



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100024; File Nos. SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14; SR-MIAX-2024-03; SR-NYSEAMER-2024-10; SR-PEARL-2024-03]

**Self-Regulatory Organizations; BOX Exchange LLC; Cboe Exchange, Inc.; MIAX International Securities Exchange LLC; MIAX PEARL LLC; Nasdaq ISE, LLC; NYSE American LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Permit the Listing and Trading of Options on Trusts That Hold Bitcoin**

April 24, 2024.

### I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BOX Exchange LLC (“BOX”); Cboe Exchange, Inc. (“Cboe Options”); MIAX International Securities Exchange LLC (“MIAX”); MIAX PEARL LLC (“MIAX Pearl”); Nasdaq ISE, LLC (“ISE”); and NYSE American LLC (“NYSE American”) (collectively, the “Exchanges” and each an “Exchange”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes to list and trade options on exchange-traded product (“ETP”) shares that represent interests in either a specified bitcoin trust or in any trust that holds bitcoin, as described below (each, a “Proposal,” and collectively, the “Proposals”). Specifically, ISE proposed to list and trade options on shares that represent interests in the iShares Bitcoin Trust.<sup>3</sup> BOX, Cboe Options, MIAX, MIAX Pearl and, in a second filing, ISE,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See File No. SR-ISE-2024-03 (“ISE iShares Proposal”), filed Jan. 9, 2024. On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the iShares Bitcoin Trust, the Grayscale Bitcoin Trust, and the Bitwise Bitcoin ETF. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-

proposed to list and trade options on shares that represent interests in a trust that holds bitcoin.<sup>4</sup>

NYSE American proposed to list and trade options on shares that represent interests in the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust, and on any trust that holds bitcoin.<sup>5</sup>

On January 25, 2024, the Cboe Options Proposal,<sup>6</sup> the ISE iShares Proposal,<sup>7</sup> the MIAX Proposal,<sup>8</sup> and the MIAX Pearl Proposal<sup>9</sup> were published for comment in the Federal Register.

On March 6, 2024, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> the Commission designated a longer period within which to approve these proposals, disapprove the proposals, or institute proceedings to determine whether to disapprove the proposals.<sup>11</sup> The NYSE American Proposal was published for comment in the Federal Register on February 29, 2024.<sup>12</sup> On April 8, 2024, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> the Commission designated a longer period within which to approve the proposal, disapprove the proposal, or institute proceedings to determine

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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).

<sup>4</sup> See File Nos. SR-BOX-2024-07 (“BOX Proposal”), filed Mar. 11, 2024; SR-CBOE-2024-005 (“Cboe Options Proposal”), filed Jan 5, 2024; SR-ISE-2024-14 (“ISE Trust Proposal”), filed Mar. 19, 2024; SR-MIAX-2024-03 (“MIAX Proposal”), filed Jan. 12, 2024; SR-PEARL-2024-03 (“MIAX Pearl Proposal”), filed Jan. 12, 2024.

<sup>5</sup> See File No. SR-NYSEAMER-2024-10 (“NYSE American Proposal”), filed Feb. 9, 2024.

<sup>6</sup> See Securities Exchange Act Release Nos. 99395 (Jan. 19, 2024), 89 FR 5075 (“Cboe Options Notice”).

<sup>7</sup> See. Securities Exchange Act Release No. 99396 (Jan. 19, 2024), 89 FR 5047 (“ISE iShares Notice”).

<sup>8</sup> See Securities Exchange Act Release No. 99397 (Jan. 19, 2024), 89 FR 5079 (“MIAX Notice”).

<sup>9</sup> See Securities Exchange Act Release No. 99394 (Jan. 19, 2024), 89 FR 5058 (“MIAX Pearl Notice”).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> See Securities Exchange Act Release Nos. 99680 (Mar. 6, 2024), 89 FR 17887 (Mar. 12, 2024) (Cboe Options Proposal); 99682 (Mar. 6, 2024), 89 FR 17887 (Mar. 12, 2024) (MIAX Pearl Proposal); 99684 (Mar. 6, 2024), 89 FR 17887 (Mar. 12, 2024) (MIAX Proposal); 99681 (March 6, 2024), 89 FR 17886 (March 12, 2024) (ISE iShares Proposal). The Commission designated April 24, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule changes.

