

only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-29 and should be submitted on or before August 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100610; File Nos. SR-NYSEARCA-2024-45; SR-CboeBZX-2023-101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Pando Asset Spot Bitcoin Trust

July 26, 2024.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Exchange Act”)¹ and Rule 19b-4 thereunder,² each of NYSE Arca, Inc. (“NYSE Arca”) and Cboe BZX Exchange, Inc. (“BZX”, and together with NYSE Arca, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes to list and trade shares of the following. NYSE Arca proposes to list and trade shares of the Grayscale Bitcoin Mini Trust³ under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares); and BZX proposes to list and trade shares of the Pando Asset Spot Bitcoin Trust⁴ under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares). Each filing was subject to notice and comment.⁵

Each of the foregoing proposed rule changes, as modified by their respective amendments, is referred to herein as a “Proposal” and together as the “Proposals.” Each trust described in a Proposal is referred to herein as a “Trust” and together as the “Trusts.” As described in more detail in the Proposals’ respective amended filings,⁶ each Proposal seeks to list and trade shares of a Trust that would hold spot bitcoin,⁷ in whole or in part.⁸ This order approves the Proposals.⁹

II. Discussion and Commission Findings

After careful review, the Commission finds that the Proposals are consistent with the Exchange Act and rules and

regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Exchange Act,¹¹ which requires, among other things, that the Exchanges’ rules be designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest;” and with Section 11A(a)(1)(C)(iii) of the Exchange Act,¹² which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

A. Exchange Act Section 6(b)(5)

The Commission has explained that one way an exchange that lists bitcoin-based exchange-traded products (“ETPs”) can meet the obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices is by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference assets.¹³ Such an agreement

¹⁰ In approving the Proposals, the Commission has considered the Proposals’ impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹³ See, e.g., Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units, Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) (“Spot Bitcoin ETP Approval Order”); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR-NYSEARCA-2021-53). The Commission has provided an illustrative definition for “market of significant size” to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market. See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust Under NYSE Arca Rule 8.201-E, Commodity-Based Trust Shares, Securities Exchange Act Release No. 100290 (June 6, 2024), 89 FR 49931 (June 12, 2024) (SR-NYSEARCA-2024-45) (“Grayscale Filing”).

⁴ See Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Pando Asset Spot Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 100420 (June 25, 2024), 89 FR 54555 (July 1, 2024) (SR-CboeBZX-2023-101) (“Pando Filing”).

⁵ The Commission did not receive any comments on SR-NYSEARCA-2024-45. Comments received on SR-CboeBZX-2023-101 are available at <https://www.sec.gov/comments/sr-cboebzx-2023-101/sr-cboebzx2023101.htm>.

⁶ See *supra* notes 3-4.

⁷ Bitcoins are digital assets that are issued and transferred via a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the “Bitcoin blockchain.” The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions.

⁸ Each Trust proposes to hold spot bitcoin. The Pando Asset Spot Bitcoin Trust also proposes to hold cash and cash equivalents. See Pando Filing at 54563.

⁹ The Pando Filing is being approved on an accelerated basis. See *infra* Section III.

¹⁷ 17 CFR 200.30-3(a)(12).

would assist in detecting and deterring fraud and manipulation related to that underlying asset.

The Commission has also consistently recognized, however, that this is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.¹⁴ A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.¹⁵ In the Spot Bitcoin ETP Approval Order, the Commission determined that having a comprehensive surveillance-sharing agreement with a U.S.-regulated market that, based on evidence from robust correlation analysis, is consistently highly correlated with the ETPs’ underlying assets (spot bitcoin) constituted “other means” sufficient to satisfy the Exchange Act Section 6(b)(5) standard.¹⁶ Specifically, given the consistently high correlation between the bitcoin futures market of the Chicago Mercantile Exchange (“CME”) and a sample of spot bitcoin markets—confirmed by the Commission through robust¹⁷ correlation analysis using data at hourly, five-minute, and one-minute intervals—the Commission was able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Commission was able to conclude that the comprehensive surveillance-sharing agreement among the listing exchanges and the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals considered in the Spot Bitcoin ETP Approval Order.

Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37594 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (“Winklevoss Order”).

¹⁴ See, e.g., Winklevoss Order at 37580; Spot Bitcoin ETP Approval Order at 3009.

¹⁵ See Spot Bitcoin ETP Approval Order at 3009 (quoting Winklevoss Order at 37580).

¹⁶ See *id.* at 3009–11.

¹⁷ The Commission stated that the “robustness” of its correlation analysis rested on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the Commodity Futures Trading Commission, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period. See *id.* at 3010 n.38.

