



May 9, 2022

VIA ELECTRONIC SUBMISSION

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 22-08; FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comments on Effective Practices and Rule Enhancements

Dear Ms. Piorko Mitchell:

FINRA is requesting comment on (1) practices that FINRA members have developed for investor access to options and so-called complex products; and (2) whether the current regulatory framework for investor access to these products is appropriately tailored.¹ As a leader in exchange-traded derivatives and exchange-traded products (“ETPs”), Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to provide feedback on this topic.

Cboe is uniquely qualified to respond to this request for comment. Cboe is the creator of listed options, and operates four U.S. listed options exchanges (Cboe Options, C2 Options, BZX Options, and EDGX Options), including the largest U.S. options exchange (Cboe Options); a futures exchange (CFE); four U.S. stock exchanges (BYX Equities, BZX Equities, EDGA Equities, and EDGX Equities); the largest pan-European stock exchange (Cboe Europe Equities); and among others, a foreign exchange-trading platform (Cboe FX).

FINRA and the U.S. national securities exchanges have issued robust and relevant guidance over the years with respect to suitability. This time-tested guidance has served investors and the industry well. Occasional aberrant incidents are not indicative of a flawed or stale framework. As a regulator and product developer, Cboe believes the current regulatory framework for investors to access options and complex products is strong and appropriately rigorous.

¹ Regulatory Notice 22-08 (FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comments on Effective Practices and Rule Enhancements) (March 8, 2022).

Summary

- **Listed options have tremendous utility and are important tools for investors.**
- **Exchanges, broker-dealers, and other market participants provide quality educational content to investors. In fact, they are providing more and better content than ever.**
- **The current listed options account approval and suitability framework is strong and serves investors well. Cboe does not believe that changes to the framework are warranted, and Cboe does not support the establishment of mandated minimum eligibility requirements or certifications for investors to access listed options.**
- **No definition for “complex product”² is warranted.**

Discussion

a. Listed options are important investment products.

Listed options³ provide considerable utility to investors. For years, listed options have been widely embraced by investors, including financial professionals, institutional investors, and many self-directed individual investors. Retail investors are increasingly utilizing options to efficiently hedge holdings, gain exposures, manage risk, and improve returns.

There are a multitude of options trading strategies that can benefit the retail investor. For example, an investor can purchase a protective put to hedge risk associated with a stock exposure. Further, many investors also turn to selling covered calls as a way to generate additional income in connection with accumulated stock holdings. These established options strategies are important tools in the retail investor’s toolkit and their use should not be discouraged or made unduly burdensome. Cboe believes increased use of listed options reflects growing acknowledgment by investors regarding the utility of the product.⁴

An additional factor behind this positive trend is funds, including exchange-traded funds (“ETFs”), that use listed options. Funds use options for good reason. Options-based funds often have lower volatility and

² For purposes of this letter, the term “complex products” generally refers to the product set listed in the request for comment. It is not meant to signal an endorsement of a label for these investments.

³ Listed options are distinguishable from options contracts that trade over the counter (“OTC options”) in that they are centrally cleared and contribute to transparent, price discovery. OTC options involve private transactions between a buyer and a seller with no meaningful disclosure requirements. Despite the vast size of the OTC options market, it is incredibly opaque.

⁴ Cboe has also introduced mini listed options, which are available for several higher-priced securities, to gain exposures with a lower cash outlay. Further, Cboe recently launched [Nanos](#), which are one-multiplier, cash-settled listed options on the Mini-S&P 500 Index.

less severe drawdowns than other funds and typically outperform the S&P 500 Index in down markets.⁵ A 2014 study found that over a 5-year period, funds that used options had higher returns, lower volatility, and higher risk-adjusted returns than their peer funds that did not use options.⁶

Certain funds deliver particular options investment strategies in a familiar ETF wrapper. For example, certain products with defined outcome strategies seek to provide investors with U.S. large cap equity market exposure while limiting their downside risk through the use of options. To illustrate the utility of these products, we note that the S&P 500 Index experienced a decline of 8% in its total return year-to-date.⁷ During that same time period, certain funds that track the S&P 500 Index through the use of listed options and provide a buffer of downside protection against losses over a set period of time while also providing predetermined capped growth opportunity, experienced little-to-no declines.

After decades of use, listed options are widely acknowledged as important investment tools. Cboe believes that access to these tools is important for all investors.

b. Robust education already exists and is widely accessible to investors via many different formats.

