



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102823; File No. SR-ISE-2025-11]

### **Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Rules to Allow the Exchange to List Options on the Fidelity Ethereum Fund, the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust**

April 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 9, 2025, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Options 4, Section 3, Criteria for Underlying Securities, to list and trade options on the (1) Fidelity Ethereum Fund (the “Fidelity Fund”); (2) Bitwise Ethereum ETF (“Bitwise Fund” or “ETHW”); (3) the Grayscale Ethereum Trust (“Grayscale Fund” or “ETHE”); (4) and Grayscale Ethereum Mini Trust (“Grayscale Mini Fund” or “ETH”).

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

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

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

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

1. Purpose

The Exchange proposes to amend Options 4, Section 3, Criteria for Underlying Securities, to allow the Exchange to list and trade options on the (1) Fidelity Ethereum Fund (the “Fidelity Fund”); (2) Bitwise Ethereum ETF (“Bitwise Fund” or “ETHW”); (3) the Grayscale Ethereum Trust (“Grayscale Fund” or “ETHE”); (4) and Grayscale Ethereum Mini Trust (“Grayscale Mini Fund” or “ETH”), (collectively “Ether Trusts”) as “Units” deemed appropriate for options trading on the Exchange.<sup>5</sup> Options on each Ether Trust were approved for trading on other options exchanges.<sup>6</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-Cboe-2024-035) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Permit the Listing and Trading of Options on Ether Exchange-Traded Funds). See also Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31) (order approving the listing and trading of, among other Ether-Based Exchange-Traded Products, the Bitwise Ethereum ETF and the Grayscale Ethereum Trust (ETH)); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (SRNYSEARCA-2024-44) (order approving the listing and trading of, among others, the Grayscale Ethereum Trust Mini).

<sup>6</sup> See Securities Exchange Act Release Nos. 102797 (April 9, 2025) (SR-Cboe-2024-036) (not yet published) (“Cboe Proposal”); 102799 (April 9, 2025), (not yet published) (SR-NYSEAMER-2024-45) (“NYSE American Proposal”).

Currently, Options 4, Section 3(h) provides that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares” or “ETFs”) that are traded on a national securities exchange and are defined as an “NMS” stock under Rule 600 of Regulation NMS, and that meet certain criteria specified in Options 4, Section 3(h), including that they:

(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 or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust or similar entity 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 Aberdeen Standard Physical Gold Trust, or the iShares Ether Trust or

(v) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management 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”).

In addition to the aforementioned requirements, Options 4, Section 3(h)(1) and (2) must be met to list options on ETFs.<sup>7</sup>

### **Proposal**

The Exchange proposes to expand the list of ETFs that are appropriate for options trading on the Exchange in Options 3, Section 4(h)(iv) to include the Ether Trusts.<sup>8</sup>

The Ether Trusts are Ether-backed commodity ETFs structured as trusts. Similar to any Unit currently deemed appropriate for options trading under Options 3, Section 4(h), the investment objective of each Ether Trust is for its shares to reflect the performance of Ether (less the expenses of the trust’s operations), offering investors an opportunity to gain exposure to Ether without the complexities of Ether delivery. As is the case for Units currently deemed appropriate for options trading, a Ether Trust’s shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Ether and are designed to track Ether or the performance of the price of Ether and offer access to the Ether market.<sup>9</sup> The Ether Trusts provide investors with cost-efficient alternatives that allow a level of participation in the Ether market through the securities market. The primary substantive difference between Ether Trusts and Units currently deemed appropriate for options trading are that Units may hold

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<sup>7</sup> Options 4, Section 3(h)(1) and (2) state that the Exchange-Traded Fund Shares either (i) meet the criteria and guidelines set forth in paragraphs (a) and (b) described herein; or (ii) the Exchange-Traded Fund Shares are available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them 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 of the Exchange-Traded Fund Shares, all as described in the Exchange-Traded Fund Shares’ prospectus. Also, the Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the criteria in Options 4, Section 3(h)(2)(A)-(F).

<sup>8</sup> Specifically, the Exchange proposes to amend Options 3, Section 4(h)(iv) to include the name of each Ether Trust to enable options to be listed on the Ether Trusts on the Exchange.

<sup>9</sup> The trust may include minimal cash.

securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Ether Trusts hold Ether (which is also deemed a commodity).

The Exchange believes each Ether Trust satisfies the Exchange's initial listing standards for Units on which the Exchange may list options. Specifically, each Ether Trust satisfies the initial listing standards set forth in Options 3, Section 4(h), as is the case for other Units on which the Exchange lists options (including trusts that hold commodities). Currently, Options 4, Section 3(h)(1) and (2) requires that Units must either (i) meet the criteria and guidelines set forth in paragraphs (a) and (b) described herein; or (ii) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them 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 of the Exchange-Traded Fund Shares, all as described in the Exchange-Traded Fund Shares' prospectus. Each Ether Trust Fund satisfies Options 4, Section 3(h)(1) and (2), as each is subject to this creation and redemption process.

While not required by the Rules for purposes of options listings, the Exchange believes each Ether Trust satisfies the criteria and guidelines set forth in Options 4, Section 3(b).<sup>10</sup>

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<sup>10</sup> ISE Options 4, Section 3(b) states that, in addition, the Exchange shall from time to time establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be selected as an underlying security. Further, in exceptional circumstances an underlying security may be selected by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the forgoing, however, absent exceptional circumstances, an underlying security will not be selected unless: (1) There are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act; (2) There are a minimum of 2,000 holders of the underlying security; (3) The issuer is in compliance with any applicable requirements of the Exchange Act; (4) Trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the

Options 4, Section 3(a), a security (which includes a Unit) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, as amended (the “Act”)), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>11</sup> Each Ether Trust is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.<sup>12</sup> The Exchange believes each Ether Trust is characterized by a substantial number of outstanding shares that are widely held and actively traded.

### Fidelity Fund

Based on data filed in the Cboe Proposal, as of December 23, 2024, the Fidelity Fund had 41,700,000 shares outstanding, which is nearly six times more than the minimum number of shares of a corporate stock (i.e., 7,000,000 shares) that is generally required to list options on that stock pursuant to Options 4, Section 3(b)(1). The Cboe Proposal noted that it believed that this demonstrates that the Fidelity Fund is characterized by a substantial number of outstanding shares. Further, the Cboe Proposal noted that as of November 26, 2024, there were 38,170 beneficial holders of shares of the Fidelity Fund, which is significantly more than 2,000

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preceding twelve (12) months; (5) Either: (i) If the underlying security is a "covered security" as defined under Section 18(b)(1)(A) of the Securities Act of 1933: (A) the market price per share of the underlying security has been at least \$3.00 for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; however, (B) the requirements set forth in (5)(i)(A) will be waived during the three days following its initial public offering day for an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, and may be listed and traded starting on or after the second business day following the initial public offering day; or (ii) If the underlying security is not a "covered security," the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days. Notwithstanding the requirements set forth in Paragraphs 1, 2, 4 and 5 above, the Exchange may list and trade an options contract if (i) the underlying security meets the guidelines for continued approval in Options 4, Section 4; and (ii) options on such underlying security are traded on at least one other registered national securities exchange.