<sup>12</sup> See Securities Exchange Act Release No. 99593 (Feb. 23, 2024), 89 FR 14911 (“NYSE American Notice”).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

whether to disapprove the NYSE American Proposal.<sup>14</sup> On March 25, 2024, the BOX Proposal<sup>15</sup> and the ISE Trust Proposal<sup>16</sup> were published for comment in the Federal Register.

The Commission received comments addressing the ISE iShares Proposal,<sup>17</sup> the NYSE American Proposal,<sup>18</sup> and the Cboe Proposal.<sup>19</sup> This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>20</sup> to determine whether to approve or disapprove the Proposals.

## II. Description of the Proposals

As described in detail in the notices of their respective Proposals,<sup>21</sup> the Exchanges proposed to amend their rules to permit the listing and trading of options on shares that represent interests in any trust that holds spot bitcoin,<sup>22</sup> or options on shares that represent interests in specified trusts that hold spot bitcoin<sup>23</sup> (such trusts, collectively, the “Bitcoin ETPs”).

The Exchanges stated that Bitcoin ETPs are trusts that hold spot bitcoin, and that the investment objective of a Bitcoin ETP is 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 direct investment in bitcoin.<sup>24</sup> The Exchanges stated that the Bitcoin ETPs also would provide investors with a hedging and risk management tool to manage their exposure

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<sup>14</sup> See Securities Exchange Act Release No. 99921 (April 8, 2024), 89 FR 25908 (April 12, 2024). The Commission designated May 29, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>15</sup> See Securities Exchange Act Release No. 99777 (Mar. 19, 2024), 89 FR 20712 (“BOX Notice”).

<sup>16</sup> See Securities Exchange Act Release No. 99776 (Mar. 19, 2024), 89 FR 20717 (“ISE Trust Proposal Notice”).

<sup>17</sup> Comments may be accessed at <https://www.sec.gov/comments/sr-ise-2024-03/srise202403.htm>.

<sup>18</sup> Comments may be accessed at <https://www.sec.gov/comments/sr-nyseamer-2024-10/srnyseamer202410.htm>.

<sup>19</sup> Comments may be accessed at <https://www.sec.gov/comments/sr-cboe-2024-005/srcboe2024005.htm>.

<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>21</sup> See notes 6 - 9, 12, 15 - 16, *supra*.

<sup>22</sup> See BOX Proposal; Cboe Options Proposal; ISE Trust Proposal; MIAX Proposal; MIAX Pearl Proposal; and NYSE American Proposal.

<sup>23</sup> See ISE iShares Proposal and NYSE American Proposal.

<sup>24</sup> See BOX Notice, 89 FR at 20713; Cboe Options Notice, 89 FR at 5076; ISE Trust Proposal Notice 89 FR at 20717; MIAX Notice, 89 FR at 5080; MIAX Pearl Notice, 89 FR at 5058; NYSE American Notice, 89 FR at 14912.

to the price of bitcoin and bitcoin-related products and positions.<sup>25</sup> Additionally, several Exchanges stated that the Proposals would provide investors with the ability to transact Bitcoin ETP options on a listed market rather than in the unregulated over-the-counter options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchanges through increased order flow.<sup>26</sup> Several Exchanges stated that the primary substantive difference between the proposed Bitcoin ETPs and exchange-traded funds (“ETFs”) currently deemed appropriate for options trading on the Exchanges are that the ETFs may hold securities, certain financial instruments, and specified precious metals, while Bitcoin ETPs hold bitcoin.<sup>27</sup> The Exchanges stated that they have not identified any issues with the continued

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<sup>25</sup> See BOX Notice, 89 FR at 20715; Cboe Options Notice, 89 FR at 5078; ISE iShares Notice, 89 FR at 5051; ISE Trust Proposal Notice, 89 FR at 20719; MIAX Notice, 89 FR at 5082; MIAX Pearl Notice, 89 FR at 5060-1; NYSE American Notice, 89 FR at 14912.

<sup>26</sup> See BOX Notice, 89 FR at 20714; Cboe Options Notice, 89 FR at 5077; ISE Trust Proposal Notice, 89 FR at 20719; MIAX Notice, 89 FR at 5081; MIAX PEARL Notice, 89 FR at 5061.

