



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102996; File No. SR- NYSEAMER-2024-78]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Certain Rules Related to Flexible Exchange Options

May 5, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 25, 2025, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.⁴

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

The Exchange proposes to amend Rules 903G and 906G to permit Flexible Exchange (“FLEX”) Options on certain Exchange-Traded Funds (or ETFs) that hold bitcoin. This Amendment No. 1 supersedes and replaces the original filing in its entirety.⁵ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The initial proposed rule change was filed with the Commission on December 13, 2024. See Securities Exchange Act Release No. 102014 (Dec. 20, 2024), 89 FR 105669 (Dec. 27, 2024).

⁵ This Amendment No. 1 modifies the scope of the original filing to include (i) the Grayscale Bitcoin Mini Trust ETF and (ii) the Bitwise Bitcoin ETF. The Exchange also proposes to update existing rule text references to make technical corrections, including to update the name of the Grayscale Bitcoin Mini Trust (BTC) to the Grayscale Bitcoin Mini Trust ETF.

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

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

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

1. Purpose

The Exchange proposes amend Rules 903G (Terms of FLEX Options) and 906G (Position Limits) to permit options the Grayscale Bitcoin Trust (BTC) (“GBTC”), the Grayscale Bitcoin Mini Trust ETF (“BTC”), and the Bitwise Bitcoin ETF (“BITB”) (each a “Fund” and, collectively, the “Funds”) to trade as FLEX Equity Options and to require the aggregation of any FLEX and non-FLEX positions on the same underlying Fund for purposes of calculating position and exercise limits as set forth in Rules 904 and 905.⁶

The Exchange notes that this proposal is competitive given that Nasdaq Phlx, LLC (“Phlx”) recently filed a proposal to permit FLEX trading on options on iShares Bitcoin Trust ETF (“IBIT”), with an aggregated position and exercise limit for IBIT options of 25,000- contracts.⁷

Background

Each Fund is ETF that holds bitcoin and is listed on NYSE Arca, Inc. (“NYSE Arca”),

⁶ FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. See generally Section 15 (Flexible Exchange (“FLEX”) Options). A “FLEX Equity Option” is an option on a specified underlying equity security that is subject to the rules of Section 15. See Rule 900G(b)(10).

⁷ See Securities Exchange Act Release No. 102132 (Jan. 7, 2025), 90 FR 3266 (Jan. 14, 2025) (SR-Phlx-2024-72) (Notice of Filing of Proposed Rule Change To Permit FLEX Trading in the iShares Bitcoin Trust ETF) (“Phlx FLEX IBIT Proposal”). Like each of the Funds, IBIT is an ETF that holds bitcoin.

the Exchange's affiliated equities exchange.⁸ Recently, the Commission approved options trading on the Funds.⁹ For each Fund, the position and exercise limits are 25,000 contracts, as set forth in Rule 904, Commentary .07(f), the lowest available limit.¹⁰

FLEX Equity Options are not generally subject to position or exercise limits.¹¹ Today, pursuant to Rule 903G(a)(1), Fund options are not approved for FLEX trading.¹² Therefore, the 25,000-contract limit applicable to options on each Fund currently applies solely to non-FLEX Fund options.

Proposal

The Exchange proposes to permit options on each Fund to trade as FLEX Equity Options and would require the aggregation of any FLEX and non-FLEX positions in the same underlying Fund for purposes of calculating the 25,000-contract position and exercise limits applicable to each Fund.¹³

Per the Commission "rules regarding position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate

⁸ NYSE Arca received approval to list and trade Bitcoin-Based Commodity-Based Trust Shares in GBTC, BTC, and BITB pursuant to NYSE Arca Rule 8.201-E(c)(1). See Securities Exchange Act Release Nos. 99306 (January 10, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to list and trade options in GBTC and BITB), 89 FR 3008 (January 17, 2024) (SR-NYSEARCA-2021-90); 100610 (July 26, 2024) (Order Granting Approval of Proposed Rule Changes, as Modified by Amendment No. 1, to permit the listing and trading of options on BTC), 89 FR 62821 (August 1, 2024) (SR-NYSEARCA-2023-45)

⁹ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Order approving the listing and trading of options on GBTC, BTC, and BITB, pursuant to Rule 915, Commentary .10(a) (the "Fund Options Approval Order").

¹⁰ Per Rule 905(a)(i), the exercise limit for options on each Fund is the same as the position limit for that Fund as determined by Rule 904. The following ETFs are also subject to a 25,000-contract position and exercise limit: IBIT, Fidelity Wise Origin Bitcoin Fund ("FBTC"), and ARK 21Shares Bitcoin ("ARKB"). See Rules 904, Commentary .07(f) and 905(a)(i).

¹¹ See Rule 906G(b) (subject to the exceptions enumerated in the rule "there shall be no position limits for FLEX Equity options.")

¹² Rule 903G(a)(1) also does not permit FLEX trading on options on IBIT, FBTC, and ARKB.