With respect to the present Proposals, the structure of the Trusts, the terms of their operation and the trading of their shares, and the representations in their respective amended filings are substantially similar to those of the proposals considered in the Spot Bitcoin ETP Approval Order.¹⁸ In addition, the Commission finds that the spot bitcoin market continues to be consistently highly correlated with the CME bitcoin futures market.¹⁹ As such, based on the record before the Commission, including the Commission’s correlation analysis, the Commission is able to conclude that the Exchanges’ comprehensive surveillance-sharing agreement with the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.

B. Exchange Act Section 11A(a)(1)(C)(iii)

Each Proposal sets forth aspects of its proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with other ETPs that the Commission has approved.²⁰ This

¹⁸ See also *infra* Section II.B.

¹⁹ The Commission examined correlation between the CME bitcoin futures market and the Coinbase and Kraken spot bitcoin trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology as in the Spot Bitcoin ETP Approval Order (see Spot Bitcoin ETP Approval Order at 3010 n.35), for the period from March 1, 2021, to March 29, 2024. The correlation between the CME bitcoin futures market and this subset of spot bitcoin platforms for the full sample period is no less than 98.3 percent using data at an hourly interval, 89.7 percent using data at a five-minute interval, and 73.9 percent using data at a one-minute interval. The rolling three-month correlation results range between 91.9 and 99.3 percent using data at an hourly interval, 76.6 and 94.9 percent using data at a five-minute interval, and 62.7 and 83.3 percent using data at a one-minute interval.

²⁰ See, e.g., Spot Bitcoin ETP Approval Order at 3011; Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR–NYSEARCA–2009–94) (Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of the ETFs Palladium Trust); Securities Exchange Act Release No. 94518 (Mar. 25, 2022), 87 FR 18837 (Mar. 31, 2022) (SR–NYSEARCA–2021–65) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares); Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR–NYSEARCA–2023–70; SR–NYSEARCA–2024–31; SR–NASDAQ–2023–045; SR–CboeBZX–2023–069; SR–CboeBZX–2023–070; SR–CboeBZX–2023–087; SR–CboeBZX–2023–095; SR–CboeBZX–2024–018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

includes commitments regarding: the availability via the Consolidated Tape Association of quotation and last-sale information for the shares of each Trust; the availability on the websites of each Trust of certain information related to the Trusts, including net asset values; the dissemination of intra-day indicative values by one or more major market data vendors, updated every 15 seconds throughout the Exchanges’ regular trading hours; the Exchanges’ surveillance procedures and ability to obtain information regarding trading in the shares of the Trusts; the conditions under which the Exchanges would implement trading halts and suspensions; and the requirements of registered market makers in the shares of each Trust.²¹ In addition, in each Proposal, the applicable Exchange deems the shares of the applicable Trust to be equity securities, thus rendering trading in such shares subject to that Exchange’s existing rules governing the trading of equity securities.²² Further, the applicable listing rules of each Exchange require that all statements and representations made in its filing regarding, among others, the description of the applicable Trust’s holdings, limitations on such holdings, and the applicability of that Exchange’s listing rules specified in the filing, will constitute continued listing requirements.²³ Moreover, each Proposal states that its sponsor has represented to the applicable Exchange that it will advise that Exchange of any failure to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, that Exchange will monitor for compliance with the continued listing requirements; and if the applicable Trust is not in compliance with the applicable listing requirements, that Exchange will commence delisting procedures.²⁴

The Commission therefore finds that the Proposals, as with other ETPs that the Commission has approved,²⁵ are reasonably designed to promote fair disclosure of information that may be necessary to price the shares of the Trusts appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trusts’

²¹ See Grayscale Filing at 49941–43; Pando Filing at 54564–67.

²² See Grayscale Filing at 49942; Pando Filing at 54566.

²³ See NYSE Arca Rule 8.201–E(e)(2)(vii); BZX Rule 14.11(a).

²⁴ See Grayscale Filing at 49943; Pando Filing at 54567.

²⁵ See *supra* note 20.

portfolios, and to ensure fair and orderly markets for the shares of the Trusts.

C. Comments

Some commenters state that bitcoin is a volatile asset and approval of spot bitcoin ETPs could amplify that volatility,²⁶ making spot bitcoin ETPs unsuitable for some retail investors.²⁷ The Commission finds that the Proposals are consistent with the Section 6(b)(5) requirement that the Exchanges' rules be designed to protect investors and the public interest because, in addition to the factors discussed in Section II.A and II.B above, existing rules and standards of conduct would apply to recommending and advising investments in the shares of the Trusts. For example, when broker-dealers recommend ETPs to retail customers, Regulation Best Interest ("Reg BI") would apply.²⁸ Reg BI requires broker-dealers to, among other things, exercise reasonable diligence, care, and skill when making a recommendation to a retail customer to: (1) understand potential risks, rewards, and costs associated with the recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers; and (2) have a reasonable basis to believe the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile.²⁹ In addition, investment advisers have a fiduciary duty under the Investment Advisers Act of 1940 comprised of a duty of care and a duty of loyalty. These obligations require the adviser to act in the best

