

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101713; File No. SR-NYSEARCA-2024-101)

November 22, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Option Contracts on the Grayscale Fund, the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 20, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 list and trade option contracts on the Grayscale Fund, (BTC), the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, 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 self-regulatory organization 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 those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 5.3-O (Criteria for Underlying Securities), Rule 5.4-O (Withdrawal of Approval of Underlying Securities), Rule 5.32-O (Terms of FLEX Options), and Rule 6.8-O (Position Limits,) to allow the Exchange to list and trade options on the following exchange-traded products: the Grayscale Bitcoin Trust (BTC) (the “Grayscale Fund” or “GBTC”), the Grayscale Bitcoin Mini Trust BTC (the “Grayscale Mini Fund” or “BTC”), and the Bitwise Bitcoin ETF (the “Bitwise Fund” or “BITB” and, collectively, the “Bitcoin Funds” or “Funds”).⁴ This proposal would align the Exchange’s rules with that of its affiliated exchange, NYSE American LLC.⁵ As such this proposal does not raise any new or novel issues not previously considered by the Commission.

As discussed herein, the Exchange believes options on the Bitcoin Funds would permit hedging, and allow for more liquidity, better price efficiency, and less volatility with respect to

⁴ See proposed Rule 5-3-O, Commentary .010. On January 11, 2024, GBTC and BITB began trading on the Exchange after the Commission approved rule changes to list and trade shares of “Bitcoin-Based Commodity-Based Trust Shares” pursuant to Rule 8.201-E(c)(1) (Commodity-Based Trust Shares), including GBTC and BITB. See Securities Exchange Act Release No. 99306 (January 10, 2024) (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), 89 FR 3008 (January 17, 2024) (SR-NYSEARCA-2023-44; SR-NYSEARCA-2021-90).

On July 13, 2024, after receiving approval of the Commission, BTC began trading on the Exchange. See Securities Exchange Act Release No. 100610 (July 26, 2024) (Order Granting Approval of Proposed Rule Changes, as Modified by Amendment No. 1, to List and Trade Share of BTC pursuant to NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)), 89 FR 62821 (August 1, 2024) (SR-NYSEARCA-2023-45).

⁵ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Order approving the listing and trading of options on the Bitcoin Funds) (the “American Bitcoin Options Approval Order”). See also NYSE American Rule 915, Commentary .10(a).

the underlying Funds. Further, permitting the listing of such options would enhance the transparency and efficiency of markets in these and correlated products.

Rule 5.3-O provides that, subject to certain other criteria set forth in the Rule,⁶ securities deemed appropriate for options trading include Exchange-Traded Fund Shares (or ETFs) that represent certain types of interests⁷ and exchange-traded products (“ETPs”) structured as trusts that hold precious metals (which are deemed commodities).⁸ Like ETPs backed by precious

⁶ To be eligible for options trading, ETFs and ETPs must satisfy the initial listing criteria set forth in Rule 5.3-O(g)(1) through (2).

⁷ Rule 5.3-O(g) permits options trading on ETFs that are traded on a national securities exchange and are defined as an “NMS stock” in Rule 600(b)(55) of Regulation NMS, that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (“Currency Trust Shares”); commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool Units”); or represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”); provided that all of the conditions listed in Rules 5.3-O and 5.4-O are met. See Rule 5.3-O(g)(i)-(iii) and (vii)

⁸ Rule 5.3-O(g) permits the listing and trading of options on shares of the following trusts: SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Silver Trust, the ETFS Gold Trust, ETFS Palladium Trust, or ETFS Platinum Trust. See Rule 5.3-O(g)(iv)-(vi) and (viii)-(ix)

metals (i.e., commodities), the Exchange proposes to allow options trading on the Bitcoin Funds that hold Bitcoin -- which is also deemed a commodity.⁹

The Bitcoin Funds are structured as trusts that hold bitcoin. Like ETFs and ETPs currently deemed appropriate for options trading, the investment objective of each Bitcoin Fund trust is for its shares to reflect the performance of Bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. Each Bitcoin Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.¹⁰ The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market.