<sup>11</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Options 4, Section 3(b), subject to exceptions.

<sup>12</sup> 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”).

beneficial holders (approximately 19 times more), which is the minimum number of holders generally required for corporate stock in order to list options on that stock pursuant to Options 4, Section 3(b)(2). Therefore, the Cboe Proposal noted that it believed the shares of the Fidelity Fund were widely held and actively traded. Further, the Cboe Proposal noted that as of December 23, 2024, the total trading volume (by shares) and the approximate average daily volume (“ADV”) (in shares and notional) from July 23, 2024 (the date on which shares of the Fidelity Fund began trading) to December 23, 2024 for the Fidelity Fund was as follows:

<b>Trading Volumes (Shares)</b>	<b>ADV (Shares)</b>	<b>ADV (Notional \$)</b>
115,589,047	1,070,269	33,864,193

The Cboe Proposal noted that, as demonstrated above, despite the fact that the Fidelity Fund has been trading for approximately five months as of December 23, 2024, its total trading volume as of that date was substantially higher than 2,400,000 shares (more than 48 times that amount), which is the minimum 12-month volume generally required for a corporate stock in order to list options on that security as set forth in ISE Options 4, Section 3(b). Additionally, as of December 23, 2024, the trading volume for the Fidelity Fund was in the top 5% of all ETFs that are currently trading. The Cboe Proposal noted that this data demonstrates the Fidelity Fund is characterized as having shares that are actively traded.

Grayscale Fund, Grayscale Mini Fund or Bitwise Fund (“NYSE Ether Funds”)

The NYSE American Proposal noted that, as of November 29, 2024, the NYSE Ether Funds had the following number of shares outstanding (and corresponding market capitalization):

<b>NYSE Ether Fund</b>	<b>Shares Outstanding</b>	<b>Market Capitalization (11/29/24)</b>
ETHE	177,838,500	\$5,425,852,635
ETH	45,220,787	\$1,547,003,157
ETHW	16,600,000	\$430,886,200

The NYSE American Proposal noted that, as shown above, each of the NYSE Ether 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 Options 4, Section 5(d).<sup>13</sup> The NYSE American Proposal stated that it believed this demonstrates that each NYSE Ether Fund is characterized by a substantial number of outstanding shares. The NYSE American Proposal provided the below table, noting that it contained information regarding the number of beneficial holders of the Ether Funds as of December 31, 2024.

<b>Ether Fund</b>	<b>Beneficial Holders (as of 12/31/24)</b>
ETHE	112,320
ETH	17,396
ETHW	5,992

The NYSE American Proposal noted that, as this table shows, each NYSE Ether Fund has significantly more than 2,000 beneficial holders (approximately 56, 9, and 3 times more, respectively), which is the minimum number of holders that is generally required for corporate stock in order to list options on that stock pursuant to Options 4, Section 5(b)(2).<sup>14</sup> NYSE American noted that it believed that the shares of each NYSE Ether Fund are widely held and that, based on trading volume since the Funds began trading on July 23, 2024, shares of the NYSE Ether Funds are actively traded. In particular, the table below sets forth the total trading volume (by shares and notional) from the inception of trading through either November 29, 2024 (for ETHE and ETH) or December 31, 2024 (for ETHW). The NYSE American Proposal noted that, in addition, the below table illustrates the average daily volume (“ADV”) over the 30-day

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<sup>13</sup> NYSE American noted that on November 19, 2024, ETH underwent a reverse stock split, reducing the number of shares outstanding-- and increasing the share price-- tenfold.

<sup>14</sup> The number of beneficial holders of ETH may have been impacted by the 10:1 reverse stock split, as investors with fewer than 10 shares would have received a cash payout. See id.

period of either October 29, 2024- through November 29, 2024 (for ETHE and ETH) or November 29, 2024- through December 31, 2024 (for ETHW).<sup>15</sup>

<b>NYSE Ether Fund</b>	<b>Trading Volume (Shares)</b>	<b>Trading Volume (Notional \$)</b>	<b>ADV (Shares)</b>
ETHE	427,312,540	\$10,289,781,199	4,237,811
ETH	172,400,020	\$4,614,428,230	3,065,796
ETHW	44,477,060	\$959,491,343	291,627

The NYSE American Proposal noted that, as demonstrated above, even though the NYSE Ether Funds have been trading for less than one year, the trading volume for each NYSE Ether Fund is substantially higher than 2,400,000 shares (roughly 178, 72, and 16 times that amount), which is the minimum 12-month volume that is generally required for a security in order to list options on that security as set forth in Options 4, Section 3(b)(4). The NYSE American Proposal noted that this data demonstrated that each NYSE Ether Fund was characterized by a substantial number of outstanding shares that are actively traded.

Options on the Ether Trusts will be subject to the Exchange's continued listing standards for options on ETFs set forth in Options 4, Section 4(g). Specifically, options approved for trading pursuant to Options 4, Section 3(h) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such ETFs if the ETFs are delisted from trading as provided in subparagraph (b)(5) of Options 4, Section 4<sup>16</sup> or the ETFs are halted or suspended from trading

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<sup>15</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>.

<sup>16</sup> Options 4, Section 4(b)(5) provides, If an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including 'when-issued' trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied.

on their primary market.<sup>17</sup> In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering ETFs in any of the following circumstances:

- (1) in the case of options covering Exchange-Traded Fund Shares approved pursuant to Options 4, Section 3(h)(A)(i), in accordance with the terms of subparagraphs (b)(1), (2), (3) and (4) of Options 4, Section 4;
- (2) in the case of options covering Fund Shares approved pursuant to Options 4, Section 3(h)(A)(ii), following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days;
- (3) the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments, on which the Exchange-Traded Fund Shares are based 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 in such options on the Exchange inadvisable.

Options on the Ether Trusts would be physically settled contracts with American-style exercise.<sup>18</sup> Consistent with current Options 4, Section 5, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on the Ether Trusts and may also list series of options on the Ether Trusts for trading on a weekly<sup>19</sup> or quarterly<sup>20</sup> basis. The Exchange may also list long-term equity option series (“LEAPS”)<sup>21</sup> that expire from twelve to thirty-nine from the time they are listed.

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<sup>17</sup> See Options 4, Section 4(g).

<sup>18</sup> See Options 4, Section 2, Rights and Obligations of Holders and Writers, which provides that the rights and obligations of holders and writers 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](https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf).

