



November 16, 2023

Christopher J. Kirkpatrick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Cboe Digital Exchange, LLC Rule Certification  
Submission Number CDE-2023-14E

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Regulation 40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission (“CFTC” or “Commission”) under the Act, Cboe Digital Exchange, LLC (“CDE” or “Exchange”) hereby submits amendments to its Limited Liability Company Agreement (“Operating Agreement”) and Rulebook (collectively, the “Amendments”) to dissolve the Exchange Participant Committee and Exchange Practices Committee of the CDE Board of Directors (collectively, the “Exchange Committees”). The amendments to CDE’s Operating Agreement are set forth in **Exhibit A**, and the amendments to the CDE Rulebook are set forth in **Exhibit B** to this submission. The Amendments will become effective on December 1, 2023.

### **Explanation and Analysis**

In its October 10, 2023 meeting, the CDE Board approved, by unanimous vote, to dissolve its Exchange Participant Committee and Exchange Practices Committee, effective upon rule certification with the Commission. During the Exchange Committees meetings over the last two years, at least, the Exchange Committees have not addressed any action items nor conducted any significant or substantive discussions; rather, any and all substantive topics and action items are addressed at the Board meetings,<sup>1</sup> which immediately follow regularly scheduled Exchange Committees meetings. Additionally, items discussed in the Exchange Committees meetings can be duplicative of those discussed in greater depth at Board meetings. The actionable responsibilities delegated to the Exchange Committees are more effectively and efficiently managed by the Exchange’s legal, compliance, and regulatory staff. Any matter that would arise in the course of the Exchange’s legal, compliance and regulatory staff executing such responsibilities that could significantly affect the business and affairs of the Exchange would be (and currently are) brought directly to the Board. CFTC Rules do not require the Exchange to establish or maintain the Exchange Committees. Also, following the acquisition of Cboe Digital by Cboe Global Markets, Inc. (“CGM”) in May 2022, to the extent possible, the Exchange continues align its governance, rules, and policies and procedures within the CGM structure, and particularly with Cboe Futures Exchange, LLC (“CFE”), a CFTC-registered designated contracts market like the Exchange. CFE

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<sup>1</sup> Exchange Committees members also comprise the four of the five Board Directors; only the Board Chair does not sit on an Exchange Committee.

does not have a practices or participant committee in place. For these reasons, the CDE Board approved the dissolution of the Exchange Committees and the Exchange is submitting the Amendments to dissolve the Exchange Committees.

**Exhibit A** reflects the amendments being made to the Exchange’s Operating Agreement in light of the removal of the Exchange Committees, including the requirement that the Board appoint such committees.

**Exhibit B** reflects the amendments being made to the CDE Rulebook in light of the removal of the Exchange Committee. The Amendments update the CDE Rulebook to remove in its entirety Rule 207 (Exchange Participant Committee) and Rule 210 (Exchange Practices Committee) as well as Rule 205 (Standing Committees). The Exchange notes with the dissolution of the Exchange Committees, the only remaining standing committee of the Board is the Regulatory Oversight Committee, which is duly governed by the Exchange’s Operating Agreement and Rule 208. The Amendment also replaces instances throughout the CDE Rulebook that reference the authority of an Exchange Committee (in Rule 302 (Trading Privilege Holder Application Process) and Rule 530 (Position Limits and Exemptions)) and replace such with reference to the Board. The Board will absorb responsibility as a reviewing body that it previously delegated to an Exchange Committee upon the dissolution of the Exchange Committees.

### **Core Principle Compliance**

CDE believes that the Amendments are consistent with the Designated Contract Market (“DCM”) Core Principles under Section 5 of the Act. In particular, CDE believes that the Amendments are consistent with:

- DCM Core Principle 2 (Compliance with Rules), in that the governing body of the Exchange, the Board, will absorb the role of the Exchange Participant Committee in the governance process for review and reconsideration of a denial, conditioning or termination of a Trading Privilege Holder’s Exchange application, and the role of the Exchange Practices Committee in reviewing appeals of sanctions in connection with position limit violations; and
- DCM Core Principle 17 (Composition of Governing Boards of Contract Markets), as the dissolution of the Exchange Committees will have no impact on the Board’s governance arrangements, which are designed to permit consideration of the views of market participants.

### **Public Information**

We have concurrently posted a notice and copy of this submission on the Exchange’s website at <https://www.cboedigital.com/regulation/exchange-notices/> under “CFTC Submissions.”

### **Opposing Views**

We are not aware of any opposing views to this self-certification.

### **Certification**

Cboe Digital Exchange, LLC hereby certifies to the Commodity Futures Trading Commission, pursuant to the procedures set forth in Commission regulation §40.6, that this

submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

If you have any questions regarding this submission, please contact the undersigned at the information below.

Sincerely,

**/s/ Rebecca Tenuta**

Rebecca Tenuta  
Senior Counsel  
[rtenuta@cboe.com](mailto:rtenuta@cboe.com)  
(773) 485-7926

## EXHIBIT A

### **SECOND-THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF CBOE DIGITAL EXCHANGE, LLC**

This **SECOND-THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT** of CBOE DIGITAL EXCHANGE, LLC (such agreement, as amended from time to time, shall be referred to herein as this “**Agreement**”), effective as of ~~May 2, 2022~~ December 1, 2023 (the “Effective Date”), is entered into by Cboe Digital Intermediate Holdings, LLC, a Delaware limited liability company (“**Member**”), and each of those other members executing this Agreement from time to time in accordance with the terms hereof.