The Exchange believes each Bitcoin Fund satisfies the Exchange's initial listing standards set forth in Rule 5.3-O(a).¹¹ The Exchange notes that the Bitcoin Funds also satisfy the listing standard applied to ETFs traded on the Exchange that they be available for creation and redemption each business day as set forth in Rule 5.3-O(g)(1)(B).¹²

First, each of the Bitcoin Funds satisfy the criteria and guidelines set forth in Rule 5.3-O. Pursuant to Rule 5.3-O(b), a security on which options may be listed and traded on the Exchange

⁹ See proposed Rule 5.3-O, Commentary .01 (The Exchange may list and trade options on shares of GBTC, BTC, and BITB, pursuant to Rules 5.3-O and 5.4-O").

¹⁰ Each trust may include minimal cash.

¹¹ Rule 5.3-O(a) provides for guidelines to be used by the Exchange when evaluating potential underlying securities for Exchange option transactions.

¹² Rule 5.3-O(g)(1)(B) requires that ETFs must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held and actively traded.¹³ Each of the Bitcoin Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.¹⁴ The Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of August 30, 2024, the Bitcoin Funds had the following number of shares outstanding (and corresponding market capitalization):

Bitcoin Fund	Shares Outstanding	Market Value (8/30/2024)
GBTC	284,570,100	\$13,443,091,524
BTC	366,950,100	\$1,930,157,526
BITB	68,690,000	\$2,221,640,670

As shown above, each of the Bitcoin Funds had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to the Exchange’s rules. The Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

¹³ The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 5.3-O(a), subject to exceptions.

¹⁴ See Rule 5.3-O(b). An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR § 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

Further, the below table contains information regarding the number of beneficial holders of the Bitcoin Funds as of August 14, 2024.

Bitcoin Fund	Beneficial Holders (8/14/24)
GBTC	464,364
BTC	13,403
BITB	75,437

As this table shows, each Bitcoin Fund has significantly more than 2,000 beneficial holders (approximately 232, 7, and 38 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to the Exchange’s rules. Therefore, the Exchange believes the shares of each Bitcoin Fund are widely held.

In addition, the Exchange believes the shares of each Bitcoin Fund are actively traded. Further, as of September 30, 2024, the total trading volume (by shares and notional) for these funds since they began trading¹⁵ and the average daily volume (“ADV”) over the 30-day period of September 1 through September 30, 2024, was as follows:¹⁶

Bitcoin Fund	Trading Volume (Shares)	Trading Volume (Notional \$)	ADV (Shares)
GBTC	1,803,567,700	93,472,544,497	3,266,138
BTC	335,492,930	1,792,866,521	6,838,546

¹⁵ As noted *supra*, GBTC and BITB began trading on January 11th and BTC began trading on July 31st. The measurement period for the trading volume (shares/notional) is January 11 through September 20, 2024, for GBTC and BITB (i.e., nine months) and July 31 through September 20, 2024, for BTC (i.e., two months).

¹⁶ See FactSet, 9/30/2024, <https://www.factset.com/data-attribution>.

BITB	434,815,840	14,433,361,384	1,949,835
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As demonstrated above, even though these Bitcoin Funds have been trading for less than one year (and in the case of the BTC, for several months), the trading volume for each is substantially higher than 2,400,000 shares (between roughly 165 and 700 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security. The Exchange believes this data demonstrates each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded.

In addition to satisfying the Exchange’s initial listing standards, options on Bitcoin Funds will be subject to the Exchange’s continued listing standards as set forth in Rule 5.4-O.¹⁷

Pursuant to Rule 5.4-O(b)(5), the Exchange will not open for trading any additional series of option contracts covering a fund traded on the Exchange if such fund ceases to be an “NMS stock” or the fund is halted from trading on its primary market.¹⁸ Additionally, options on funds traded on the Exchange may be subject to the suspension of opening transactions as follows: (1) the fund no longer meets the terms of Rule 5.4-O(b)(1)-(4); (2) following the initial twelve-month period beginning upon the commencement of trading of the fund, there are fewer than 50 record and/or beneficial holders of the fund for 30 or more consecutive trading days; (3) the value of the underlying commodity is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

¹⁷ The Exchange proposes to adopt Commentary .02 to Rule 5.4-O to specify that for purposes of the continued listing standards set forth in Rule 5.3-O(k), the Bitcoin Funds will be deemed “Exchange-Traded Fund Shares.” See proposed Commentary .02 to Rule 5.4-O.

