September 29, 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 Product and Rule Certification for Futures on Bitcoin and Ether Submission Number CDE-2023-04E

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Regulation 40.2 and Regulation 40.6, including 40.6(a)(6)(ii), 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 this emergency rule filing to re-certify its physically-settled ETH and BTC futures contracts (the "Products").

This submission contains the following:

- A description of the emergency rules;
- A summary of the terms and conditions of the Products, included in a copy of the Products' contract specifications attached as **Exhibit A**;
- A summary of the rule changes being made as part of the Amendment to make a minor update to the Products in CDE's rules, included in the rule changes attached as **Exhibit B**;
- An explanation and analysis of the Products' and the Amendment's compliance with the applicable provisions of the Act, including the Designated Contract Market ("DCM") Core Principles ("Core Principles"), and the Commission regulations thereunder;
- A certification that the Products and Amendment comply with the Act and Commission regulations thereunder;
- A certification of a notice of pending product and rule certification with the Commission and a copy of the submission on the Exchange's website.

The re-certification of the terms and conditions for the Products and the Amendment will become effective on September 30, 2023 ("Effective Date").

Emergency Rules

This emergency product re-certification is being implemented to respond to an emergency as defined in CFTC Rule 40.1 and Exchange Rule 212. Specifically, the Exchange believes, and it is in the opinion of persons duly authorized, that immediate implementation of this emergency product certification required in response to a circumstance which may have a severe, adverse effect upon the functioning of the Exchange as a registered entity. In light of a pending government shut down coinciding with a potential risk of dormancy, the Exchange is of the opinion that it is necessary to re-certify the Products to allow for trading to continue on the Exchange.

Products Description

The Exchange plans to re-certify and list physically-settled bitcoin futures ("BTC") and physically-settled Ether futures ("ETH"), with the specification detailed in **Exhibit A**. The Exchange has previously certified and listed and traded the Products. The Products are fully funded at the time of execution, with final settlement at the execution price. As such, the Products do not require any transfers of assets as part of a variation margin process. On a daily basis there is a closing price, calculated pursuant to Exchange Rule 906. Because the Products are fully-funded at the time of execution, the daily closing or settlement price for these Products are relevant only for purposes of providing market participants with statements. The Exchange notes that all contract specifications are identical to the specifications of the Products when prior certified and listed on the Exchange. Additionally, and pursuant to Exchange Rule 503, the Exchange will allow block trading hours on Saturday.

Regarding the underlying digital assets, the Exchange currently operates a digital asset spot market, separate from its DCM ("Cboe Digital Spot Market"). The Cboe Digital Spot Market is regulated as a money services business ("MSB') under Financial Crimes Enforcement Network (FinCEN) and is licensed in various states in accordance with state money transmitter licensing ("MTL") requirements. The Exchange implements best practices of a traditional financial market surveillance program designed around CFTC Core Principals and which was established to enforce the rules of our spot market to help protect investors and the integrity of our markets. Participation in the Cboe Digital Spot Market is governed by a comprehensive Rulebook and membership requirements, and subject to substantially the same market surveillance program as for Cboe Digital's futures market. The Cboe Digital Spot Market offers trading in bitcoin (BTC) and Ether (ETH) in U.S dollars on a central limit order book ("CLOB"), which allows for continuous interactions between fully-displayed marketable orders and limit orders. Cboe Digital Exchange requires all orders placed in BTC and ETH on its spot market to be fully-funded.

Rule Changes

While the Exchange currently has the authority pursuant to Exchange Rule 503 to determine the Business Days and Holidays of the Exchange and the Trading Hours and Block Trading Hours for each Contract, the Exchange is updating Rules 1101 (Bitcoin Futures) and 1102 (Ether Futures) to make clear in the contracts specifications for the Products currently in such Rules that the Exchange is open for block trading on Saturdays. The rule updates are reflected in **Exhibit B**.