#### EXPLANATORY STATEMENTS

A. The Company was formed pursuant to a Certificate of Formation (the “**Certificate**”) filed with the Secretary of State of Delaware on February 4, 2010, and has been operating pursuant to the provisions of the Company’s Second Amended and Restated Limited Liability Company Agreement dated as of ~~April 18~~ May 2, 2022 (the “**A&R LLC Agreement**”).

B. The Member has determined to amend and restate the A&R LLC Agreement to, among other things, govern the management and operation of the Company and the relationship of the parties in accordance with the terms and subject to the conditions set forth in this Agreement.

#### AGREEMENT

For good and valuable consideration, the parties, intending legally to be bound, agree as follows:

##### **Section I** **Defined Terms**

In addition to any terms that are defined in the text of this Agreement, capitalized terms shall have the meanings ascribed to them in Exhibit B of this Agreement.

##### **Section II** **Formation and Name; Office; Purpose; Term**

The Company was formed upon the execution and filing of the Certificate with the Secretary on February 4, 2010. The name of the Company is “Cboe Digital Exchange, LLC.” The Company may do business under that name and under any other name or names upon which the Member may determine. The purposes of the Company shall be to engage in any lawful act or activity for which limited liability companies may be organized under the Act as determined by the Member. The term of the Company began upon the filing of the Certificate and shall continue in perpetual existence until dissolved pursuant to this Agreement. The registered office of the Company in the State of Delaware shall be as set forth in the Certificate, or at such other place as the Member may designate from time to time. The principal office and place of business of the Company shall be located at such place as the Member may designate from time to time.

The name and address of the Company's registered agent in the State of Delaware shall be as set forth in the Certificate, or at such other place as the Member may designate from time to time. The name, present mailing address, taxpayer identification number and Percentage Interest of the Member are set forth on Exhibit A. The Member shall have the right to admit additional members from time to time as it determines in its sole discretion. If at any time the Member deems it to be in the best interest of the Company to raise additional equity capital to properly carry out the Company's business and operations, the Member shall have the right to (i) raise additional equity capital for infusion into the Company from members or other Persons on terms that may be senior to, junior to, or on parity with, the terms of the Interests held by then existing members, and (ii) admit the Persons investing such equity capital as additional members. In addition, the Company may obtain funds through loans (which may be made by the Member) having such terms and conditions as the Member, in its reasonable discretion, deems to be in the best interest of the Company. The Member shall amend Exhibit A from time to time to reflect changes in the identity of the members and changes in information set forth on Exhibit A. This Agreement is the limited liability company agreement of the Company within the meaning of the Act.

### **Section III** **Capital**

It is acknowledged that the Member has made all capital contributions to the capital of the Company required to be made by the Member as of the date hereof. From time to time the Member may, but shall not be obligated to, contribute additional capital or make loans to the Company, all at such times and upon such terms as the Member shall approve, acting in its sole discretion. The Member shall not be required to contribute any additional capital to the Company, and the Member shall not have any personal liability for any obligations of the Company.

### **Section IV** **Profit, Loss and Distributions**

Cash Flow for each taxable year of the Company shall be distributed to the Member, at such time as determined by the Board. All Profit or Loss shall be allocated to the Member. If the Company is dissolved, the assets of the Company shall be distributed as provided in **Section VII**.

### **Section V** **Management of the Company**

(a) Management by the Member. Subject to **Section V(b)**, the Company shall be managed by and all decisions regarding the Company shall be made by the Member.

(b) Delegation of Authority to the Board of Directors. Notwithstanding **Section V(a)** above, except as otherwise set forth herein, the Member hereby delegates authority over the business and affairs of the Company to the Board of Directors of the Company (the "**Board**"). Except as otherwise specifically provided herein, the Board shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company as set forth herein. Except as otherwise provided herein or expressly authorized by the Board, the Member of the Company shall not

have, and no other Person, shall have the authority or power, directly or indirectly, to act as agent of the Company for any purpose, engage in any transaction, make any commitment, enter into any contract or incur any obligation (whether as principal, surety or agent) in the name of the Company or in any other way bind the Company or hold itself out as acting for or on behalf of the Company. Any attempted action in contravention of **Sections V(a)-(g)** shall be null, void *ab initio* and not binding upon the Company, unless ratified or authorized in writing by the Board.

(c) Number; Election; Tenure; Compensation; Reimbursement. Commencing on the date of this Agreement, the Board shall consist of six (6) directors (the “**Directors**”). One Director shall be designated by the Member to serve as the Chairman. The Directors shall be appointed by the Member; provided, however, that, at all times, not fewer than thirty-five percent (35%) of the Directors shall be “public directors”, as such term is defined by applicable CFTC regulation (“**Public Directors**”), as determined by the Board. Subject to applicable law, the number of Directors constituting the Board may be increased or decreased from time to time by the Member; provided that the Board shall consist of not fewer than five (5) Directors. Each Director shall have the duties (including fiduciary duties) that the directors of a Delaware corporation have to a corporation under Delaware General Corporation Law. No Director shall be entitled to be compensated for any services provided to the Company, except as authorized in writing by the Board. The Company shall reimburse each of the Directors for reasonable business expenses incurred by any such Director on behalf of the Company, which expenses will be treated as expenses of the Company.