¹⁸ See Rule 5.4-O(k).

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.¹⁹ Consistent with Rule 6.4-O, which governs the opening of options series on a specific underlying security (including ETFs and ETPs), the Exchange will open at least one expiration month for options on each Bitcoin Fund²⁰ at the commencement of trading on the Exchange and may also list series of options on Bitcoin Funds for trading on a weekly,²¹ monthly,²² or quarterly²³ basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from twelve to thirty-nine months from the time they are listed.²⁴

Pursuant to Rule 6.4-O, Commentary .05(a), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over

¹⁹ See Rule 6.5-O (Rights and Obligations of Holders and Writers), which provides that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation. See also OCC Rules, Chapter VIII, which governs exercise and assignment, and Chapter IX, which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts. OCC Rules can be located at: https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

²⁰ See Rule 6.4-O(d). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 5.3-O. Monthly listings expire the third Friday of the month. The term “expiration date” (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. See OCC By-Laws Article I, Section 1. Pursuant to Rule 6.4-O(a), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

²¹ See Rule 6.4-O, Commentary .07.

²² See Rule 6.4-O, Commentary .09.

²³ See Rule 6.4-O, Commentary .08.

²⁴ See Rule 6.4-O(d).

\$200.²⁵ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,²⁶ the \$0.50 Strike Program,²⁷ the \$2.50 Strike Price Program,²⁸ and the \$5 Strike Program.²⁹ Pursuant to Rule 6.72-O, where the price of a series of a Bitcoin Fund option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.³⁰ Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 6.4-O and 6.72-O, as applicable. Further, the Exchange notes that Rule 4.16-O, which governs margin requirements applicable to the trading of all options on the Exchange, including options on ETFs and ETPs, will also apply to the trading of Bitcoin Fund options.

Rule 5.32(f)(1) permits the Exchange to authorize for trading a FLEX option class on any equity security if it may authorize for trading a non-FLEX option class on that equity security pursuant to Rule 5.3-O.³¹ At this time, the Exchange is not proposing to permit Bitcoin Fund

²⁵ The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rule 6.4-O, Commentary .07 through .09, specifically set forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

²⁶ See Rule 6.4-O, Commentary .04.

²⁷ See Rule 6.4-O, Commentary .13.

²⁸ See Rule 6.4-O, Commentary .03.

²⁹ See Rule 6.4-O, Commentary .10.

³⁰ If options on a Bitcoin Fund are eligible to participate in the Penny Interval Program, the minimum increment of \$0.01 below \$3.00 and \$0.50 above \$3.00 would apply. See Rule 6.4-O(a)(3). See also Rule 6.72A-O (which describes the requirements for the Penny Interval Program).

³¹ See Rule 5.32-O(f)(1). See generally Section 4 (Flexible Exchange (“FLEX”) Options).

options to trade as FLEX options.³² The Exchange therefore proposes to modify Rule 5.32(f)(1) to specify this exception, which will add clarity and transparency to Exchange Rules.³³

Position and Exercise Limits

Position and exercise limits for options, including options on Bitcoin Funds, are determined pursuant to Rules 6.8-O and 6.9-O, respectively. Position and exercise limits for options vary according to the number of outstanding shares and the trading volumes of the underlying security over the past six months, where the largest in capitalization and the most frequently traded funds have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization funds have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.³⁴

Position limits are designed to limit the number of options contracts traded on the Exchange in an underlying security that an investor, acting alone or in concert with others

³² The Exchange will continue ongoing discussions with the Commission regarding appropriate position limits for the Bitcoin Funds and plans to submit a separate rule filing that would permit the Exchange to authorize for trading FLEX options on the Funds (which filing may propose changes to existing FLEX option position limits for such options if appropriate).