Compliance

CDE believes that the Products and the Amendment are consistent with the DCM Core Principles under Section 5 of the Act. In particular, CDE believes that the Products and the Amendment are consistent with the following DCM Core Principles:

DCM Core Principle 2 (Compliance with Rules) because CDE Rules include prohibitions against market manipulation and fraudulent, non-competitive, and disruptive trading practices that will apply to trading activity in the Products and CDE will conduct monitoring and surveillance of trading in the Product for compliance with CDE Rules;

DCM Core Principle 3 (Contracts not Readily Susceptible to Manipulation) because of, among other things, the following factors:

- The Products are fully funded and physically settled and, therefore, the financial incentive for manipulation is greatly outweighed by the cost. Specifically, an attempt to manipulate, corner, squeeze or congest final settlement, or attempt to do so would be unsuccessful. A market participant must post the underlying commodity to the Clearinghouse before they may sell the Contracts on the Exchange, so the necessary deliverable supply will be available at all times;
- Due to the lack of variation margin, any attempts to manipulate daily settlement prices will not provide a benefit to a market participant because the mark-to-market price movements will not result in any additional funds being available for trading or profit that can be withdrawn;
- The settlement price will be based on a weighted average price from executed trades on the Exchange's spot market during a specified period on each trading day or, based upon a third party or combination of third party index or reference prices during the settlement period so as to mitigate the influence of trades executed as outliers;
- The underlying digital asset market is a highly liquid and capitalized market, wherein the dollar value of bitcoin volume is currently approximately $3.6. billion and the dollar value of ether volume is currently approximately $1.36 billion;
- The Products are subject to Rule 530, which governs position limits. Position limits apply to all accounts for which a person directly or indirectly owns (more than 10% ownership) or controls the trading, and all positions held by persons acting pursuant to an agreement. As described above, the position limits for the Products are substantially the same as position limits imposed for similar products on other DCMs;
- The Exchange operates the Cboe Digital Spot Market, from which the settlement prices for the Products are derived from the trades executed on the Cboe Digital Spot Market in the underlying digital assets. As stated above, participation on the Cboe Digital Spot Market is governed by a comprehensive Rulebook and membership requirements, and is subject to substantially the same regulatory market surveillance program as for its futures market, including real-time monitoring of and alerts for orders and trades and the ability to impose sanctions on market participants identified as conducting any market manipulation or attempt to manipulate the market in any spot contract on Cboe Digital. Such rules and oversight capacity ensure that the digital assets underlying the Products are not readily susceptible to manipulation. The Exchange notes that all participants on the Cboe Digital Spot Market are subject to rigorous AML/KYC checks and procedures during the onboarding process;

DCM Core Principle 4 (Prevention of Market Disruption) because CDE Rules prohibit participants from manipulating the market in, disrupting the orderly functioning of the market in, or creating a condition in which prices do not or will not reflect fair market values in the Products, and CDE enforces compliance with such CDE Rules;

DCM Core Principle 5 (Position Limits or Accountability) because the Products' contract specification establish, as they had when previously certified and listed, an appropriate initial position limit for the Products that will serve to reduce the potential for market manipulation in the Products;

DCM Core Principle 7 (Availability of General Information) because the contract specifications for each Product will be posted and maintained on CDE's website;

DCM Core Principle 8 (Daily Publication of Trading Information) because in that volume, open interest, settlement prices, and other price information for the Products will be made available publicly on a daily basis on CDE's website consistent with CFTC Regulation 16.01;

DCM Core Principle 9 (Execution of Transactions) because CDE will make the Products available

for trading on CDE's trading system. This provides for a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading on CDE's centralized market. Block trades in Products must be submitted and reporting pursuant to the CDE block trading rules;

DCM Core Principle 10 (Trade Information) because CDE will maintain trade information for the Products as part of its audit trail and this information will be accessible to CDE Regulation for regulatory surveillance and enforcement purposes;