<sup>19</sup> See Supplementary .03 to Options 4, Section 5.

<sup>20</sup> See Supplementary .04 to Options 4, Section 5.

<sup>21</sup> See Options 4, Section 8.

Pursuant to Options 4, Section 5(d), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on ETFs approved for options trading pursuant to Section 3(h) of Options 4 shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange. With respect to the Short Term Options Series or Weekly Program, during the month prior to expiration of an option class that is selected for the Short Term Option Series Program, the strike price intervals for the related non-Short Term Option (“Related non-Short Term Option”) shall be the same as the strike price intervals for the Short Term Option.<sup>22</sup> Specifically, the Exchange may open for trading Short Term Option Series at strike price intervals of (i) \$0.50 or greater where the strike price is less than \$100, and \$1 or greater where the strike price is between \$100 and \$150 for all option classes that participate in the Short Term Options Series Program; (ii) \$0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) \$2.50 or greater where the strike price is above \$150.<sup>23</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>24</sup> the \$0.50 Strike Program,<sup>25</sup> the \$2.50 Strike Price Program,<sup>26</sup> and the \$5 Strike Program.<sup>27</sup> Options 3, Section 3 governs the minimum increment for bids and offers for both equity and index options. Pursuant to Options 3, Section 3, where the price of a series of options for the Ether Trusts is less than \$3.00 the minimum increment will

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<sup>22</sup> See Supplementary Material .03(e) to Options 4, Section 5.

<sup>23</sup> Id.

<sup>24</sup> See Supplementary Material .01 to Options 4, Section 5.

<sup>25</sup> See Supplementary Material .05 to Options 4, Section 5.

<sup>26</sup> See Supplementary Material .02 to Options 4, Section 5.

<sup>27</sup> See Supplementary Material .06 to Options 4, Section 5.

be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10<sup>28</sup> consistent with the minimum increments for options on other ETFs listed on the Exchange. Any and all new series of options on the Ether Trusts that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Options 4, Section 5 and Options 3, Section 3, as applicable.

Based on the foregoing and notwithstanding the position limits in Options 9, Section 13(d) and exercise limits in Options 9, Section 15(c), ISE proposes the position and exercise limits for the options on the Fidelity Ethereum Fund, the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust to be 25,000 contracts on the same side pursuant to proposed Supplementary Material .01 to Options 9, Section 13 and proposed Supplementary Material .01 to Options 9, Section 15. Further, Exchange Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, and margin requirements, will govern the listing and trading of options on the Ether Trusts. The proposed position limit, and exercise limit, is consistent with the Act as it addresses concerns related to manipulation and protection of investors because the position limit (and exercise limit) is conservative and appropriate given the Ether Trusts are actively traded.

#### Fidelity Fund

The Cboe Proposal noted that, with respect to the Fidelity Fund, Cboe determined these proposed position and exercise limits considering, among other things, the ADV (since trading of the Fidelity Fund began on July 23, 2024) and outstanding shares of the Fidelity Fund (which as discussed above demonstrate that the Fidelity Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of December 23, 2024):

<b>ADV (shares)</b>	<b>Outstanding Shares</b>	<b>Market Capitalization (\$)</b>
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<sup>28</sup> Options that are eligible to participate in the Penny Interval Program have a minimum increment of \$0.01 below \$3.00 and \$0.50 above \$3.00. See Supplementary Material .01 to Options 3, Section 3.

1,070,269	41,700,000	1,433,229,000
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Cboe then compared the number of outstanding shares of the Fidelity Fund to those of other ETFs. The Cboe Proposal stated that the approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of December 31, 2024) was approximately 102,703 contracts, which is significantly higher (approximately 4 times) than the proposed position and exercise limit of 25,000 contracts for Fidelity Fund options.<sup>29</sup> The Cboe Proposal noted that, as discussed above, shares of the Fidelity Fund are actively held and widely traded: (1) the Fidelity Fund (as of December 23, 2024) had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that is generally required to list options on that stock pursuant to Options 4, Section 3(ab)(1); (2) the Fidelity Fund (as of November 26, 2024) had significantly more than 2,000 beneficial holders, which is the minimum number of holders is generally required for corporate stock in order to list options on that stock pursuant to Options 4, Section 3(b)(2) and (3) the Fidelity Fund had a trading volume in the approximately five-month time period since it began trading substantially higher than 2,400,000 shares, which is the minimum 12-month volume is generally required for a security in order to list options on that security as set forth in Options 4, Section 3(b).

The Cboe Proposal noted that with respect to outstanding shares, if a market participant held the maximum number of positions possible pursuant to the proposed position and exercise limits, the equivalent shares represented by the proposed position/exercise limit would represent approximately 6.0% of the 41,700,000 current outstanding shares of the Fidelity Fund. Therefore, Cboe noted that if a market participant held the maximum permissible options positions in Fidelity Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the Fidelity Fund.

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<sup>29</sup> The position limits for those ETF options for which the underlying ETFs had similar outstanding shares were all 50,000 or above, and nearly half of them had position limits of 200,000 or 250,000 contracts.

Options 9, Section 13(d), provides two methods of qualifying for a position limit tier above 25,000 option contracts. The first method is based on six-month trading volume in the underlying security, and the second method is based on slightly lower six-month trading volume and number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on trading volume and number of shares outstanding would be required to have the minimum number of outstanding shares as shown in middle column of the table below. The Cboe Proposal noted that the below table, which provides the equivalent shares of the position limits applicable to equity options, including ETFs, represents the percentages of the minimum number of outstanding shares that an underlying stock or ETF must have to qualify for that position limit (under the second method described above).

<b>Position/Exercise Limit (in equivalent shares)</b>	<b>Minimum Outstanding Shares</b>	<b>Percentage of Outstanding Shares</b>
2,500,000	6,300,000	40.0%
5,000,000	40,000,000	12.5%
7,500,000	120,000,000	6.3%
20,000,000	240,000,000	8.3%
25,000,000	300,000,000	8.3%

The equivalent shares represented by the proposed position and exercise limits for the Fidelity Fund as a percentage of outstanding shares of the Fidelity Fund is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000, which is the position limit Cboe proposed for Fidelity Fund options.<sup>30</sup>

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<sup>30</sup> As these percentages are based on the minimum number of outstanding shares an underlying security must have to qualify for the applicable position limit, these are the highest possible percentages that would apply to any option subject to that position and exercise limit. 6,300,000 is the minimum number of outstanding shares an underlying security must have for the Exchange to continue to list options on that security, so this would be the smallest number of outstanding shares permissible for any corporate option that would have a position limit of 25,000 contract. See Options 4, Section 5(d). This rule applies to corporate stock options but not ETF options, which currently have no requirement regarding outstanding shares of the underlying ETF for the Exchange to continue listing options on that ETF. Therefore, there may be ETF options trading for which the 25,000 contract position limit represents an even larger percentage of outstanding shares of the underlying ETF than set forth above.