<sup>27</sup> See BOX Notice, 89 FR at 20713; Cboe Options Notice, 89 FR at 5076; ISE Trust Proposal Notice, 89 FR at 20717; MIAX Notice, 89 FR at 5080; NYSE American Notice, 89 FR at 14912. The Exchanges’ rules use the term “exchange traded fund” to refer to several types of investment products. For example, BOX Rule 5020(h) provides: “Securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that are traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS and that (i) 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 indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase 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 broad-based 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); or (ii) represent interests in a trust 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 or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”); or (iii) represent 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 ETFs”) or (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust, the ETFS Silver trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust; provided that all of the following conditions are met. . . .” See also Cboe Rules 1.1 and 4.3, Interpretation and Policy .06; ISE Options 4, Section 3(h); MIAX Rule 402(i); MIAX Pearl Rule 402(i); NYSE American Rule 915, Commentary .06. In describing the Proposals, for purposes of this Order, the terms “exchange-traded fund” and “ETF” have the meaning set forth in the Exchanges’ rules.

listing and trading of any ETF or ETP options currently trading on the Exchanges, including options on ETPs that hold commodities.<sup>28</sup>

Bitcoin ETP options will be physically settled with American-style exercise.<sup>29</sup> The Exchanges stated that Bitcoin ETP options will be subject to the Exchanges' respective initial and continued listing standards.<sup>30</sup> The Exchanges' initial listing standards require, among other things, that the security underlying a listed option be "characterized by a substantial number of outstanding shares that are widely held and actively traded."<sup>31</sup> The Exchanges stated that Bitcoin ETP options will trade in the same manner as other ETF options, and that Bitcoin ETP options would be subject to the Exchanges' rules that currently apply to the listing and trading of all ETF options on the Exchanges, including, for example, exchange rules governing listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures.<sup>32</sup>

The Exchanges stated that position and exercise limits for Bitcoin ETP options would be determined pursuant to the Exchanges' existing rules.<sup>33</sup> Under these rules, the position limit applicable to an options class depends upon the trading volume and outstanding shares of the underlying security. The Exchanges stated that the highest option position and exercise limit—

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<sup>28</sup> See BOX Notice, 89 FR at 20714; Cboe Options Notice, 89 FR at 5077; ISE Trust Proposal Notice, 89 FR at 20717; MIAX Notice, 89 FR at 5080; MIAX Pearl Notice, 89 FR at 5060; NYSE American Notice, 89 FR at 14912.

<sup>29</sup> See BOX Notice, 89 FR at 20713; Cboe Options Notice, 89 FR at 5076; ISE iShares Notice, 89 FR at 5050; ISE Trust Notice, 89 FR at 20718; MIAX Notice, 89 FR at 5080; MIAX Pearl Notice, 89 FR at 5059; NYSE American Notice, 89 FR at 14913.

<sup>30</sup> See BOX Notice, 89 FR at 20713; Cboe Options Notice, 89 FR at 5076; ISE iShares Notice, 89 FR at 5049; ISE Trust Proposal Notice, 89 FR at 20717-8; MIAX Notice, 89 FR at 5080; MIAX Pearl Notice, 89 FR at 5059; NYSE American Notice, 89 FR at 14913.

<sup>31</sup> See BOX Notice, 89 FR at 20713; Cboe Options Notice, 89 FR at 5076; ISE iShares Notice, 89 FR at 5049; ISE Trust Proposal Notice, 89 FR at 20717-8; MIAX Notice, 89 FR at 5080; MIAX Pearl Notice, 89 FR at 5059; NYSE American Notice, 89 FR at 14913.

<sup>32</sup> See BOX Notice, 89 FR at 20714; Cboe Options Notice, 89 FR at 5077; ISE iShares Notice, 89 FR at 5050; ISE Trust Notice, 89 FR at 20718-9; MIAX Notice, 89 FR at 5081; MIAX Pearl Notice, 89 FR at 5059-60; NYSE American Notice, 89 FR at 14913-4.

<sup>33</sup> See BOX Notice, 89 FR at 20714; Cboe Options Notice, 89 FR at 5077; ISE iShares Notice, 89 FR at 5050; ISE Trust Notice, 89 FR at 20718-9; MIAX Notice, 89 FR at 5081; MIAX Pearl Notice, 89 FR at 5059-60; NYSE American Notice, 89 FR at 14913-4.