(d) Resignation. Each Director shall hold office until his or her successor is appointed and has qualified, or until his or her earlier resignation or removal. A Director may resign at any time by giving written notice to the Board. A resignation shall be effective upon receipt thereof by the Board unless the notice specifies a future date. The acceptance of a resignation shall not be necessary to make it effective. Any one or more of the Directors (i) shall automatically, without any further action by the Board or the Member, be removed from such position due to such Director’s death, and (ii) may be removed from such position, either with or without cause, by the Member. Following the resignation of any Director, such Director and the Persons described in **Section VIII** shall remain entitled to indemnification from the Company to the extent available under such Section with respect to any matter arising prior to its or their resignation.

(e) Vacancy. Any vacancies occurring on the Board shall be filled by the Member in accordance with **Section V(c)**; provided that at all times at least thirty-five percent (35%) of the Directors shall be Public Directors and any vacancies with respect to Public Directors shall be filled by the Board.

(f) Meetings of the Board.

(i) Time and Place. Meetings of the Board shall be held at the principal place of business of the Company or at any other place that the Board determines. At any meeting, any Director may participate by telephone or similar communication equipment, provided each Director who is participating in the meeting can hear each of the other Directors who are participating in the meeting. Directors present by telephone or similar communication equipment shall be deemed to be present “in person” for the purposes of the

meeting. Meetings shall be held in accordance with a schedule established by the Board. Meetings of the Board may be called by the Chairman or by any two (2) Directors upon at least one (1) Business Day's prior notice to the other Directors, provided such notice may be waived by all of the Directors for any individual meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of the meeting, except where such Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and notes such objection on the record. Notwithstanding any other provision of this Agreement to the contrary, a notice pursuant to this Section may be given orally or otherwise as set forth in **Section X** of this Agreement.

- (ii) Quorum and Voting. Each Director shall have one (1) vote in all matters requiring a vote of the Board. A majority of the entire Board shall constitute a quorum at any meeting of the Board. Except as otherwise required by law, the act of the Board Members possessing a majority of the votes in the aggregate present at the meeting, excluding from the votes present for such purposes any abstentions or recusals, shall be the act of the Board. If at any meeting of the Board there shall be less than a quorum present, the Director(s) present thereat may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall have been obtained. Any meeting not resumed, or if resumed not completed, during the originally scheduled time for such meeting, shall be deemed concluded at the end of such scheduled time; provided that this provision may be waived by all of the Directors present at any such meeting. All actions and decisions of the Board, once approved in accordance herewith, shall be binding on the Company and the Member.
- (iii) Written Consents in Lieu of a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action(s) so taken, shall be signed by a majority of the Directors (one of whom shall be the Chairman).

(g) Committees.

- (i) Designations and Powers. The Board may in its sole discretion, but subject to any requirements under applicable law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, (x) appoint one or more committees of the Board consisting of one or more of the Directors of the Company or other individuals and authorize and adopt a charter for such committee setting forth such committee's powers, authorities and responsibilities (a "**Charter**"), (y) designate one or more Directors or other individuals as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and (z) appoint a chairperson of any such committee. The number of Directors or other individuals serving on any committee may, subject to any

requirements under applicable law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, be increased or decreased from time to time by the Board. Any such committee, to the extent provided in a resolution of the Board or in this Agreement, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company.

~~(ii) Exchange Participant Committee. The Board shall appoint an Exchange Participant Committee (the “**Exchange Participant Committee**”) which will consist of such number of Directors as established by resolution adopted by the Board, provided that the Exchange Participant Committee shall at all times consist of not less than thirty five percent (35%) Public Directors. The Exchange Participant Committee shall have those powers, authorities, and responsibilities delegated to it by the Board in its Charter.~~

~~(iii) Exchange Practices Committee. The Board shall appoint an Exchange Practices Committee (the “**Exchange Practices Committee**”) which shall consist of such number of Directors as established by resolution adopted by the Board, provided that the Exchange Practices Committee shall at all times consist of not less than thirty five percent (35%) Public Directors. The Exchange Practices Committee shall have those powers, authorities, and responsibilities delegated to it by the Board in its Charter.~~

~~(iv)~~(ii) Regulatory Oversight Committee. The Board shall appoint a Regulatory Oversight Committee (the “**Regulatory Oversight Committee**”) which shall consist of such number of Directors as established by resolution adopted by the Board, provided that the Regulatory Oversight Committee shall at all times consist entirely (100%) of Public Directors. The Regulatory Oversight Committee shall have those powers, authorities, and responsibilities delegated to it by the Board in its Charter.