Further, Cboe noted that the proposed position and exercise limit for Fidelity Fund options is equal to the lowest position and exercise limits available in the options industry for equity options, are extremely conservative and more than appropriate given the market capitalization, average daily volume, and high number of outstanding shares of the Fidelity Fund. The Cboe Proposal stated that the proposed position and exercise limit for the Fidelity Fund is also equal to the position and exercise limits for ETFs that hold Bitcoin, as recently approved by the Commission.<sup>31</sup>

The Cboe Proposal concluded that all of the above information demonstrated that the proposed position and exercise limits for Fidelity Fund options are more than reasonable and appropriate. The trading volume, ADV, and outstanding shares of the Fidelity Fund demonstrate that its shares are actively traded and widely held, and proposed position and exercise limit is well below those of options on other ETFs with similar market characteristics. The proposed position and exercise limit would be the lowest position and exercise limit available for equity options in the industry, are extremely conservative, and, Cboe noted, are more than appropriate given the Fidelity Fund's market capitalization, ADV, and high number of outstanding shares.

Further, given that the issuer of the Fidelity Fund may create and redeem shares that represent an interest in Ethereum, the Cboe Proposal noted that it believed it is relevant to compare the size of a position limit to the market capitalization of the Ethereum market. The Cboe Proposal noted that, as of December 23, 2024, the global supply of Ethereum was approximately 120,000,000 coins, and the price of one Ethereum coin was approximately \$3,494.25<sup>32</sup> which equates to a market capitalization of approximately \$419.31 billion. The Cboe Proposal noted that in consideration of the proposed position and exercise limit of 25,000 option contracts for the Fidelity Fund option. Cboe noted that a position and exercise limit of

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<sup>31</sup> See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-035) (“Bitcoin ETF Option Approval”).

<sup>32</sup> See Ethereum Price (ETH), Market Cap, Price Today & Chart History – Blockworks.

25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 of Fidelity Fund shares (if that market participant exercised all its options). The Cboe Proposal noted that using a share price of \$34.37 on December 23, 2024, the value of 2,500,000 shares of the Fidelity Fund at that price is \$85,925,000, and the approximate percentage of that value of the size of the Ethereum market is 0.02%. Therefore, Cboe noted, if a market participant with the maximum 25,000 same side contracts in Fidelity Fund options exercised all positions at one time, such an event would have no practical impact on the Ethereum market. Cboe noted that it also believed that the proposed position and exercise limits are appropriate given position limits for Ethereum futures. For example, Cboe noted, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 8,000 futures (for the initial spot month) on its Ethereum futures contract.<sup>33</sup> The Cboe Proposal noted that, on December 23, 2024, CME Dec 24 Ethereum Futures settled at approximately \$3,418.00. Cboe stated that a position of 8,000 CME Ethereum futures, therefore, would have a notional value of \$1,367,200,000. A position of approximately 397,789 option contracts would equate to that notional value.<sup>34</sup> Cboe noted that this approximate number of option contracts for the Fidelity Fund that equate to the notional value of CME Ethereum futures is significantly higher than the proposed limit of 25,000 options contract for the Fidelity Fund option. The fact that many options ultimately expire out-of-the-money and thus are not exercised for shares of the underlying, while the delta of a Ethereum Future is 1, Cboe stated, further demonstrates how conservative the proposed limit of 25,000 options contracts are for the Fidelity Fund options.

The Cboe Proposal noted that, unlike options contracts, CME position limits are

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<sup>33</sup> See CME Rulebook Chapter 349 (description of CME Ether Futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME Ethereum futures contract is valued at 50 Ethereum as defined by the CME CF Ether Reference Rate (“BRR”). See CME Rule 35001.

<sup>34</sup> The notional value of the futures is calculated as follows: 8,000 futures x 50 (the futures multiplier) x \$3,418 (the price of one future) = \$1,367,200,000. The number of option contracts that equates to that notional value is calculated as follows: \$1,367,200,000 / notional value of one option contract (\$34.37 (share price of Fidelity Fund) x 100 (option multiplier)) = 397,789 option contracts.

calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).<sup>35</sup> Therefore, Cboe noted that if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.<sup>36</sup> If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. The Cboe Proposal noted that, considering CME's position limits on futures for Ethereum, the Exchange believes that that the proposed same side position limits are more than appropriate for Fidelity Fund options. Cboe believed the proposed position and exercise limits for Fidelity Fund will have no material impact to the supply of Ethereum. The Cboe Proposal noted that, for example, consider again the proposed position limit of 25,000 option contracts for the Fidelity Fund option. As noted above, Cboe stated that a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the Fidelity Fund (if that market participant exercised all its options). The Cboe Proposal noted that as of December 23, 2024, the Fidelity Fund had 41,700,000 shares outstanding. Cboe stated that this means that the approximate number of market participants that could hold the maximum of 25,000 same side positions in the Fidelity Fund that would equate to the number of shares outstanding of that Fund is 16. This means if 16

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<sup>35</sup> See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

<sup>36</sup> Id.

market participants had 25,000 same side positions in Fidelity Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Cboe noted that it believed it is highly unlikely for such an event to occur; however, even if either such event did occur, it would not expect the Fidelity Fund to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

Cboe noted that as of December 23, 2024, the global supply of Ethereum was approximately 120,000,000, and the price of one Ethereum coin was approximately \$3,418.00,<sup>37</sup> which equates to a market capitalization of approximately \$419.31 billion. The Cboe Proposal noted that based on the \$34.37 price of a Fidelity Fund share on December 23, 2024, a market participant could have redeemed one Ethereum for approximately 99 Fidelity Fund shares. Cboe stated that another 11,880,000,000 Fidelity Fund shares could be created before the then-circulating global supply of Ethereum was exhausted. As a result, 4,752 market participants would have to simultaneously exercise 25,000 same side positions in Fidelity Fund options to receive shares of the Fidelity Fund holding the entire global supply of Ethereum. The Cboe Proposal noted that, unlike the Fidelity Fund, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Fidelity Fund may create, redeem, or split shares in response to demand. Additionally, Cboe stated that the supply of Ethereum is unlimited.<sup>38</sup> Cboe provided that the current supply of Ethereum is larger than the available supply of most securities.<sup>39</sup> Given the significant unlikelihood of any of these events ever occurring, Cboe did not believe options on

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<sup>37</sup> See Ethereum Price (ETH), Market Cap, Price Today & Chart History - Blockworks.

<sup>38</sup> See Ethereum Price (ETH), Market Cap, Price Today & Chart History - Blockworks; see also Amendment No. 5 to Form S-1 Registration Statement No. 333-278249, Fidelity Fund, filed July 17, 2024, at 17 (noting that approximately 1,700 Ethereum are issued per day, subject to various factors); and Amendment No. 3 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed May 10, 2024, at 15 – 16 (noting that approximately 1,700 Ethereum are issued per day, subject to various factors).