250,000 option contracts on the same side of the market—would apply to options on a Bitcoin ETP with the highest trading volume and number of shares outstanding.<sup>34</sup> Position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts on the same side of the market would apply to Bitcoin ETP options with lower six-month trading volumes and numbers of shares outstanding.<sup>35</sup>

The Exchanges represented that the surveillance procedures that they apply to other ETF options would apply to options on Bitcoin ETPs, and that their existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior that might arise from listing and trading options on ETFs.<sup>36</sup> In addition, several Exchanges stated that they may obtain information from contract markets that are members of the Intermarket Surveillance Group (“ISG”) related to any financial instrument that is based, in whole or in part, upon an interest in or the performance of bitcoin.<sup>37</sup> Each Exchange represented that it believed that both

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<sup>34</sup> See BOX Notice, 89 FR at 20714; Cboe Options Notice, 89 FR at 5077; ISE iShares Notice, 89 FR at 5050; ISE Trust Notice, 89 FR at 20718-9; MIAX Notice, 89 FR at 5081; MIAX Pearl Notice, 89 FR at 5059-60; NYSE American Notice, 89 FR at 14913-4. 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 million shares, or most recent six-month trading volume of at least 75 million shares and at least 300 million shares currently outstanding. See BOX Rule 3120(d); Cboe Rule 8.30, Interpretation and Policy .02; ISE Options 9, Section 13; MIAX Rule 307; MIAX Pearl Chapter III (incorporating MIAX Rule 307 by reference); NYSE American Rule 904, Commentary .07.

<sup>35</sup> 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. The 25,000-contract limit applies to options on underlying securities that do not qualify for a higher contract limit. See BOX Rule 3120(d); Cboe Rule 8.30, Interpretation and Policy .02; ISE Options 9, Section 13; MIAX Rule 307; MIAX Pearl Chapter III (incorporating MIAX Rule 307 by reference); NYSE American Rule 904, Commentary .07.

<sup>36</sup> See BOX Notice, 89 FR at 20714; Cboe Notice, 89 FR at 5077; ISE iShares Notice, 89 FR at 5050; ISE Trust Notice, 89 FR at 20719; MIAX Notice, 89 FR at 5081; MIAX Pearl Notice, 89 FR at 5060; NYSE American Notice, 89 FR at 14914.

<sup>37</sup> See BOX Notice, 89 FR at 20714; Cboe Notice, 89 FR at 5077; ISE Trust Notice, 89 FR at 20719; MIAX Notice, 89 FR at 5081; MIAX Pearl Notice, 89 FR at 5060. NYSE American stated that it may obtain information from exchanges that are members of ISG or from other exchanges with which the NYSE American has entered into a comprehensive surveillance sharing agreement (“CSSA”). NYSE American further stated that it would implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs. See NYSE American Notice, 89 FR at 14914.

the Exchange and the Options Price Reporting Authority, LLC (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Bitcoin ETPs.<sup>38</sup>

One Exchange acknowledged that options on the Bitcoin ETPs will not be available for trading until The Options Clearing Corporation (“OCC”) represents to the Exchange that it is able to clear and settle the options.<sup>39</sup>

### III. Summary of Comments Received

The Commission received comments addressing the ISE iShares Proposal,<sup>40</sup> the NYSE American Proposal,<sup>41</sup> and both the Cboe and NYSE American Proposals.<sup>42</sup> Commenters stated the options on spot Bitcoin ETPs would help investors hedge their positions in spot bitcoin and manage risk.<sup>43</sup> One commenter stated that permitting options on the iShares Bitcoin Trust would likely increase overall market liquidity, allow for arbitrage and increased market efficiency, and provide investors with additional investing tools to take exposure to spot bitcoin.<sup>44</sup> Other commenters stated the Commission should permit the listing of options on shares of spot bitcoin-based ETPs because options on shares of an ETF holding bitcoin futures already trade.<sup>45</sup> One

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<sup>38</sup> See BOX Notice, 89 FR at 20714; Cboe Notice, 89 FR at 5077; ISE iShares Notice, 89 FR at 5050; ISE Trust Notice, 89 FR at 20719; MIAX Notice, 89 FR at 5081; MIAX Pearl Notice, 89 FR at 5060; NYSE American Notice, 89 FR at 14914.

<sup>39</sup> See NYSE American Notice, 89 FR at 14914.

<sup>40</sup> See comments from Joseph Ferrucci (“Ferrucci Letter”); Benjamin Pincock (“Pincock Letter”); Derek Jerina, dated Feb. 10, 2024 (“Jerina Letter”); Xplorer Trading (“Xplorer Letter”); and a comment submitted anonymously (“Anonymous Letter”).