~~(v)~~(iii) Meetings of Committees. Meetings of any committee may be held at any time or place as shall be determined by resolution of the committee, the chairperson of the committee or any two (2) members of the committee. Notice of any meeting of a committee shall be given in the same manner as notice of any meeting of the Board as provided in **Section V(f)(i)**. A majority of the entire committee shall constitute a quorum at any meeting of a committee. The act of a majority of the members of a committee at any duly constituted meeting, if a quorum is present, shall be the act of the committee. Any action required or permitted to be taken at any meeting of a committee may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the requisite number of members of such committee. Any member of a committee may participate by telephone or similar communications equipment, provided each member who is participating in the meeting can hear each of the other members who are participating in the meeting. Persons present by telephone or similar



communications equipment shall be deemed to be present “in person” for the purposes of the meeting. The foregoing shall be subject to the specific terms of each committee’s Charter and in the event of an inconsistency between a Charter and this Agreement, the terms of such Charter shall govern.

~~(vi)~~(iv) Reports to the CFTC. In the event that the Board rejects any recommendation or supersedes any action of the Regulatory Oversight Committee ~~or the Exchange Participant Committee~~, the Company shall prepare and submit to the CFTC a report detailing (w) the recommendation or action of the Regulatory Oversight Committee ~~or the Exchange Participant Committee, as applicable~~, (x) the rationale for such recommendation or action, (y) the rationale of the Board for rejecting such recommendation or superseding such action, and (z) the course of action the Board decided to take contrary to such recommendation or action.

(h) Board Observers. The Member shall have the right to appoint observers to the Board (each, an “**Observer**”). Such Observers shall serve for a term of one (1) year. Such Observers shall be entitled to (x) receive contemporaneously the same notice and other materials in respect of all meetings (or written consents) of the Board as are furnished to the Directors, (y) attend all meetings (and review all written consents) of the Board, and (z) participate in all discussions conducted at meetings (or with respect to actions to be taken by written consent) of the Board; provided, however, such Observers shall not constitute a Director and shall not be entitled to vote on any matters presented to the Board and may be removed for any or no reason by the Board upon notice thereof; provided further that such Observers may be required to leave, or not be allowed to attend, any meetings (or may not receive certain materials) if and to the extent a conflict of interest, confidentiality concern or privilege arises or may arise in connection with the issues being discussed (or described in such materials), regulatory issues may arise or be discussed with respect to which it would be inappropriate for the Observers to participate, or another reasonable basis exists for excluding the Observers, in each case as determined by the Chairman in his or her reasonable discretion.

(i) Required Member Consent. Notwithstanding anything to the contrary contained herein, the Board shall not approve or undertake or authorize any other Person to approve or undertake, and shall not have the power or authority to approve or authorize any other Person to approve or undertake any of the following actions with respect to the Company without the prior written consent of the Member:

- (i) enter into, approve or adopt an annual business plan or annual budget;
- (ii) appoint a new president, chief executive officer, chief financial officer, chief operating officer, any executive vice president or any other officer comprising senior management of the Company, or the termination (other than for cause) of or material change in the compensation (including equity compensation) of any then-existing president, chief executive officer, chief financial officer, chief operating officer, any executive vice president or any other officer comprising senior management of the Company;

- (iii) acquire or dispose of any business or any material assets;
- (iv) approve, recommend, consummate or participate in any Sale Transaction;
- (v) cause any material change in the line(s) of business of the Company and its subsidiaries, taken as a whole, from the business conducted by the Company and its subsidiaries as of the date hereof;
- (vi) create, authorize, offer, issue or sell to any Person any Interests or any interests or other instruments directly or indirectly convertible, exercisable or exchangeable for Interests;
- (vii) admit a new Member to the Company;
- (viii) create or grant any security interest, encumbrance or guarantee on the assets of the Company or any of its subsidiaries;
- (ix) incur indebtedness for borrowed money;
- (x) approve, initiate or consummate a reorganization, liquidation or dissolution of the Company;
- (xi) initiate or settle any litigation or any other action, suit or similar proceeding;
- (xii) finalize or settle any administrative or judicial disputes with any taxing or other governmental authority;
- (xiii) select, cause appointment or replace the auditors of the Company or its Subsidiaries;
- (xiv) file any tax returns and statements with respect to the Company or any subsidiary or the assets of the Company or any subsidiary;
- (xv) amend any accounting policy or make any tax election or decision or change in tax classification of the Company;
- (xvi) amend the Company's organizational documents or documents related to the Interests; or
- (xvii) redeem, repurchase or otherwise acquire any Interests or other instruments directly or indirectly convertible, exercisable or exchangeable for Interests.

(j) Officers. Any Officer authorized and appointed to act by the Board shall have full power and authority to act for and bind the Company for the purposes so authorized or appointed and third parties may rely upon such authorization or appointment. The Officers of the Company may include a president, chief executive officer, chief regulatory officer and/or such other Officers as the Board may establish from time to time. Each Officer shall hold office until his or her successor is elected or appointed or until his or her earlier displacement from office by resignation,

removal or otherwise; provided that if the term of office of any Officer elected or appointed pursuant to this **Section V(i)** shall have been fixed by the Board, he or she shall cease to hold such office no later than the date of expiration of such term, regardless of whether any other person shall have been elected or appointed to succeed him or her. Any Officer may resign by written notice to the Company and may be removed with or without cause by the Board whenever in its judgment the best interests of the Company will be served thereby.