<sup>39</sup> The market capitalization of Ethereum would rank in the top 25 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

the Fidelity Fund should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity options in the industry) to protect the supply of Ethereum. Cboe believed that the available supply of Ethereum is not relevant to the determination of position and exercise limits for options overlying the Fidelity Fund.<sup>40</sup> Further, the Cboe Proposal noted that position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of the instrument underlying the option (in this case, the Ethereum being held within the Fidelity Fund). Cboe stated that position and exercise limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.<sup>41</sup> Cboe noted that, “[s]ince the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.”<sup>42</sup> Further, Cboe noted that position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, Cboe provided that position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying

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<sup>40</sup> The Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits, other than recently with respect to ETFs that hold Bitcoin. See, e.g., Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the “listing and trading of Gold Trust Options will be subject to the exchanges’ rules pertaining to position and exercise limits and margin”); compare to Bitcoin ETF Option Approval. The Exchange notes when the Commission approved the filing to list options on an ETF holding gold, filing, the position limits in Rule 8.30 were the same as they are today. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF (“GLD”) and options on iShares Silver Trust (“SLV”) are 250,000 contracts, or 10 times that proposed position and exercise limit for the Fidelity Fund options.

<sup>41</sup> For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

<sup>42</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

market. In addition, Cboe stated that such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”<sup>43</sup>

Cboe noted that a Registration Statement on Form S-1 was filed with the Commission for the Fidelity Fund, which described the supply of Ethereum and the potential limits to that supply.<sup>44</sup> The Registration Statement permits an unlimited number of shares of the Fidelity Fund to be created. Further, the Commission approved the listing and trading of shares of the Fidelity Fund, which approval did not comment on the sufficient supply of Ethereum or address whether there was a risk that permitting an unlimited number of shares for the Fidelity Fund would impact the supply of Ethereum.<sup>45</sup> Cboe noted that it believed the Commission had ample time and opportunity to consider whether the supply of Ethereum was sufficient to permit the creation of unlimited Fidelity Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, the Cboe Proposal noted that given the significant size of the Ethereum supply, the proposed positions limit is more than sufficient to protect investors and the market.

Based on the above information demonstrating, among other things, Cboe believed that that the Fidelity Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, Cboe believed that the proposed position and exercise limits are extremely conservative compared to those of ETF options with similar market characteristics. Also, Cboe believed that the proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The

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<sup>43</sup> See id.

<sup>44</sup> See Amendment No. 5 to Form S-1 Registration Statement No. 333-278249, Fidelity Fund, filed July 17, 2024, at 17.

<sup>45</sup> See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEArca-2023-70; SR-NYSEArca-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; and SRCboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products).

Cboe Proposal noted that these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying as well as the Ethereum market.<sup>46</sup>

Grayscale Fund, Grayscale Mini Fund or Bitwise Fund (“NYSE Ether Funds”)

The NYSE American Proposal noted that Exchange Rules set forth position (and exercise) limits for options, which vary according to the number of shares outstanding and the amount of trading in underlying during the most recent six-month period pursuant to NYSE American Commentary 07(a)-(d) to Rule 904. NYSE American believes that the trading volume in each Fund is sufficient to qualify the Funds for position limits in excess of the proposed 25,000-contract limit, as shown below.<sup>47</sup>

<b>NYSE Ether Fund</b>	<b>Total volume</b>
ETHE	<b>427,312,540</b> (7/23/24- 11/29/24)
ETH	<b>172,400,020</b> (7/23/24- 11/29/24)
ETHW	<b>44,477,060</b> (7/23/24- 12/31/24)

Specifically, the NYSE American Proposal noted that the most-recent trading volume in ETHE and ETH well exceeds the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits.<sup>48</sup> By comparison, the NYSE American Proposal

<sup>46</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

<sup>47</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>. The Exchange notes that the Commission approved a 25,000-contract position limit for options trading on the Grayscale Bitcoin Mini Trust BTC which traded 335,492,9030 shares during its first two months of trading-- well over the minimum requisite of 100,000,000 shares as required by Commentary .07(a) to Rule 904. See On October 19, 2024, the Commission approved the Exchange’s proposal to list and trade options on the Grayscale Bitcoin Trust (BTC), the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF. See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SRNYSEARCA-2024-49) (the “BTC Approval Order”).

<sup>48</sup> Options 9, Section 13(d)(5), to qualify for the 250,000-contract position limit for options, the underlying security must (i) have trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) have trading volume of at least 75,000,000 shares during the most recent six-month trading period and have at least 300,000,000 shares currently outstanding.

noted that other options symbols with less trading volume for the most-recent six months than ETHE and ETH are eligible for position and exercise limits of at least 250,000.<sup>49</sup> Further, the NYSE American Proposal noted that the most-recent trading volume for ETHW well exceeded the requisite minimum of 40,000,000 shares necessary to qualify for the 75,000-contract position (and exercise) limit, which is three times the proposed 25,000-contract limit.<sup>50</sup> Finally, the NYSE American Proposal noted that the proposed 25,000-contract position limit is the default for options that do not otherwise qualify for a higher limit and is therefore an adequate limit for each NYSE Ether Fund.<sup>51</sup> With respect to the outstanding shares of each NYSE Ether Fund, the NYSE American Proposal noted that if a market participant held the maximum number of contracts possible pursuant to the proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position/exercise limit (2,500,000 shares) would represent the following approximate percentage of current outstanding shares:

<b>NYSE Ether Fund</b>	<b>Proposed Position/Exercise Limits in Equivalent Shares</b>	<b>Outstanding Shares (11/29/24)</b>	<b>Percentage of Outstanding Shares</b>
ETHE	2,500,000	177,838,500	1.4%
ETH	2,500,000	45,220,787	5.5%
ETHW	2,500,000	16,600,000	15.1%

The NYSE American Proposal noted that, as this table demonstrates, if a market participant held the maximum permissible options positions in one of the NYSE Ether Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying NYSE Ether Fund. For example, the NYSE American Proposal stated that, as noted above, a position limit of 25,000 same side contracts

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<sup>49</sup> See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/Series-Search> (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

<sup>50</sup> Options 9, Section 13(d)(3), to qualify for the 75,000-contract position limit for options, the underlying security must (i) have trading volume of at least 40,000,000 shares during the most recent six-month trading period; or (ii) have trading volume of at least 30,000,000 shares during the most recent six-month trading period and have at least 120,000,000 shares currently outstanding.