<sup>41</sup> See letter to Vanessa Countryman, Secretary, Commission, from Michael Sonnenshein, on behalf of Grayscale Investments, LLC and GBTC investors, dated February 28, 2024 (“Grayscale Letter”).

<sup>42</sup> See letter to the Commission from James J. Angel, Associate Professor of Finance, Georgetown University, to the Commission, dated March 10, 2024 (“Angel Letter”).

<sup>43</sup> See Ferrucci Letter (stating that options on the iShares Bitcoin Trust would be used to hedge long positions); Jerina Letter (stating that options would give investors a means to hedge their investment in the iShares Bitcoin Trust and other bitcoin-related positions); Anonymous Letter (stating that options on spot bitcoin ETPs would allow hedging and greater flexibility for retail investors to trade a volatile asset class at a more granular risk/reward trade-off profile); Pincock Letter (stating that options allow hedging strategies and mitigate risk during periods of market downtime); Xplorer Letter (stating that options make a product safer by providing the ability to hedge); Angel Letter at 8 (stating that options are efficient risk management tools and may be used as part of hedging strategies to reduce risk).

<sup>44</sup> See Jerina Letter.

<sup>45</sup> See Angel Letter and Grayscale Letter.

commenter also stated that options on ETPs holding spot bitcoin and options on ETFs holding bitcoin futures are both subject to the risks presented by the spot bitcoin market,<sup>46</sup> and commenters further stated that options on extremely similar national market system (“NMS”) securities<sup>47</sup> should have the same regulatory treatment.<sup>48</sup> One commenter further stated that because “the price trajectories of the spot- and futures-based bitcoin ETFs are virtually identical,” options on these securities should have the same regulatory treatment.<sup>49</sup> The commenter also stated that the Commission should allow options exchanges to list options on any NMS security that meets the exchange’s quantitative listing standards without filing a proposed rule change with the Commission.<sup>50</sup>

One commenter stated that options are an efficient risk management tool that give investors the ability to take on or reduce risk.<sup>51</sup> Another commenter stated that options on spot bitcoin ETPs would facilitate price discovery in the shares of the underlying ETP, improve market efficiency, and help investors achieve desired investment outcomes, such as generating income, hedging, or reducing volatility.<sup>52</sup> In addition, the commenter stated that approving the listing and trading of options on spot Bitcoin ETPs “would further bring Bitcoin into the regulatory perimeter by allowing additional regulated market participants such as CFTC-regulated designated contract merchants and SEC-regulated broker-dealers to trade the products.”<sup>53</sup>

#### IV. Proceedings to Determine Whether to Approve or Disapprove File Nos. SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14; SR-MIAX-2024-03; SR-NYSEAMER-2024-10; and SR-PEARL-2024-03 and Grounds for Disapproval under Consideration

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<sup>46</sup> See Grayscale Letter at 4. The commenter also stated that the spot bitcoin ETP market is “far more liquid” than the market for bitcoin futures ETFs. Id. at 4-5.

<sup>47</sup> 17 CFR 242.600(b)(54).

<sup>48</sup> See Grayscale Letter at 4; Angel Letter at 4.

<sup>49</sup> See Angel Letter at 4.

<sup>50</sup> See Angel Letter at 6.

<sup>51</sup> See Angel Letter at 8.

<sup>52</sup> See Grayscale Letter at 3.

<sup>53</sup> Grayscale Letter at 3.

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>54</sup> to determine whether the Proposals should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>55</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the Proposals' consistency with Section 6(b)(5) of the Act,<sup>56</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."<sup>57</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>58</sup> and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative

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<sup>54</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>55</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>56</sup> 15 U.S.C. 78f(b)(5).

<sup>57</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>58</sup> See id.

finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>59</sup>

As discussed above, the Exchanges' initial listing standards require, among other things, that the security underlying a listed option be "characterized by a substantial number of outstanding shares that are widely held and actively traded."<sup>60</sup> Instituting proceedings allows for comment on whether the Proposals have demonstrated that spot Bitcoin ETP shares meet this standard. In addition, the Proposals stated that spot Bitcoin ETP options would be subject to the Exchanges' rules that currently apply to the listing of ETF options, including, among others, the Exchanges' option position and exercise limit rules.<sup>61</sup> Under the Exchanges' rules, options that have traded for less than six months would be subject to a position limit of 25,000 contracts on the same side of the market.<sup>62</sup> The Exchanges' rules provide higher position limits based on the six-month average daily volume and/or number of shares outstanding of the underlying security.<sup>63</sup> Instituting proceedings allows for comment on whether the Proposals have demonstrated that these position limits are appropriate for the proposed spot Bitcoin ETP options. In addition, instituting proceedings allows for comment on whether the Proposals have demonstrated that listing options on the Bitcoin ETPs would not result in adverse market impacts.