(k) Disciplinary Panels. The Board may, in its sole discretion, but subject to any requirements under applicable law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, establish one or more disciplinary panels, including, but not limited to, a disciplinary panel for appeals (each a “**Disciplinary Panel**”), each of which generally shall be responsible for conducting hearings, rendering decisions, and imposing sanctions with respect to disciplinary matters as determined by the Board. Except as the Board may otherwise determine from time-to-time, each Disciplinary Panel shall be comprised of three individuals, at least one of whom would qualify as a Public Director, and such person will chair the Disciplinary Panel. The number of individuals serving on any Disciplinary Panel (each a “**Disciplinary Panel Member**”) may, subject to any requirements under applicable law, be increased or decreased from time to time by the Board. The Disciplinary Panel Members shall be appointed by the Board and may be removed from such position, either with or without cause, at any time by the Board.

## **Section VI** **Transfer**

Notwithstanding any provision contained in this Agreement to the contrary, the Member shall have the right to Transfer all or any part of the Member’s Membership Rights, and such transferees shall automatically be deemed to be admitted as a member of the Company. For purposes of this Agreement, a Transfer of Interests and other Membership Rights shall include any Transfer of any direct or indirect ownership interests in the Member and any change in the power of a Person to direct the business and affairs of the Member by virtue of ownership of voting securities, contract or otherwise. The Interests and other Membership Rights are securities governed by Article 8 of the Uniform Commercial Code as in effect in the State of Delaware. Interests and Membership Rights shall not be certificated. The transferee of a Transfer for collateral purposes shall not be admitted as a member of the Company until such time, if any, as the transferee has realized upon the Membership Rights pledged to it or has acquired such Membership Rights in lieu of such realization and such transferee expressly agrees in writing to be bound to the terms and conditions of this Agreement.

## **Section VII** **Dissolution**

The Company shall be dissolved only if the Member determines to dissolve the Company or if the Company has no members. If the Company is dissolved, the affairs of the Company shall be wound up. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company in satisfaction of the liabilities of the Company, and then to the Member.

## **Section VIII**

### **Liability and Indemnification**

(a) Except as otherwise required by non-waivable provisions of applicable law or as expressly set forth in this Agreement, the Member shall not have any personal liability whatsoever in the Member's capacity as a member in excess of its capital contribution, whether to the Company, to the creditors of the Company or to any other third party, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company, other than arising out of a breach of this Agreement by the Member, any actions by such the Member prohibited by this Agreement or as provided in any other written agreement between the Company and the Member.

(b) None of the Member, the Directors, Disciplinary Panel Members or Officers shall be personally liable for the return of any portion of the capital contributions (or any return thereon) of the Member and the return, if any, of such capital contributions (or any return thereon) shall be made solely from assets of the Company. None of the Member or the Directors shall be required to pay to the Company any deficit in the Member's capital account upon dissolution of the Company or otherwise. None of the Member, the Directors or the Officers shall be liable, responsible or accountable, for damages or otherwise, to the Member or to the Company for any act performed by such Member, Directors or Officers within the scope of the authority conferred on such Member, the Directors and the Officers by this Agreement, except for gross negligence, fraud, bad faith or a material breach of this Agreement.

(c) The Company shall, to the fullest extent permitted by the Act, indemnify and hold harmless the Member, Disciplinary Panel Members, Officers, Directors, their respective partners, stockholders, members, officers, trustees, advisory board members, directors, employees, attorneys and agents and other affiliates, and, as determined by the Board in its sole discretion, certain non-Officer employees of the Company (collectively, the "**Indemnified Parties**") from and against any loss, expense, damage or injury suffered or sustained by them by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or in furtherance of the interests of the Company or by reason of the fact that such Person is or was a Member, Disciplinary Panel Member, Director, Officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, trustee, member, disciplinary panel member, manager, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the investigation and defense of any actual or threatened action, proceeding or claim, unless the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based arose out of such Indemnified Party's gross negligence or were performed or omitted fraudulently or in bad faith by such Indemnified Party or constituted a material breach of this Agreement. If any claim for indemnification is based on a claim by a third party (a "**Third Party Claim**"), the Indemnified Party in question shall give prompt written notice thereof to the Company and shall permit the Company to defend and/or settle such Third Party Claim, so long as it does so diligently and in good faith; provided, however, that no compromise or settlement of any claim may be effected by the Company without the Indemnified Party's consent (which will not be unreasonably withheld, conditioned or delayed) unless the sole relief provided is monetary damages that are paid in full by the Company. Any such indemnification

shall only be from the assets or insurance of the Company and the Member shall not be required to contribute capital to the Company to satisfy any such indemnification. Any such indemnification shall be paid by the Company in advance of the final disposition of any such action, proceeding or claim upon receipt of an undertaking by or on behalf of the Indemnified Party seeking advancement to repay the amount advanced should it ultimately be determined that the Indemnified Party was not entitled to be indemnified hereunder or under the Act.

### **Section IX** **Books, Accounting, and Tax Matters Partner**

All funds of the Company shall be deposited in such bank or other investment accounts as the Board shall approve. All such accounts shall be in the Company's name. The annual accounting period of the Company shall be the calendar year. The Member intends that for as long as the Company has a single Member the Company will be treated as a disregarded entity for all applicable tax purposes. The Member shall be the tax matters partner unless the Member selects a different tax matters partner, to the extent that a tax matters partner is required or permitted by applicable law. For all taxable years beginning on or after January 1, 2018, and in the event the Company is treated as a partnership for federal income tax purposes, the Member shall be designated as the "partnership representative", as defined in Code Section 6223 (as in effect following the effective date of its amendment by Section 1101 of H.R. 1314) and the Company and the Member shall complete any necessary actions (including executing any required certificates or other documents) to effect such designation.