³³ See proposed Rule 5.32(f)(1) (providing, in relevant part, that the Exchange may approve and open for trading any FLEX Equity Options series on any equity security that is eligible for Non-FLEX Options trading under Rule 5.3-O “except those set forth in Commentary .01 to Rule 5.3-O,” i.e., the Bitcoin Funds).

³⁴ See Commentary .06(a)-(e) to Rule 6.8-O. For an option to be eligible for the 50,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 20,000,000 shares, or most recent six-month trading volume of at least 15,000,000 shares and at least 40,000,000 shares currently outstanding. For an option to be eligible for the 75,000-contract limit, the underlying security must have most recent six-month trading volume of at least 40,000,000 shares, or most recent six-month trading volume of at least 30,000,000 shares and at least 120,000,000 shares currently outstanding. For an option to be eligible for the 200,000-contract limit, the underlying security must have most recent six-month trading volume of at least 80,000,000 shares, or most recent six-month trading volume of at least 60,000,000 shares and at least 240,000,000 shares currently outstanding. For an option to be eligible for the 250,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 100,000,000 shares, or most recent six-month trading volume of at least 75,000,000 shares and at least 300,000,000 shares currently outstanding. The 25,000-contract limit applies to options on underlying securities that do not qualify for a higher contract limit. See Commentary .07(c) to Rule 6.8-O. In addition, Commentary .07(f) to Rule 6.8-O establishes higher position limits for options on certain ETFs.

directly or indirectly, may control. The purpose of position limits is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. Accordingly, position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that investors may use for legitimate economic purposes. To achieve this balance, the Exchange proposes to set the position and exercise limits for the options on the Bitcoin Funds at 25,000 contracts, which limits are already in place for the Bitcoin Funds on NYSE American LLC.³⁵

Capping the position limit at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative for the Bitcoin Funds and therefore appropriate given their liquidity. The Exchange believes that the proposed 25,000-contract position limit is conservative for options on the Bitcoin Funds.³⁶

Based on the foregoing, the Exchange believes the proposal to list options on the Bitcoin Funds with positions and exercise limits of 25,000 on the same side, the lowest position limit available in the options industry, is conservative and appropriate given the market capitalization, average daily volume, and high number of outstanding shares for each of the Bitcoin Funds. The proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from

³⁵ See proposed 6.8-O, Commentary .07(f). See NYSE American Rule 904, Commentary .07(f).

³⁶ The Exchange may file a subsequent rule change to amend the position and exercise limit for options on any or all the Bitcoin Funds based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position limit would allow institutional investors to utilize options on the Bitcoin Funds for prudent risk management purposes.

establishing options positions that could be used to manipulate the market of the underlying Bitcoin Funds as well as the Bitcoin market.³⁷

As described herein, options on the Bitcoin Funds will trade in the same manner as any other ETF or ETP options on the Exchange, except that the Bitcoin Funds will not be eligible for FLEX options trading. The Exchange Rules that currently apply to the listing and trading of options on the Exchange, including, for example, Rules that govern listing criteria, expiration and exercise prices, minimum increments, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Bitcoin Funds on the Exchange in the same manner as they apply to all other ETFs and ETPs that are listed and traded on the Exchange, including the precious metal-backed commodity ETPs already deemed appropriate for options trading on the Exchange. Further, as described above, Exchange Rules regarding position and exercise limits will likewise apply to options on the Bitcoin Funds except that, as proposed, the position and exercise limits will be set at 25,000 on the same side.