DCM Core Principle 11 (Financial Integrity of Transactions) because the Products will be cleared by CCD, which is registered with the Commission as a DCO and is subject to the provisions of the Act and CFTC regulations relating to DCOs;

DCM Core Principle 12 (Protection of Markets and Market Participants) because the CDE Rules include prohibitions against abusive practices, including abusive practices committed by a party acting as an agent for a participant, that will apply in relation to the Products, and promote fair and equitable trading in the Products;

DCM Core Principle 13 (Disciplinary Procedures) because CDE maintains disciplinary procedures and rules that authorize the Exchange to discipline market participants that commit CDE rule violations, including any rule violations relating to the Products;

DCM Core Principle 14 (Dispute Resolution) because the CDE Rules provide a mechanism for market participants to arbitrate disputes that arise out of transactions executed on or subject to the rules of the Exchange, including transactions in the Products;

DCM Core Principle 18 (Recordkeeping) because CDE's recordkeeping procedures, established pursuant to Commission Regulation 1.31, will apply with respect to Exchange records relating to the Product, including trade records and investigatory and disciplinary files;

DCM Core Principle 19 (Antitrust Considerations) because the listing of the Products may promote competition with digital asset futures products that are offered for trading on other markets; and

DCM Core Principle 20 (System Safeguards) because CDE maintains system safeguards controls and procedures for its operations and automated systems that will be utilized to facilitate trading in the Products.

<u>Certification</u>

CDE believes that the impact of the Products offering and the Amendment will be beneficial to the public and market participants. CDE is not aware of any substantive opposing views to the Amendment. CDE hereby certifies that the listing of the Products and the Amendment complies with the Act and the regulations thereunder. CDE further certifies that it will post a notice of pending certification with the Commission and a copy of this submission on the Cboe Digital website (https://www.cboedigital.com/regulation/exchange-notices/) concurrent with the filing of this submission with the Commission.

Questions regarding this submission may be directed to Rebecca Tenuta at <u>rtenuta@cboe.com</u> or (312) 786-7570.

Sincerely,

/s/ Rebecca Tenuta

Rebecca Tenuta
Senior Counsel
rtenuta@cboe.com
(773) 485-7926

Exhibit A
Contract Specifications

Bitcoin Futures

Description	A fully funded physically settled futures contract for Bitcoin
Contract Symbol	BTC
Contract Size	0.1 Bitcoin
Price Quotation	USD per 1 Bitcoin
Minimum Price Increment	$ 1.00 per Bitcoin ($0.10 per contract) Block Trades can be negotiated in $0.01 increments
Minimum Block Size	10 Contracts
Listed Contracts	Quarterly contracts
Settlement	Physical Delivery
Trading Hours	Sunday - Friday, 17:00 – 16:00 (CT) Block Trading Hours: Sunday - Friday, 17:00 – 16:00 (CT); Saturday, 08:00-16:00 (CT)
Daily Closing Time	16:00 (CT)
Last Trading Day/Time	10:00 (CT) Last Friday* of the contract month * Preceding business day if day falls on a non-business day
Position Limit	200,000 Contracts
Large Trader Reporting	25 Contracts

Description	A fully funded physically settled futures contract for Bitcoin
Collateral Withheld	Buyer USD: No. of Contracts * Contract Size * Trade Price Seller BTC: No. of Contracts * Contract Size

Ether Futures

Description	A fully funded physically settled futures contract for the Ether
Contract Symbol	ETH
Contract Size	1 Ether
Price Quotation	USD per 1 Ether
Minimum Price Increment	$ 0.10 per Ether ($0.10 per contract) Block Trades can be negotiated in $0.01 increments
Minimum Block Size	50 Contracts
Listed Contracts	Quarterly contracts
Settlement	Physical Delivery
Trading Hours	Saturday - Friday, 17:00 – 16:00 (CT) Block Trading Hours: Sunday - Friday, 17:00 – 16:00 (CT); Saturday, 08:00-16:00 (CT)
Daily Closing Time	16:00 CT
Last Trading Day/Time	10:00 (CT) Last Friday* of the contract month * Preceding business day if day falls on a non-business day
Position Limit	75,000 Contracts