interest of its client and not subordinate its client's interest to its own.³⁰

Commenters also raised concerns with bitcoin's susceptibility to fraud and manipulation,³¹ including wash trading,³² and with custody arrangements and susceptibility of the Trusts' bitcoin to hacks and theft.³³ The Commission acknowledges commenters' concerns. Pursuant to Section 19(b)(2) of the Exchange Act, however, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act.³⁴ For the reasons described above, the Commission finds that the Proposals satisfy the requirements of the Exchange Act, including the requirement in Section 6(b)(5)³⁵ that the Exchanges' rules be designed to "prevent fraudulent and manipulative acts and practices."³⁶

Commenters also address, among other things: the use of bitcoin for illicit activities,³⁷ such as sanctions evasion,³⁸

money-laundering,³⁹ and terrorist finance;⁴⁰ the environmental impacts of bitcoin mining;⁴¹ the potential impacts of spot bitcoin ETP approvals on lower-income countries' financial development;⁴² on democracy, human rights, and civil liberties;⁴³ and on inflation;⁴⁴ and the benefits of blockchain technology.⁴⁵ Ultimately, however, for the reasons described above, the Commission is approving the Proposals because it finds that the Proposals satisfy the requirements of the Exchange Act, including the requirement in Section 6(b)(5)⁴⁶ that the Exchanges' rules be designed to "prevent fraudulent and manipulative acts and practices."

III. Accelerated Approval of The Pando Filing

The Commission finds good cause to approve the Pando Filing prior to the 30th day after the date of publication of notice of its Amendment No. 1⁴⁷ in the **Federal Register**. The amendment clarified the description of its Trust; further described the terms of the Trust; and conformed various representations in the amended filing to BZX's listing standards and to representations that exchanges have made for other ETPs that the Commission has approved.⁴⁸ The amended filing is now substantially similar to other spot bitcoin ETPs that the Commission has approved,⁴⁹ and as discussed above in Section II.A, the spot bitcoin market and the CME bitcoin futures market remain consistently highly correlated. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁰ to approve the Pando Filing on an accelerated basis.

IV. Conclusion

This approval order is based on all of the Exchanges' representations and descriptions in their respective

dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101 ("Budhiraja Letter"); Letter from Anurag Saksena, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101 ("Anurag Letter").

³⁹ See, e.g., Letter from Vipin Agarwal, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101.

⁴⁰ See, e.g., Letter from Sameer Tiwari, dated Jan. 5, 2024, regarding SR-CboeBZX-2023-101.

⁴¹ See, e.g., Gogia Letter.

⁴² See, e.g., Letter from Mohit Gupta, dated Dec. 29, 2023, regarding SR-CboeBZX-2023-101.

⁴³ See, e.g., Pupaza Letter; Budhiraja Letter; Anurag Letter.

⁴⁴ See, e.g., Gulati Letter.

⁴⁵ See, e.g., Letter from Miguel A. Suro Carrasco, dated Jan. 3, 2024, regarding SR-CboeBZX-2023-101.

⁴⁶ 15 U.S.C. 78f(b)(5).

⁴⁷ See *supra* note 4.

⁴⁸ See *supra* Section II.B.

⁴⁹ See Spot Bitcoin ETP Approval Order.

⁵⁰ 15 U.S.C. 78s(b)(2).

³⁰ See Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669 (July 12, 2019), at 33671; Investment Company Act Release No. 34084 (Nov. 2, 2020), 85 FR 83162 (Dec. 21, 2020), at 83217 (discussing the best interest standard of conduct for broker-dealers and the fiduciary obligations of investment advisers in the context of all ETPs).

³¹ See, e.g., Gulati Letter; Letter from Prashant Saksena, dated Jan. 1, 2024, regarding SR-CboeBZX-2023-101 ("Prashant Letter"); Letter from Swatantra G., dated Dec. 28, 2023, regarding SR-CboeBZX-2023-101; Letter from Harish Reddy, dated Jan. 4, 2024, regarding SR-CboeBZX-2023-101; Letter from Snigdha Guha, dated Jan. 6, 2024, regarding SR-CboeBZX-2023-101.

³² See, e.g., Mehra Letter.

³³ See, e.g., Prashant Letter; Letter from Melissa Hayes, dated Dec. 26, 2023, regarding SR-CboeBZX-2023-101.

³⁴ See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C). The Commission does not apply a "cannot be manipulated" standard; rather, the Commission examines whether a proposal meets the requirements of the Exchange Act. See, e.g., Winklevoss Order at 37582. The Commission does not understand the Exchange Act to require that a particular product or market be immune from manipulation. Rather, the inquiry into whether the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest, has long focused on the mechanisms in place for the detection and deterrence of fraud and manipulation.