The Exchange notes that options on Bitcoin Funds would not be available for trading until The Options Clearing Corporation (“OCC”) represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of options on Bitcoin Funds. The Exchange believes any additional traffic that would be generated from the trading of options on

³⁷ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

Bitcoin Funds would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange represents that the same surveillance procedures applicable to all other options currently listed and traded on the Exchange will apply to options on Bitcoin Funds, and that it has the necessary systems capacity to support the new option series. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious metal-backed ETP options, as well as the proposed options on Bitcoin Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Bitcoin Funds in all trading sessions and to deter and detect violations of Exchange rules.

Specifically, the Exchange's market surveillance staff also conducts surveillances with respect to the Bitcoin Funds and, as appropriate, would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on each Trust. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. The Exchange will be able to obtain information regarding trading in the shares of the underlying Trusts from Nasdaq, LLC, Cboe Exchange, Inc., and other markets on which the Trusts trade through the ISG. In addition, the Exchange has a Regulatory Services Agreement ("RSA") with the Financial Industry Regulatory Authority ("FINRA"). Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related

market surveillances.³⁸ Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Bitcoin Funds.

The underlying shares of spot bitcoin ETPs, including the Bitcoin Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot bitcoin-based exchange-traded products (“Bitcoin ETP Order”³⁹):

Each Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.⁴⁰

Given the consistently high correlation between the CME bitcoin futures market and the spot bitcoin market, as confirmed by the Commission through robust correlation analysis, and given that the “CME’s surveillance can assist in detecting [the impact of fraud or manipulation] on CME bitcoin future prices,” the Commission was able to conclude that such surveillance

³⁸ Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

³⁹ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (File Nos. 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; SRCboeBZX-2023-044; and SR-CboeBZX-2023-072) (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) (“Bitcoin ETP Order”).

⁴⁰ See Bitcoin ETP Order, 89 FR at 3009.

sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].”⁴¹

In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,⁴² the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin Funds.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association (“CTA”) high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on Bitcoin Funds will be available via OPRA and major market data vendors.

The Exchange believes that offering options on the Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (“OTC”) options market,⁴³ but may prefer to

⁴¹ See Bitcoin ETP Order, 89 FR at 3010-11.

⁴² See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2021-90), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-358659-884182.pdf>; Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Bitwise Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-44), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-44/srnysearca202344-358800-884322.pdf>; and 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](https://www.federalregister.gov/documents/2024/06/12/2024-11493) (June 12, 2024) (SR-NYSEARCA-2024-45).

⁴³ The Exchange understands from customers that investors have historically transacted in options on ETFs in the OTC options market if such options were not available for trading in a listed environment.

trade such options in a listed environment to receive the benefits of trading listed options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing options on the Bitcoin Funds may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange notes that the ETPs that hold precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of options on any ETFs or ETPs that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁴⁴ in general and furthers the objectives of Section 6(b)(5) of the Act⁴⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposal to list and trade options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on the

⁴⁴ 15 U.S.C. 78f(b).

⁴⁵ 15 U.S.C. 78f(b)(5).

Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies.

The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based ETPs,⁴⁶ which, as described above, are trusts structured in substantially the same manner as the Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed ETP options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on the Bitcoin Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all ETFs and ETPs, including ETPs that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as

⁴⁶ See Rule 5.3-O(g).

demonstrated above, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin Fund options will trade in the same manner as any other ETF or ETP options — the same Exchange Rules that currently govern the listing and trading of options, including permissible expirations, strike prices, minimum increments, and margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed rule change to exclude the Bitcoin Funds from being eligible for trading as FLEX options is consistent with the Act, because it will permit the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position limits for options on the Bitcoin Funds.⁴⁷

The proposed position and exercise limit for options on the Bitcoin Funds is 25,000 contracts. These position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than appropriate given the Bitcoin Funds' market capitalization, average daily volume, number of beneficial holders, and high number of outstanding shares.⁴⁸ The proposed position and exercise limits are consistent with the Act as they address concerns related to manipulation and protection of investors because the position and exercise limits are extremely conservative and more than appropriate given the Bitcoin Funds are actively traded.