While the industry has made options education readily accessible, it is ultimately up to the investor to take advantage of the wide array of resources that are available. Both the industry and the investor each have a role to play in making sure that options are properly understood and utilized. The options industry goes above and beyond countless other industries in terms of education and disclosure. As technological advances have allowed investors to trade options (among other asset classes) from the convenience of an app on their smartphones, educational outreach has kept pace. Materials exist that allow robust options education to reach investors in new and similarly accessible ways, such as videos or streaming platform content, via those same smartphones. Importantly, this online content typically concisely lays out the key risks and benefits associated with trading options.

Cboe is a strong supporter of education and the power it provides investors. Cboe's longstanding commitment to educating investors is demonstrated by Cboe's highly regarded [Options Institute](#). The Options Institute has served as an educational resource for new and seasoned listed options traders for over 35 years. While the Options Institute is a valuable resource, it is certainly not the only provider of options education. Considerable content regarding options fundamentals and characteristics can be accessed free of charge from the [Options Industry Council](#) ("OIC") and the [Options Clearing Corporation](#) ("OCC"), among others.

Additionally, most, if not all, retail brokerage firms provide cutting-edge, educational content spanning various topics, sophistication levels and formats that are available to all investors. For example, many

⁵ Keith Black and Edward Szado. *Performance Analysis of Options-Based Equity Mutual Funds, Closed-End Funds, and Exchange-Traded Funds: An Update*, [The Journal of Wealth Management](#), (2018). In addition, another study that found lower volatility: Markus Natter, Martin Rohleder, Dominik Schulte, and Marco Wilkens, *The Benefits of Option Use by Mutual Funds*, [Journal of Financial Intermediation](#), (April 2016), Vol. 26, 142-168.

⁶ Goldman Sachs Research, *Mutual Fund Use of Options: Public Holdings and Trends* (2014).

⁷ As of April 14, 2022.

brokers publish articles explaining the risks and benefits associated with options strategies, including via a smartphone app. Some brokers even display profit and loss charts to visually illustrate to investors the potential outcomes associated with trades or positions. Similarly, other brokers provide free online options courses spanning multiple sets of curricula as well as quizzes to check knowledge while others provide a wide array of different formats for investors to access options knowledge, including free webinars and videos.

c. The current regulatory framework for listed options is strong and changes are not needed.

The current disclosure and account approval regulatory framework for listed options is time-tested and working well. Prior to buying or selling an option, investors must acknowledge that they have read a copy of the *Characteristics and Risks of Standardized Options*, also known as the options disclosure document (“ODD”). The ODD serves as a prospectus for listed options, explaining the characteristics and risks of listed options, and is specifically required and designed to have information in it that addresses various topics, many of which are the subject of this request for comment.

SEC Rule 9b-1 specifically requires that the ODD contains the following information: (1) a glossary of terms; (2) a discussion of the mechanics of exercising the options; (3) a discussion of the risks of being a holder or writer of the options; (4) the identification of the market or markets in which the options are traded; (5) a brief reference to the transaction costs, margin requirements and tax consequences of options trading; (6) the identification of the issuer of the options; (7) a general identification of the type of instrument or instruments underlying the options class or classes covered by the document; (8) if the options are not exempt from registration under the Securities Act of 1933, the registration of the options on form S-20 and the availability of the prospectus and the information in part II of the registration statement; and (9) such other information as the Commission may specify.⁸ Moreover, Rule 9b-1 also contains provisions requiring broker-dealers to furnish the ODD to a customer prior to accepting an order to trade listed options or approving a customer’s account to trade listed options along with requiring that updates to the ODD be promptly provided.

Cboe notes that instances of bad actors when it comes to listed options suitability do not appear to have materially increased as listed options volumes have grown. FINRA’s Regulatory Notice highlights that listed options trading volume has grown to over 38.6 million contracts a day on average, more than 30 percent higher than the 29.5 million contracts traded per day in 2020 and almost 100 percent higher than the 19.8 million contracts per day traded in 2019.⁹ Despite this increase in volume, Cboe is not aware of any data analysis supporting the notion that the listed options regulatory framework needs to be overhauled. If anything, the disciplinary actions related to listed options onboarding and suitability demonstrate that there is effective oversight of sales practice procedures and controls.

The listed options onboarding process and the disclosure regime go above and beyond what is required in many other industries. Technology has evolved, but the framework still holds up. It is not broken, and major surgery is not warranted. Nevertheless, to the extent policymakers determine to explore rule

⁸ See [47 FR 41956](#), Sept. 23, 1982, as amended at [51 FR 14982](#), Apr. 22, 1986; [65 FR 64139](#), Oct. 26, 2000; [68 FR 192](#), Jan. 2, 2003.