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ See also Spot Bitcoin ETP Approval Order at 3013 (discussing custody concerns raised by commenters).

³⁷ See, e.g., Letter from Arun Gogia, dated Dec. 30, 2023, regarding SR-CboeBZX-2023-101 ("Gogia Letter"); Letter from Dhiraj Kafle, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101; Letter from Bhrigu Wadhwa, dated Jan. 2, 2024, regarding SR-CboeBZX-2023-101; Letter from Vir Vijay Singh, dated Jan. 4, 2024, regarding SR-CboeBZX-2023-101.

³⁸ See, e.g., Letter from Borislava Pupaza, dated Dec. 29, 2023, regarding SR-CboeBZX-2023-101 ("Pupaza Letter"); Letter from Amit Budhiraja,

²⁶ See, e.g., Letter from Gaurav Mehra, dated Dec. 22, 2023, regarding SR-CboeBZX-2023-101 ("Mehra Letter").

²⁷ See, e.g., Letter from Shweta Gulati, dated Jan. 3, 2024, regarding SR-CboeBZX-2023-101 ("Gulati Letter").

²⁸ Exchange Act rule 15l-1(a).

²⁹ Exchange Act rules 15l-1(a)(2)(ii)(A) and (B). Separately, under Reg BI's Conflict of Interest Obligation, broker-dealers must establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, identify and disclose or eliminate all conflicts of interest associated with a recommendation and mitigate conflicts of interest at the associated person level. See Exchange Act rules 15l-1(a)(2)(iii)(A) and (B). To the extent that broker-dealers recommend ETPs to customers who are not retail customers covered by Reg BI, FINRA Rule 2111 requires, in part, that a member broker-dealer or associated person "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [broker-dealer] or associated person to ascertain the customer's investment profile."

amended filings, which the Commission has carefully evaluated as discussed above.⁵¹ For the reasons set forth above, including the Commission's correlation analysis, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,⁵² that the Proposals are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.⁵³

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁴ that the Grayscale Filing (SR-NYSEARCA-2024-45) be, and hereby is, approved; and that the Pando Filing (SR-CboeBZX-2023-101) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100608; File No. SR-ISE-2024-31]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 2, Sections 5, 6 and 10; Options 3, Sections 7 and 17; and Options 4, Section 5

July 26, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 15, 2024, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule

⁵¹ See *supra* notes 3-4. In addition, the shares of the Trust in SR-NYSEARCA-2024-45 must comply with the requirements of NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) to be listed and traded on NYSE Arca on an initial and continuing basis; and the shares of the Trust in SR-CboeBZX-2023-101 must comply with the requirements of BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) to be listed and traded on BZX on an initial and continuing basis.

⁵² 15 U.S.C. 78s(b)(2).

⁵³ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁵⁴ 15 U.S.C. 78s(b)(2).

⁵⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 2, Sections 5, 6 and 10; Options 3, Sections 7 and 17; and Options 4, Section 5.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 2, Section 5, Market Maker Quotations, to amend intra-day quoting requirements. The Exchange proposes to amend Options 2, Section 6, Market Maker Orders, and Options 3, Section 7(g), Reserve Orders, to bring additional clarity to the types of orders available to Market Makers. The Exchange proposes to amend Options 2, Section 10, Preferred Orders, to define various terms related to Preferred Orders and harmonize the rule text to other Nasdaq affiliated markets. The Exchange proposes to amend Options 3, Section 17, Kill Switch, to indicate the configurations available in the Kill Switch. Finally, the Exchange proposes amendments in Options 4, Section 5, to conform rule text and amend numbering. Each change is described below.

Options 2, Section 5

The Exchange proposes to amend the quoting requirements of a Competitive

Market Maker and a Preferred CMM in Options 2, Section 5.

With respect to a Competitive Market Maker, today, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.

The Exchange proposes to amend the quoting obligations for a Competitive Market Maker by requiring a Competitive Market Maker to enter quotations each day in the options classes to which it is appointed. Specifically, the Exchange proposes to require in proposed Options 2, Section 5(e)(1) that,

Competitive Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Competitive Market Maker are not required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and exchange-traded funds ("ETFs") or with an expiration of twelve months or greater for index options.

As is the case today, Competitive Market Makers may continue to choose to quote a Quarterly Options Series, any adjusted options series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index option, in addition to regular series in the options class. Such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in Options 2, Section 5(e)(1). The Exchange believes that requiring a Competitive Market Maker to quote each day will increase liquidity on the Exchange.

Additionally, the Exchange proposes to amend the quoting requirements for a Preferred CMM. Today, the last sentence of Options 2, Section 5(e) provides, "A Competitive Market Maker who receives a Preferred Order, as described in Options 2, Section 10 and