<sup>51</sup> Per Options 9, Section 13(d)(1), “[t]he position limit shall be 25,000 for all other options” that do not satisfy the criteria for the higher position limits set forth in Options 9, Section 13(d)(2)-(5).

effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable NYSE Ether Fund (if that market participant exercised all its options). Based on the number of shares outstanding for each NYSE Ether Fund as of November 29, 2024, the NYSE American Proposal noted that the table below sets forth the approximate number of market participants that could hold the maximum of 25,000 same side positions in each NYSE Ether Fund that would equate to the number of shares outstanding of that NYSE Ether Fund:

<b>NYSE Ether Fund</b>	<b>Shares Outstanding</b>	<b>Number of Market Participants with 25,000 Same Side Positions</b>
ETHE	177,838,500	71
ETH	45,220,787	18
ETHW	16,600,000	7

The NYSE American Proposal noted that this means if 71 market participants had 25,000 same side positions in options on ETHE, each of them would have to simultaneously exercise all those options to create a scenario that may put the underlying security under stress. Similarly, NYSE American noted that this means if 18 market participants had 25,000 same side positions in options on ETH, each of them would have to simultaneously exercise all those options to create a scenario that may put the underlying security under stress. Finally, NYSE American noted this means if 7 market participants had 25,000 same side positions in options on ETHW, each of them would have to simultaneously exercise all those options to create a scenario that may put the underlying security under stress. NYSE American noted that it believed it was highly unlikely for any of these scenarios to occur; however, even if such event did occur, the Exchange would not expect any of the Ether Funds to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

Further, given that the issuer of each NYSE Ether Fund may create and redeem shares that represent an interest in ether, the NYSE American Proposal noted that it believed it is relevant to compare the size of a position limit to the market capitalization of the ether market.

The NYSE American Proposal noted that, as of November 29, 2024, the global supply of ether was approximately 120.44 million, and the price of one ether was approximately \$3,593.49,<sup>52</sup> which equates to a market capitalization of approximately \$439.78 billion. Consider the proposed position and exercise limit of 25,000 option contracts for each NYSE Ether Fund option. The NYSE American Proposal noted that a position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of ETHE, ETH, and ETHW, as applicable (if that market participant exercised all its options). NYSE American noted that the following table shows the share price of each NYSE Ether Fund on November 29, 2024, the value of 2,500,000 shares of the NYSE Ether Fund at that price, and the approximate percentage of that value of the size of the ether market:

<b>NYSE Ether Fund</b>	<b>Nov. 29th Share Price (\$)</b>	<b>Value of 2,500,000 Shares of Ether Fund (\$)</b>	<b>Percentage of Ether Market</b>
ETHE	\$30.15	\$75,250,000	0.017%
ETH	\$33.84	\$84,600,000	0.020%
ETHW	\$25.80	\$64,500,000	0.015%

Therefore, if a market participant with the maximum 25,000 same side contracts in options on any of ETHE, ETH, or ETHW exercised all positions at one time, the NYSE American Proposal noted that such an event would have no practical impact on the ether.

The NYSE American Proposal noted also reviewed the market capitalization of each NYSE Ether Fund relative to the market capitalization of the entire ether market, as of November 29, 2024.

	<b>Ether/Shares Outstanding</b>	<b>Market Capitalization (11/29/2024)</b>	<b>% of Total Ether Market</b>
<b>Total Ether Market</b>	120,440,000	\$432,799,935,600	100.00%
ETHE	177,838,500	\$5,425,852,635	1.25%
ETH	45,220,787	\$1,547,003,157	0.36%
ETHW	16,600,000	\$430,886,200	0.10%

<sup>52</sup> See <https://finance.yahoo.com/quote/ETH-USD/history/>.

As shown above, the NYSE American Proposal noted that the NYSE Ether Funds collectively represent approximately 1.71% of the global supply of ether (120,440,000).<sup>53</sup> Based on the \$30.15 price of a ETHE share on November 29, 2024, a market participant could have redeemed one ether for approximately 119 ETHE shares. Another 14,354,890,070 ETHE shares could be created before the supply of ether was exhausted. As a result, 5,742 market participants would have to simultaneously exercise 25,000 same side positions in ETHE options to receive shares of the ETHE holding the entire global supply of ether. Similarly, the NYSE American Proposal noted that based on the \$33.84 price of an ETH share on November 29, 2024, a market participant could have redeemed one ether for approximately 106 ETH shares. Another 12,789,596,206 ETH shares could be created before the supply of ether was exhausted. As a result, 5,116 market participants would have to simultaneously exercise 25,000 same side positions in ETH options to receive shares of ETH holding the entire global supply of ether. Similarly, the NYSE American Proposal noted that based on the \$25.80 price of a ETHW share on November 29, 2024, a market participant could have redeemed one ether for approximately 139 ETHW shares. Another 16,775,191,302 ETHW shares could be created before the supply of ether was exhausted. As a result, 6,710 market participants would have to simultaneously exercise 25,000 same side positions in ETHW options to receive shares of ETHW holding the entire global supply of ether. Unlike the NYSE Ether Funds, the NYSE American Proposal noted that the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the NYSE Ether Funds may create, redeem, or split shares in response to demand. The NYSE American Proposal noted that the supply of ether is larger than the available supply of most securities.<sup>54</sup> Given the significant unlikelihood of any of these events ever occurring, the NYSE

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<sup>53</sup> See id.

<sup>54</sup> The market capitalization of ether would rank in the top 20 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

American Proposal noted that it does not believe options on the Ether Funds should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity options in the industry) to protect the supply of ether.

The NYSE American Proposal noted that it also believed the proposed limits are appropriate given position limits for ether futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 8,000 futures (for the initial spot month) on its ether futures contract.<sup>55</sup> The NYSE American Proposal noted that on November 29, 2024, CME Jan 25 ether futures settled at \$3,629.69. A position of 8,000 CME ether futures, therefore, would have a notional value of \$1,451,876,000. The NYSE American Proposal provided the following table that shows the share price of each Ether Fund on November 29, 2024, and the approximate number of option contracts that equates to that notional value:

<b>NYSE Ether Fund</b>	<b>Nov. 29th Share Price</b>	<b>Number of Option Contracts</b>
ETHE	\$30.15	481,551
ETH	\$33.84	429,041
ETHW	\$25.80	562,743

The approximate number of option contracts for each NYSE Ether Fund that would equate to the notional value of CME ether futures NYSE American noted is significantly higher than the proposed limit of 25,000 options contract for each NYSE Ether Fund option. The fact that many options ultimately expire out-of-the-money and thus are not exercised for shares of the underlying, while the delta of an ether future is 1, the NYSE American Proposal noted further demonstrates how conservative the proposed limits of 25,000 options contracts are for the NYSE Ether Fund options.

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<sup>55</sup> See CME Rulebook Chapter 349 (description of CME ether futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME ether futures contract is valued at fifty ethers as defined by the CME CF Ether Reference Rate (“ERR”). See CME Rulebook Chapter 349.