The Exchange also believes the proposed rule change to Rule 5.32-O, to make clear that options on the Bitcoin Funds are not eligible for FLEX trading, will remove impediments to and

⁴⁷ The Exchange will submit a separate rule filing that would permit the Exchange to authorize for trading FLEX options on the Bitcoin Funds (which filing may propose changes to existing FLEX option position limits for such options if appropriate).

⁴⁸ The Exchange notes that the Bitcoin Funds have are approved for options trading on NYSE American. See supra note 5.

perfect the mechanism of a free and open market and a national market system because it adds clarity and transparency to Exchange Rules making them easier to navigate and understand to the benefit of investors and the public interest.

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options, including Bitcoin Fund options. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious metal-commodity backed ETP options as well as the proposed options on Bitcoin Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Bitcoin Funds in all trading sessions and to deter and detect violations of Exchange rules.

Specifically, the Exchange's market surveillance staff also conducts surveillances with respect to the Bitcoin Funds and, as appropriate, would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on each Trust. Additionally, the Exchange is a member of the Intermarket Surveillance Group Agreement ("ISG") under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition, the Exchange is a party to an RSA with FINRA and pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Bitcoin Funds.

The underlying shares of spot bitcoin ETPs, including the Bitcoin Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot bitcoin-based ETPs, “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.”⁴⁹ Given the consistently high correlation between the CME bitcoin futures market and the spot bitcoin market, as confirmed by the Commission through robust correlation analysis, and given that the “CME’s surveillance can assist in detecting [the impact of fraud or manipulation] on CME bitcoin future prices,” the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].”⁵⁰ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,⁵¹ the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin Funds.

⁴⁹ See Bitcoin ETP Order, 89 FR at 3009.

⁵⁰ See Bitcoin ETP Order, 89 FR at 3010-11.

⁵¹ See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2021-90), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-358659-884182.pdf>; Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Bitwise Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-44), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-44/srnysearca202344-358800-884322.pdf>; and 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](https://www.federalregister.gov/documents/2024/06/06/2024-11493) (June 12, 2024) (SR-NYSEARCA-2024-45).

Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition: The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as options on the Bitcoin Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other option on an ETF before the Exchange could list these options. Additionally, Bitcoin Fund options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on ETFs on the Exchange will apply in the same manner to the listing and trading of all options on the Bitcoin Funds. Also, and as stated above, the Exchange already lists options on other commodity-based ETPs.⁵²

Intermarket Competition: The Exchange does not believe that the proposal to list and trade options on Bitcoin Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. As noted herein, this is a competitive filing as

⁵² Rule 5.3-O(g) permits the listing and trading of options on shares of the following trusts: SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Silver Trust, the ETFS Gold Trust, ETFS Palladium Trust, or ETFS Platinum Trust). See Rule 5.3-O(g)(iv)-(vi) and (viii)-(ix).

the Commission recently approved the listing and trading of options on the Bitcoin Funds on NYSE American LLC.⁵³

Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the Bitcoin Funds. The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

⁵³ See supra note 4 (regarding the American Bitcoin Options Approval Order). See also NYSE American Rule 915, Commentary .10(a).

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁵⁴ and Rule 19b-4(f)(6) thereunder.⁵⁵ Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁵⁷

A proposed rule change filed under Rule 19b-4(f)(6)⁵⁸ under the Act does not normally become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁵⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission previously approved the listing of options on the Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF.⁶⁰ The Exchange has

⁵⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵⁵ 17 CFR 240.19b-4(f)(6).

⁵⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission waives this requirement.

⁵⁸ 17 CFR 240.19b-4(f)(6).

⁵⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁶⁰ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds).

provided information regarding the underlying Bitcoin Funds, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the Bitcoin Funds. The proposal also establishes position and exercise limits for options on the Bitcoin Funds and provides information regarding the surveillance procedures that will apply to Bitcoin Fund options. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading Bitcoin Fund options. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.⁶¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁶¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number NYSEARCA-2024-101 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number NYSEARCA-2024-101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use 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 NYSEARCA-2024-101 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶²

Sherry R. Haywood,
Assistant Secretary.

⁶² 17 CFR 200.30-3(a)(12).