### **Section X** **General Provisions**

(a) Any notice, demand, consent, election, offer, approval, request, or other communication (collectively, a "**notice**") required or permitted under this Agreement must be in writing and either delivered personally, sent by certified or registered mail, postage prepaid, return receipt requested, or sent by recognized overnight delivery service. A notice must be addressed to the Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. Notices shall be deemed given upon receipt or refusal to accept delivery. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

(b) This Agreement constitutes the complete and exclusive statement of the agreement by the Member and supersedes all prior written and oral statements (including the A&R LLC Agreement), including any prior representation, statement, condition or warranty.

(c) This Agreement may not be amended without the written consent of the Member.

(d) This Agreement shall be governed by the internal law, not the law of conflicts, of the State of Delaware. The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

(e) This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

(f) Nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require.

(g) Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

**[Remainder of Page Intentionally Left Blank.  
Signature Page Follows.]**

IN WITNESS WHEREOF, the undersigned has executed this ~~Second~~Third Amended and Restated Limited Liability Company Agreement of Cboe Digital Exchange, LLC as of the date first set forth above.

**MEMBER**

CBOE DIGITAL INTERMEDIATE HOLDINGS,  
LLC,  
a Delaware limited liability company

By:

Name: [Christopher A. Isaacson](#)

Title: [Vice President](#)

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**EXHIBIT A**

(~~effective current~~ as of ~~May 2, 2022~~ December 1, 2023)

**NAME, ADDRESS, TAXPAYER IDENTIFICATION NUMBER AND  
PERCENTAGE INTEREST**

<u>Address and Taxpayer Identification Number</u>	<u>Percentage Interest</u>
Cboe Digital Intermediate Holdings, LLC <del>111 S. Wacker Drive</del> <u>433</u> <del>West Van Buren Street</del> Suite <del>700S</del> <u>4730</u> , Chicago, IL 6060 <u>76</u>	100%

EIN: 82-3843203



## **EXHIBIT B**

### **Definitions**

For purposes of this Agreement, the following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural forms of the terms so defined).

“**Act**” means the Delaware Limited Liability Company Act, as amended from time to time.

“**Board**” shall have the meaning set forth in **Section V** of this Agreement.

“**Business Day**” means any day other than Saturday, Sunday, and a day on which either the Cboe Digital Exchange or commercial banks are authorized or required to close in either of Chicago, Illinois or New York City, New York.

“**Cash Flow**” means the revenues and other cash receipts of the Company minus the expenditures of the Company. Cash Flow will not include reserves established by the Board from time to time except to the extent released from the reserves in question for distribution.

“**CEA**” means the U.S. Commodity Exchange Act, as amended.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

“**Company**” means the limited liability company formed in accordance with the Certificate.

“**Disciplinary Panel**” shall have the meaning set forth in **Section V** of this Agreement.

“**Disciplinary Panel Member**” shall have the meaning set forth in **Section V** of this Agreement.

“**Interest**” means a membership interest in the Company entitling the holder thereof to receive a share of the Profits and Losses of, and the right to receive distributions from, the Company in accordance with the terms of this Agreement.

“**Membership Rights**” means all of the rights of a member of the Company, including a member’s: (i) Interests; (ii) right to inspect the Company’s books and records; and (iii) right to vote on matters coming before the members, if any.

“**Officer**” means any individual from time to time authorized or appointed by the Board to act as an officer or representative of the Company on a general basis or for a specific purpose, which individual shall act for and bind the Company as authorized by the Board.

“**Percentage Interest**” means the percentage interest of the Member as set forth on Exhibit A.

“**Person**” means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

“**Profit**” and “**Loss**” mean, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company’s taxable income or loss determined in accordance with the Code.

“**Sale Transaction**” shall mean any transaction or series of transactions involving (i) a sale or conveyance of all or substantially all of the Company’s assets to any Person, (ii) a sale or conveyance of at least 50% of the Interests or other equity interest in the Company to any Person, or (iii) a merger or consolidation of the Company with any Person pursuant to which the Member (and their affiliates) immediately prior to such merger or consolidation shall own, immediately after giving effect thereto, less than a majority of the equity interest of the surviving entity (or its parent) or the purchasing entity (or its parent), as the case may be.

“**Transfer**” means, when used as a noun, any direct or indirect sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means to, directly or indirectly, sell, hypothecate, pledge, assign, or otherwise transfer.

## EXHIBIT B

### Amendments to the Cboe Digital Exchange Rulebook

(All deletions are struck-through and all additions are underlined)

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#### RULE 202. Board

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(e) To qualify as a Public Director, an individual must be found, by action of the Board, to have no material relationship with the Exchange. The Board must make such finding upon the nomination or appointment of the Director and as often as necessary in light of all circumstances relevant to such Director, but in no case less than annually.