Description	A fully funded physically settled futures contract for the Ether
Large Trader Reporting	25 Contracts
Collateral Withheld	Buyer USD: No. of Contracts * Contract Size * Trade Price Seller ETH: No. of Contracts * Contract Size

Cboe Digital Exchange Rulebook

(additions underlined)

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RULE 1101. Bitcoin Futures

Bitcoin Futures

Description	*A fully funded physically settled futures contract for Bitcoin*
Contract Symbol	BTC
Contract Size	0.1 Coin
Price Quotation	USD per 1 coin
Minimum Price Increment	$1.00 per Bitcoin ($0.10 per contract)
Listed Contracts	Up to 5 Daily expirations, 4 Weekly expirations, nearest 2 serial months and nearest 2 quarterly months.
Settlement	Physical Delivery
Trading Hours	Regular Trading Hours as determined by the Exchange from time to time. Sunday - Friday, 17:00 – 16:00 (CT) Block Trading Hours: Sunday - Friday, 17:00 – 16:00 (CT); Saturday, 08:00-16:00 (CT)
Daily Closing Time	16:00 (CT)
Last Trading Day/Time	Daily - 10:00 (CT) of the expiry day Weekly - 10:00 (CT) Friday. of the expiry Week Monthly - 10:00 (CT) Last Friday. of the contract month · Preceding business day if day falls on a non-business day
Block Trade Minimum	10 Contracts
Position Limit	200,000 Contracts
Large Trader Reporting	25 Contracts
Collateral Withheld	Buyer: No. of Contracts * Contract Size * Trade Price Seller: No. of Contracts * Contract Size
Delivery	Pursuant to the Cboe Clear Digital rulebook, purchase price of the future and the underlying deliverable commodity are deposited with the Clearinghouse (in accordance with Cboe Clear Digital Rules 403 and 315) by the buyer and seller, respectively, prior to the futures trade. Therefore, delivery is made through the Clearinghouse to the buyer's account. Further information about delivery can be found in Cboe Clear Digital Rule 410.
Forks	Support for forks in the underlying product will be evaluated in accordance with the Cboe Digital Fork Policy

RULE 1102. Ether Futures

Description	A fully funded physically settled futures contract for Ether
Contract Symbol	ETH
Contract Size	1 Coin
Price Quotation	USD per 1 coin
Minimum Price Increment	$0.10 per Ether ($0.10 per contract)
Listed Contracts	Up to 5 Daily expirations, 3 Weekly expirations, nearest 2 serial months and nearest 2 quarterly months.
Settlement	Physical Delivery
Trading Hours	Sunday - Friday, 17:00 – 16:00 (CT) Block Trading Hours: Sunday - Friday, 17:00 – 16:00 (CT); Saturday, 08:00-16:00 (CT)
Daily Closing Time	16:00 (CT)
Last Trading Day/Time	Daily - 10:00 (CT) of the expiry day Weekly - 10:00 (CT) Friday* of the expiry Week Monthly - 10:00 (CT) Last Friday* of the contract month * Preceding business day if day falls on a non-business day
Position Limit	75,000
Large Trade Reporting	25 Contracts
Collateral Withheld	Buyer: No. of Contracts * Contract Size * Trade Price Seller: No. of Contracts * Contract Size
Delivery	Pursuant to the Cboe Clear Digital rulebook, purchase price of the future and the underlying deliverable commodity are deposited with the Clearinghouse (in accordance with Cboe Clear Digital Rules 403 and 315) by the buyer and seller prior to the futures trade. Therefore, delivery is made through the Clearinghouse to the buyer's account. Further information about delivery can be found in Cboe Clear Digital Rule 410.
Forks	Any forks in the underlying blockchain for the digital asset will be evaluated in accordance with Exchange Rule 911.

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