NYSE American noted, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).<sup>56</sup> Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.<sup>57</sup> If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. The NYSE American Proposal noted that considering CME's position limits on futures for ether, it believed that that the proposed same side position limits are more than appropriate for the NYSE Ether Fund options.

Consistent with its position regarding the irrelevance of bitcoin supply to position limits for options on bitcoin ETPs, the NYSE American Proposal noted that it likewise believed the available supply of ether is not relevant to the determination of position and exercise limits for NYSE Ether Fund options.<sup>58</sup> The NYSE American Proposal noted that position and exercise

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<sup>56</sup> See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

<sup>57</sup> Id.

<sup>58</sup> See BTC Approval Order, 89 FR at 84965, n. 48 (asserting that, outside of the bitcoin context, the Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits). See, e.g., Securities Exchange Act Release No. 57894 May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the "listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits and margin"). The Exchange notes when the Commission approved this filing, the position limits in Rule 904 were the same as they are today. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF ("GLD") and options on iShares Silver Trust ("SLV") are 250,000 contracts, or 10 times that proposed position and exercise limit for the Ether Fund options.

limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. Position and exercise limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.<sup>59</sup> NYSE American noted that “[s]ince the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.”<sup>60</sup> The NYSE American Proposal noted that position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, the NYSE American Proposal noted that position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”<sup>61</sup>

The NYSE American Proposal noted that notes that a Registration Statement on Form S-1 was filed with the Commission for each NYSE Ether Fund, each of which described the supply of ether as being unlimited.<sup>62</sup> Each Registration Statement permits an unlimited number of shares of the applicable NYSE Ether Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each NYSE Ether Fund, which approval did not comment on the sufficient supply of ether or address whether there was a

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<sup>59</sup> For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

<sup>60</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

<sup>61</sup> Id.

<sup>62</sup> See, e.g., ETHE Form S-1 Registration Statement, at p. 77, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524106957/d756153ds1.htm>; ETH Amendment No. 5 to Form S-1 Registration Statement, at p. 79, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524181081/d756153ds1a.htm>; and ETHW Form S-1 Registration Statement 1, at p. 17, [https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a\\_061824.htm](https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a_061824.htm) (“Ether Funds Reg. Stmts.”).

risk that permitting an unlimited number of shares for a Ether Fund would impact the supply of ether.<sup>63</sup> Therefore, NYSE American believed the Commission had ample time and opportunity to consider whether the supply of ether was sufficient to permit the creation of unlimited NYSE Ether Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, given the significant size of the ether supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the foregoing, the NYSE American Proposal noted that it believed the proposal to list options on the NYSE Ether 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 NYSE Ether Funds. The NYSE American Proposal noted that the proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. NYSE American believed these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying NYSE Ether Funds as well as the ether market.

Options 3A, Section 3(a) permits the Exchange to authorize 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 Options 4, Section 3. At this time, the Exchange is not proposing to permit the Ether Trusts to trade as a FLEX Option. The Exchange therefore proposes to modify Options 3A, Section 3(a) to specify this exception, which will add clarity and transparency to the Exchange Rules.<sup>64</sup>

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<sup>63</sup> See BTC Approval Order.

<sup>64</sup> The Exchange will continue ongoing discussions with the Commission regarding appropriate position limits for the Trust and plans to submit a separate rule filing that would permit the Exchange to authorize for trading FLEX options on the Trust (which filing may propose changes to existing FLEX option position limits for such options if appropriate).

Today, the Exchange has an adequate surveillance program in place for options. ISE intends to apply those same program procedures to options on the Ether Trusts that it applies to the Exchange's other options products.<sup>65</sup> ISE's market surveillance staff would have access to the surveillances conducted by Nasdaq<sup>66</sup> with respect to the Ether Trusts and would review activity in the underlying Ether Trusts when conducting surveillances for market abuse or manipulation in the options on the Ether Trusts. Additionally, ISE is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to the surveillance that is conducted by ISE's market surveillance staff, ISE would also be able to obtain information regarding trading in shares of the Ether Funds on other exchanges through ISG. Further, ISE has a Regulatory Services Agreement 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 surveillance that are common to rules of all options exchanges.<sup>67</sup>

The underlying shares of spot ethereum ETPs, including the Trust, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in

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<sup>65</sup> The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, ping, phishing).

<sup>66</sup> The Nasdaq Stock Market LLC is an affiliated market of ISE.

<sup>67</sup> 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 at 4691. 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 ("common members"). 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.

its order approving proposals of several exchanges to list and trade shares of spot ether-based exchange-traded products, including the Trust (“Ethereum ETP Order”):<sup>68</sup>

Each Exchange has a comprehensive surveillance-sharing agreement with the Chicago Mercantile Exchange (“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 ether futures market.<sup>69</sup>

The Exchange states that in the Ethereum ETP Order, given the consistently high correlation between the CME ether futures market and the spot ether market, as confirmed by the Commission through robust correlation analysis, 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 [Ether ETPs].”<sup>70</sup>

In light of surveillance measures related to both options and futures as well as the underlying Ether Trusts,<sup>71</sup> 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 Ether Trusts.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority or “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 the Ether Trusts up to the number of expirations currently permissible under the Exchange Rules. Because the proposal is limited to one class, the Exchange believes

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<sup>68</sup> See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937, 46941 (May 23, 2024) (File Nos. SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

<sup>69</sup> Id. at 46941.

<sup>70</sup> Id. at 46938.

<sup>71</sup> See Securities Exchange Act Release No. 100016 (April 23, 2024), 89 FR 33414, 33425-33426 (April 29, 2024) (SR-NASDAQ-2023-045) (Notice of Filing of Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the iShares Ethereum Trust Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)).

any additional traffic that may be generated from the introduction of the options on the Ether Trust will be manageable.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>72</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>73</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>74</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on the Ether Trusts 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 Ether Trusts will provide investors with an opportunity to realize the benefits of utilizing options on a Ether Trust, including cost efficiencies and increased hedging strategies. The Exchange believes that offering options on the Ether Trusts 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 Ether and with Ether-related products and positions. Additionally, the Exchange's offering of options on the Ether Trusts will provide investors with the ability to transact in such options in a listed

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<sup>72</sup> 15 U.S.C. 78f(b).

<sup>73</sup> 15 U.S.C. 78f(b)(5).

<sup>74</sup> 15 U.S.C. 78(f)(b)(5).

market environment as opposed to in the unregulated OTC options 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 Units,<sup>75</sup> which, as described above, are trusts structured in substantially the same manner as Ether Trusts and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Ether rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Unit 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 Ether Trusts satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Units, including Units that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Ether Trust is characterized by a substantial number of shares that are widely held and actively traded. Options on the Ether Trusts will trade in the same manner as any other Unit options — the same Exchange Rules that currently govern the listing and trading of all Unit options, including permissible expirations, strike prices and minimum increments, and applicable margin requirements, will govern the listing and trading of options on Ether Trusts in the same manner.