A “material relationship” is one that reasonably could affect the independent judgment or decision-making of the Director. In making the finding specified in this Rule, the Board need not consider previous service as a Director of the Exchange to constitute a “material relationship.” A Director shall be considered to have a “material relationship” with the Exchange if any of the following circumstances exist or have existed within the past year:

- (1) Such Director is an Officer or an employee of the Exchange, or an officer or an employee of an Affiliate of the Exchange;
- (2) Such Director is a Trading Privilege Holder or Owner of the Exchange;
- (3) Such Director is a director, an officer, or an employee of a Trading Privilege Holder or Owner of the Exchange;
- (4) Such Director is an officer of another entity, which entity has a compensation committee (or similar body) on which any Officer of the Exchange serves;
- (5) Such Director, or an entity with which the Director is a partner, an officer, an employee, or a director, receives more than \$100,000 in combined annual payments for legal, accounting, or consulting services from the Exchange or its Affiliate, any member of the Exchange, or any Affiliate of such member. Compensation for services as a Director of the Exchange or as a director of an Affiliate thereof does not count toward the \$100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a Director, so long as such compensation is in no way contingent, conditioned, or revocable; or,
- (6) Notwithstanding Rule 202(e)(5), in the case of a public director that is a member of the Regulatory Oversight Committee ~~or the Exchange Participant Committee~~, such public director accepts, directly or indirectly, any consulting, advisory, or other compensatory fee from the Exchange or its Affiliate or any member of the Exchange or the member's Affiliate, other than deferred compensation for services rendered prior to becoming a member of the Regulatory Oversight Committee ~~or the Exchange Committee~~, provided that such compensation is in no way contingent, conditioned, or revocable. This Rule

202(e)(6) does not apply to compensation received in the public director's capacity as a member of the Regulatory Oversight Committee ~~or Exchange Participant Committee.~~

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## **RULE 205. [RESERVED] Standing Committees**

- ~~(a) The Board shall have three standing committees: the "Exchange Participant Committee," the "Regulatory Oversight Committee," and the "Exchange Practices Committee." The Board may from time to time constitute and appoint in accordance with the Operating Agreement, such additional standing committees of the Board as it may from time to time deem necessary or advisable.~~
- ~~(b) Each member of such standing committees must be a Director, one of whom the Board shall designate as the chairperson of each standing committee.~~
- ~~(c) Each standing committee shall assist in the supervision, management and control of the affairs of the Exchange within its particular area of responsibility, subject to the authority of the Board.~~
- ~~(d) Subject to the authority of the Board, each standing committee shall determine the manner and form in which its proceedings shall be conducted. Each standing committee may act only by the decision of an absolute majority in number of the members of such committee, by a vote at a meeting or by unanimous written consent without a meeting. The Board has the authority to overrule the decision of a standing committee.~~

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## **RULE 207. [RESERVED] Exchange Participant Committee**

- ~~(a) The Exchange Participant Committee of the Board shall consist of Directors appointed from time to time by the Board, of which at least 35% shall be Public Directors.~~
- ~~(b) The Exchange Participant Committee shall:
  - ~~(1) Determine the standards and requirements for initial and continuing Trading Privilege Holder eligibility;~~
  - ~~(2) Review appeals of staff denials of Trading Privilege Holder applications; and~~
  - ~~(3) Approve rules that would result in different categories or classes of Participants receiving disparate access to the Exchange.~~~~

~~(c) In reviewing appeals of staff denials of Trading Privilege Holder applications, the Exchange Participation Committee shall not uphold any staff denial if the relevant application meets the standards and requirements that such Committee sets forth.~~

~~(d) The Exchange Participant Committee shall not, and shall not permit the Exchange to, restrict access or impose burdens on access in a discriminatory manner, within each category or class of Trading Privilege Holder or between similarly situated categories or classes of Trading Privilege Holder.~~

~~(e) The Exchange Participant Committee reports to the Board.~~

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## **RULE 210. [RESERVED]Exchange Practices Committee**

~~(a) The Exchange Practices Committee of the Board shall consist of Directors appointed from time to time by the Board, of which at least 35% shall be Public Directors.~~

~~(b) The Exchange Practices Committee shall be responsible for:~~

- ~~(1) establishing and modifying from time to time Contract specifications and trading protocols and conventions for the Exchange,~~
- ~~(2) establishing and modifying position limits or accountability levels,~~
- ~~(3) designating and modifying from time to time products eligible for listing on the Exchange and~~

~~(c) In addition, the Exchange Practices Committee shall have such other powers and perform such other duties as set forth in the Cboe Digital Exchange Rules and as the Board may delegate to it from time to time.~~

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## **RULE 302. Trading Privilege Holder Application Process**

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(e) If the Exchange decides to decline or condition an application for admission as a Trading Privilege Holder, or terminate a Person's status as a Trading Privilege Holder, the Exchange shall promptly notify such Person (the "Affected Person") thereof in a writing sent to the address provided by the applicant in the Exchange application form or maintained in the Exchange registry of Trading Privilege Holder. Such Affected Person may, within seven (7) calendar days, request in writing that the Exchange provide the reasons for the denial, conditioning or termination of Trading Privilege Holder status. Within fourteen (14) calendar days after receiving such written

request, the Exchange shall send a written response to the Affected Person setting forth the reasons for the denial, conditioning or termination. Within fourteen (14) calendar days of receiving the Exchange's written response, the Affected Person may request in writing that the ~~Exchange Participant Committee~~Board reconsider the determination.