#### V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposals. In particular, the Commission invites the written

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<sup>59</sup> See id.

<sup>60</sup> See supra note 31.

<sup>61</sup> See supra note 32.

<sup>62</sup> See BOX Rule 3120(d); Cboe Rule 8.30, Interpretation and Policy .02; ISE Options 9, Section 13; MIAX Rule 307; MIAX Pearl Chapter III (incorporating MIAX Rule 307 by reference); NYSE American Rule 904, Commentary .07.

<sup>63</sup> See supra note 35.

views of interested persons concerning whether the proposed rule changes are consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>64</sup> any request for an opportunity to make an oral presentation.<sup>65</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission asks that commenters address the sufficiency of the Exchanges' statements in support of their respective Proposals, which are set forth in the Notices,<sup>66</sup> in addition to any other comments they may wish to submit about the proposed rule changes. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Whether the Proposals should include data demonstrating that the shares of each of the specified Bitcoin ETPs on which an Exchange proposes to list options are "widely held and actively traded," as required by the Exchanges' rules;
2. Whether options on the specified Bitcoin ETPs should be subject to the same position limits as options on stock, and whether the available supply in the markets for bitcoin should be considered in establishing position limits for options on Bitcoin ETPs;

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<sup>64</sup> 17 CFR 240.19b-4.

<sup>65</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>66</sup> *See supra* notes 8 - 16.

3. Whether the Proposals should analyze the potential impact that listing options on Bitcoin ETPs could have on bitcoin market quality and function, particularly during times of market stress, given the linkages between the options markets for Bitcoin ETPs, spot Bitcoin ETPs, and spot bitcoin;

4. Whether the Proposals should include representations regarding how the Exchanges would obtain information regarding trading in the Bitcoin ETPs from the exchanges where the Bitcoin ETPs trade; and

5. Whether the Proposals seeking to list options on any ETP that holds spot bitcoin provide an adequate basis for the Commission to find that it is consistent with Section 6(b)(5) of the Act to permit the listing of such options, rather than approving options on ETPs that hold bitcoin on a product-by-product basis.<sup>67</sup>

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Nos. SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14; SR-MIAX-2024-03; SR-NYSEAMER-2024-10; SR-PEARL-2024-03 on the subject line.

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<sup>67</sup> To date, options exchanges have proposed, and the Commission has approved, the listing and trading of options on commodity-based ETPs on a product-by-product basis. See, e.g., Securities Exchange Act Release Nos. 94928 (May 17, 2022), 87 FR 31287 (May 23, 2022) (File No. SR-CBOE-2022-09) (order approving a proposed rule change to list and trade options on shares of the Goldman Sachs Physical Gold ETF); 61983 (Apr. 26, 2010), 75 FR 23314 (May 3, 2010) (File No. SR-ISE-2010-19) (order approving a proposed rule change to list and trade options on shares of the ETFS Palladium Trust and the ETFS Platinum Trust); 61483 (Feb. 3, 2010), 75 FR 6753 (Feb. 10, 2010) (File Nos. SR-SR-CBOE-2010-007; SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110) (order approving proposals to list and trade options on shares of the ETFS Gold Trust and the ETFS Silver Trust); 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (File Nos. SR-Amex-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SR-NYSEArca-2008-66; and SR-Phlx-2008-58) (order approving the listing and trading of options on shares of the iShares COMEX Gold Trust and the iShares Silver Trust); 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (File Nos. SR-Amex-2008-15; SR-CBOE-2005-11; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SR-Phlx-2008-17) (order approving the listing and trading of options on shares of the SPDR Gold Trust).

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 numbers SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14; SR-MIAX-2024-03; SR-NYSEAMER-2024-10; SR-PEARL-2024-03.

These file numbers 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 submissions, all subsequent amendments,

all written statements with respect to the proposed rule changes that are filed with the

Commission, and all written communications relating to the proposed rule changes 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 offices of the Exchanges. 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 numbers SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14;

SR-MIAX-2024-03; SR-NYSEAMER-2024-10; SR-PEARL-2024-03 and should be submitted by

[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL*

*REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER

DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>68</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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