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 Ether Trusts satisfy the initial listing standards and continued listing standards currently in the

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<sup>75</sup> See Options 4, Section 3(h)(iv).

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 demonstrated above, each Ether Trust is characterized by a substantial number of shares that are widely held and actively traded. Options on the Ether Trust 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 Ether Trusts in the same manner.

The proposed position and exercise limit for options on the Ether Trusts 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 Ether Trusts' market capitalization, average daily volume, number of beneficial holders, and high number of outstanding shares as described herein for each Ether Trust. 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 Ether Trusts are actively traded.

The Exchange believes the proposed rule change to exclude the Ether Trusts from being eligible for trading as a FLEX Option is consistent with the Act, because it will permit the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position and exercise limits for options on the Ether Trusts. The Exchange also believes the proposed rule change to Options 3A, Section 3(a), to make clear that options on the Ether Trusts are not eligible for FLEX Trading, will remove impediments to and 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.<sup>76</sup>

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options the Ether Trusts that it applies to the Exchange's other options products.<sup>77</sup> ISE's market surveillance staff would have access to the surveillances conducted by Nasdaq<sup>78</sup> with respect to the Ether Trusts and would review activity in the underlying Ether Trusts when conducting surveillances for market abuse or manipulation in the options on the Ether Trusts. Additionally, ISE is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to the surveillance that is conducted by the Exchange's market surveillance staff, the Exchange would also be able to obtain information regarding trading in shares of the Ether Trusts on other exchanges through ISG. Further, ISE has a Regulatory Services Agreement with the FINRA and as noted herein, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.<sup>79</sup> Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ether Trusts.

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<sup>76</sup> The Exchange will continue ongoing discussions with the Commission regarding appropriate position limits for the Ether Trusts and plans to submit a separate rule filing that would permit the Exchange to authorize for trading FLEX options on the Ether Trusts (which filing may propose changes to existing FLEX option position limits for such options if appropriate).

<sup>77</sup> The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, ping, phishing).

<sup>78</sup> The Nasdaq Stock Market LLC is an affiliated market of ISE.

<sup>79</sup> 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 ("common members"). 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.

Today, the Exchange has an adequate surveillance program in place for options. ISE intends to apply those same program procedures to options on the Ether Trusts that it applies to the Exchange's other options products.<sup>80</sup> ISE's market surveillance staff would have access to the surveillances conducted by Nasdaq<sup>81</sup> with respect to the Ether Trusts and would review activity in the underlying Ether Trusts when conducting surveillances for market abuse or manipulation in the options on the Ether Trusts. Additionally, ISE is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition, ISE has a Regulatory Services Agreement 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 surveillance that are common to rules of all options exchanges.<sup>82</sup>

The underlying shares of spot ethereum ETPs, including the Trust, 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 ether-based exchange-traded products, including the Trust ("Ethereum ETP Order"):<sup>83</sup>

Each Exchange has a comprehensive surveillance-sharing agreement with the Chicago Mercantile Exchange ("CME") via their common

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<sup>80</sup> The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, ping, phishing).

<sup>81</sup> The Nasdaq Stock Market LLC is an affiliated market of ISE.

<sup>82</sup> 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 ("common members"). 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.

<sup>83</sup> See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937, 46941 (May 23, 2024) (File Nos. SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

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 ether futures market.<sup>84</sup>

The Exchange states that in the Ethereum ETP Order, given the consistently high correlation between the CME ether futures market and the spot ether market, as confirmed by the Commission through robust correlation analysis, 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 [Ether ETPs].”<sup>85</sup>

In light of surveillance measures related to both options and futures as well as the underlying Ether Trusts,<sup>86</sup> 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 Ether Trusts.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority or “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 the Ether Trusts up to the number of expirations currently permissible under the Exchange Rules. Because the proposal is limited to one class, the Exchange believes any additional traffic that may be generated from the introduction of the options on the Ether Trust will be manageable.

#### 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.

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<sup>84</sup> Id. at 46941.

<sup>85</sup> Id. at 46938.

<sup>86</sup> See Securities Exchange Act Release No. 100016 (April 23, 2024), 89 FR 33414, 33425-33426 (April 29, 2024) (SR-NASDAQ-2023-045) (Notice of Filing of Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the iShares Ethereum Trust Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)).

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 Ether Trusts would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other option on ETFs before the Exchange could list options on them. Additionally, options on the Ether Trusts 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 Ether Trusts. Also, and as stated above, the Exchange already lists options on other commodity-based ETPs.

The Exchange does not believe that the proposal to list and trade options on Ether Trusts 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 options on the Ether Trusts 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 the Commission recently approved the listing and trading of options on an ETP that, like the Ether Trusts, holds ether.<sup>87</sup> Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Ether Trusts. The Exchange notes that listing and trading options on Ether Trust 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

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<sup>87</sup> See supra note 4.

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 options on the Ether Trusts 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 Ether prices and Ether-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 either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>88</sup> and Rule 19b-4(f)(6) thereunder.<sup>89</sup> 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 Act<sup>90</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>91</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>92</sup> 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),<sup>93</sup> the Commission may designate a shorter time if such action is consistent with the

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<sup>88</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>89</sup> 17 CFR 240.19b-4(f)(6).

<sup>90</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>91</sup> 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.

<sup>92</sup> 17 CFR 240.19b-4(f)(6).

<sup>93</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 iShares Ethereum Trust, the Fidelity Ethereum Fund, the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust.<sup>94</sup> The Exchange has provided information regarding the underlying Bitcoin Trusts, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the Ether Trusts. The proposal also establishes position and exercise limits for options on the Ether Trusts and provides information regarding the surveillance procedures that will apply to Ether Trust options. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading Bitcoin Trust 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.<sup>95</sup>

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.

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<sup>94</sup> See Securities Exchange Act Release No. 102797 (April 9, 2025), (SR-Cboe-2024-036) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Permit the Listing and Trading of Options on Shares of the Fidelity Ethereum Fund) See also Securities Exchange Act Release No. 102798 (April 9, 2025), (SR-ISE-2024-35) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Permit the Listing and Trading of Options on the iShares Ethereum Trust). See also Securities Exchange Act Release No. 102799 (April 9, 2025), (SR-NYSEAMER-2024-45) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Exchange Rule 915 To Permit the Listing and Trading of Options on the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust).

<sup>95</sup> 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).

#### 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:

##### 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](mailto:rule-comments@sec.gov). Please include file number SR-ISE-2025-11 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 SR-ISE-2025-11. 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 SR-ISE-2025-11 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.<sup>96</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>96</sup> 17 CFR 200.30-3(a)(12), (59).