⁹ See FINRA Regulatory Notice 22-08 referencing Options Clearing Corporation [data](#).

changes to the listed options regulatory framework, Cboe believes it would be prudent to first form a committee of relevant experts representing various types of market participants (e.g., broker-dealers, options exchanges, FINRA, etc.) to explore any potential changes. To be clear, Cboe does not believe changes should result in restrictions or limitations to product access. Instead, committee consideration could focus on initiatives such as establishment, on a pilot basis, of a simple summary of the ODD containing information about options and their potential risks in an easily digestible one-page format.

The current framework requires broker-dealers to ensure that their listed options account approval standards are rigorous regardless of the technology used by the broker-dealer. As such Cboe does not believe reforms are necessary. Importantly, Cboe does not support minimum eligibility requirements, mandated testing, or mandated certification for investors to tap into the utility of listed options.

d. A definition for “complex products” is not warranted.

Cboe does not believe that establishing a formal definition for “complex products” is prudent. It is possible that such a definition could give investors a false sense of an asset’s risk profile and could lead investors to believe that only products that are labeled “complex” carry heightened risk.

Further, drawing the line on what is deemed “complex” would be arbitrary and unproductive. The request for comment questions whether products with cryptocurrency-related holdings should be classified as complex. Cboe questions whether such products are sufficiently different from other commodity-related products to warrant disparate treatment. Cboe notes that investors currently have access to ETPs that track the price of sugar, corn, and gold, among other commodities that could present similar considerations. Applying the existing framework that requires funds to disclose risks and broker-dealers to perform comprehensive analysis about the suitability of a particular product for their customers provides sufficient investor information and protection.

Of particular concern would be designating as “complex” ETPs that provide investors with options trading strategy exposures with defined capped gains and losses in a simple and familiar wrapper. These products often simplify the investing process for customers and a “complex” label would be counterproductive. Moreover, Cboe does not support the establishment of mandated minimum eligibility requirements or certifications for investors to tap into the utility of complex products, especially ones that provide important ease of exposure.

A definition would not provide additional value beyond the established disclosure regime. Cboe believes comprehensive risk disclosure in the applicable regulatory documentation backstopped by rigorous broker-dealer evaluation of the suitability of a particular product for a client provides a robust and balanced framework for investor protection. In addition to the robust disclosure regime, Reg BI, which requires broker-dealers to only recommend products that are in the best interest of a customer while considering the customer’s investment profile, the potential risks, rewards, and costs of the recommendation and that are based on a reasonable understanding of the client’s objectives,¹⁰ provides

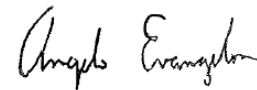
¹⁰ Regulation Best Interest: The Broker-Dealer Standard of Conduct, Securities Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019).

an additional layer of investor protection. As a result, Cboe believes that additional sales practices or heightened requirements for complex products could be duplicative.

Meaningful guidance from FINRA to its members already exists regarding recommendations to customers of certain complex products, such as leveraged and inverse ETFs. For example, in addition to presenting a balanced overview of the risks and benefits associated with the particular leveraged or inverse product, firms and registered representatives supervised by FINRA must specifically disclose that the fund is not designed to, and will not necessarily, track the underlying index or benchmark over a longer period of time in all of their sales materials and oral presentations regarding these products.¹¹ Moreover, FINRA's suitability rule¹² requires that a firm or registered representative must perform a reasonable basis suitability determination before recommending a transaction or investment strategy involving a security—this rule applies to listed options and complex products. Cboe believes that when FINRA's previous guidance related to supervision of complex products¹³ is paired with Reg BI it further demonstrates that the framework is sound, and changes are not needed.

Cboe appreciates the opportunity to share its views on the request for comment. Cboe welcomes the opportunity to discuss these comments further.

Sincerely,



Angelo Evangelou
Chief Policy Officer
Cboe Global Markets, Inc.

¹¹ FINRA Regulatory Notice 09-31, FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds <https://www.finra.org/rules-guidance/notices/09-31>.

¹² See FINRA Rule 2111.

¹³ FINRA Regulatory Notice 12-03, Heightened Supervision of Complex Products states that any product with multiple features that affect its investment returns differently under various scenarios is potentially complex.