(f) Within twenty-eight (28) calendar days of receiving either the request for reconsideration, the ~~Exchange Participant Committee~~Board shall either confirm, reverse or modify the denial, conditioning or termination of the Affected Person as a Trading Privilege Holder, and shall promptly notify the Affected Person accordingly in writing. The ~~Exchange Participant Committee~~Board may, within its discretion, schedule a hearing (in-person or by teleconference); request additional information from the Affected Person; or, establish any other process that it believes is necessary and appropriate to consider the request for reconsideration.

(g) The ~~Exchange Participant Committee~~Board's decision is the final action of the Exchange and is not subject to appeal within the Exchange.

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## **RULE 530. Position Limits And Exemptions**

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(n) Violations.

(1) No Person shall exceed the position limits set forth in the Rules, unless an exemption is granted by the Market Regulation Department.

(2) The Market Regulation Department ~~and the Exchange Practices Committee~~ shall have the authority to enforce the Cboe Digital Exchange Rules regarding position limits

(3) Any Person making a bid or offer that would, if accepted, cause such Person to exceed the applicable position limits shall be in violation of this Rule 530.

(4) If a position exceeds position limits as a result of an Option assignment, the Person who owns or controls such position shall be allowed one Business Day to liquidate the excess position without being considered in violation of the limits. Additionally, if, at the close of trading, a position that includes Options exceeds position limits when evaluated using the delta factors as of that day's close of trading, but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation.

(5) A Clearing Member shall not be in violation of this Rule if it carries positions for a Customer in excess of the applicable position limits for such reasonable period of time,

generally not exceed one Business Day, as the Clearing Member may require to investigate and liquidate the excess Customer positions.

(6) A Customer who exceeds the position limits as a result of maintaining positions at more than one Clearing Member shall be deemed to have waived confidentiality regarding his positions and the identity of the Clearing Members at which they are maintained. A Clearing Member carrying such positions shall not be in violation of this Rule if, upon notification by the Exchange, it liquidates its pro-rata share of the position in excess of the limits or otherwise ensures the Customer is in compliance with the limits within a reasonable period of time, generally not exceed one Business Day.

(o) Violations, Sanctions and Appeals.

(1) First Violation. The first position limit violation by a Trading Privilege Holder will result in a warning letter issued by the Market Regulation Department, with a copy provided to the carrying Clearing Member(s), if applicable. In circumstances where the carrying Clearing Member has also committed a position limit violation as set forth in this Rule 530 by carrying such positions, a warning letter will be issued to the Clearing Member(s).

(2). Second Violation, Sanctions and Appeals.

(A) A second position limit violation by a Trading Privilege Holder within 24 months of the issuance of a warning letter will result in the imposition of an automatic fine by the Market Regulation Department to the Trading Privilege Holder as set forth below and the issuance of a cease and desist order.

(B) The automatic fine for a position exceeding the applicable limit by up to 25% shall be \$5,000.

(C) The automatic fine for a position exceeding the applicable limit by more than 25% shall be \$15,000.

(3) Referral to the Chief Regulatory Officer.

(A) Any third or subsequent position limit violation within 24 months of the issuance of a warning letter shall be referred by the Market Regulation Department to the Chief Regulatory Officer for consideration of the issuance of charges.

(B) Notwithstanding anything to the contrary contained herein, the Market Regulation Department, in its sole discretion, may refer any position limit violation it deems egregious to the Chief Regulatory Officer for consideration of the issuance of charges.

(4) Appeal. Parties may, within 10 Business Days of being provided notice of sanctions issued pursuant to this section, request an appeal to the ~~Exchange Practices Committee~~Board.

(A) Upon receiving a written request for appeal, the Chair of the ~~Exchange Practices Committee~~Board shall determine solely upon the written request for appeal and any written response of the Market Regulation Department, whether there is a reasonable basis to conclude that the appellant might be able to meet one of the standards identified in subsection (b) below that would permit the ~~Exchange Practices Committee~~Board to set aside, modify or amend the appealed decision. If the Chair determines that such a reasonable basis exists, a hearing will be held. The ~~Exchange Practices Committee~~Board Chair's determination of whether to hold a hearing on an appeal shall be final. If a hearing is held the Chair shall allow the filing of briefs in connection with the appeal.

(B) The ~~Exchange Practices Committee~~Board shall not set aside, modify or amend the appealed decision unless it determines by a majority vote that the decision was:

(i) Arbitrary, capricious, or an abuse of the Market Regulation Department's discretion;

(ii) In excess of the Market Regulation Department's authority or jurisdiction; or,

(iii) Based on a clearly erroneous application or interpretation of Cboe Digital Exchange Rules.

(C) If a hearing is held, the ~~Exchange Practices Committee~~Board shall issue a written decision which shall include a statement of findings with respect to the decision from which the appeal was taken and the ~~Exchange Practices Committee~~Board's determination that such initial decision is affirmed, set aside, modified or amended in whole or in part and, with respect to any initial decision that is not affirmed in whole, the ~~Exchange Practices Committee~~Board's determination of the order or penalty to be imposed, if any, and the effective date. The decision of the ~~Exchange Practices Committee~~Board shall be final and may not be appealed.

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