¹³ See proposed Rules 5.32-O(f)(1) (excluding GBTC, BTC, and BITB options from the prohibition against FLEX trading); and 5.35-O(b)(iii) (adopting the requirement that, for options on each Fund, the Exchange will aggregate any FLEX and non-FLEX positions in the same underlying Fund for purposes of calculating the position and exercise limits for that Fund, as set forth in Rules 904 and 905.

or disrupt the underlying market so as to benefit the options positions.”¹⁴ For this reason, the Commission requires that “position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security.”¹⁵ Based on its review of the data and analysis provided by the Exchange, the Commission concluded that the 25,000-contract position (and exercise) limit for non-FLEX options on each Fund satisfied these objectives.¹⁶

As proposed, for options on each Fund, the Exchange will aggregate any FLEX and non-FLEX positions in the same underlying Fund for purposes of calculating the 25,000-contract position and exercise limits. For each Fund, this proposed aggregated limit effectively restricts a market participant from holding positions that could result in the receipt of more than 2,500,000 shares, aggregated for FLEX and non-FLEX in the same underlying Fund (if that market participant exercised all its options). The Exchange believes that capping the aggregated position and exercise limits at 25,000 contracts, the lowest available limit, would be sufficient to address concerns related to manipulation and the protection of investors. The Exchange notes that this number is conservative given the liquidity of each Fund.¹⁷

While the Exchange proposes an aggregated 25,000-contract position and exercise limit for options on each Fund, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.¹⁸

Specifically, in approving the options on each Fund, the Commission considered and

¹⁴ See supra note 9, Fund Options Approval Order, 89 FR, at 84971.

¹⁵ See id.

¹⁶ See id.

¹⁷ See id.

¹⁸ The Exchange may file a subsequent rule change to increase the position and exercise limit for options on the Funds based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position and exercise limit would allow institutional investors to utilize Fund options for prudent risk management purposes. In this regard, the Exchange would address the impact of higher position (and exercise) limits on the proposed FLEX Fund options.

reviewed the Exchange’s analysis that the exercisable risk associated with a position limit of 25,000 contracts represented only 0.9%, 0.7%, and 3.6% of the outstanding shares of GBTC, BTC and BITB, respectively.¹⁹ The Commission also considered and reviewed the Exchange’s arguments that with a 25,000-contract limit for each Fund: (i) the 284,570,100 GBTC shares outstanding, 114 market participants would have to simultaneously exercise their positions to place GBTC under stress; (ii) the 366,950,100 BTC shares outstanding, meant that 147 market participants would have to simultaneously exercise their same-side positions to place BTC under stress; and (iii) the 68,690,000 BITB shares outstanding, meant that 27 market participants would have to simultaneously exercise their same-side positions to place BITB under stress.²⁰ Based on the Commission’s review of this information and analysis, the Commission concluded that the 25,000-contract position and exercise limit for options on each Fund would address concerns related to manipulation and investor protection and deemed this limit conservative and therefore appropriate given the liquidity of each Fund.²¹

Each Fund qualifies a 250,000-contract limit, pursuant to Rule 904, Commentary .06(e), which requires that, for the most recent six-month period, trading volume for the underlying security is at least 100,000,000 shares.²² The following table sets forth the trading data for each Fund, as of November 25, 2024, for the preceding six months and the average daily volume (“ADV”) for the preceding three months.

Fund	Trading Volume (Shares)	Market Capitalization	ADV (Shares)
GBTC	550,687,400	\$20,661,316,542*	3,829,597

¹⁹ See *id.* Data represents figures from FactSet as of August 30, 2024.

²⁰ See *supra* note 9, Fund Options Approval Order, 89 FR, at 84971.

²¹ *Id.*

²² See Rule 904, Commentary .06 (providing at subparagraph (e) that the position limit shall be 250,000 contracts for options: (i) on underlying stock or Exchange-Traded Fund Share that had trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) on an underlying stock or Exchange-Traded Fund Share that had trading volume of at least 75,000,000 shares during the most recent six-month trading period and has at least 300,000,000 shares currently outstanding).

BTC	163,712,700	\$3,496,748,882 [†]	2,036,369
BITB	288,800,860	4,095,157,000 [‡]	2,480.478

* The market capitalization was determined by multiplying a settlement price (\$75.42) by the number of shares outstanding (273,950,100). Data represents figures from FactSet as of November 25, 2024.

† The market capitalization of BTC was determined by multiplying a settlement price (\$42.16) by the number of shares outstanding (82,939,964). Data represents figures from FactSet as of November 25, 2024.

‡ The market capitalization of BITB was determined by multiplying a settlement price (\$51.70) by the number of shares outstanding (79,950,100). Data represents figures from FactSet as of November 25, 2024.

Also, as of November 25, 2024, there were 19,787,762 bitcoins in circulation.²³ At a price of \$94,830 per bitcoin,²⁴ that equates to a market capitalization of greater than \$1.876 trillion. If a position and exercise limit of 250,000 contracts were considered for each Fund, the exercisable risk would represent 9.13%²⁵ of the GBTC shares outstanding; 30.14%²⁶ of BTC shares outstanding; and 31.27%²⁷ of BITB shares outstanding. Given the liquidity of BTC and BITB, the current 25,000 position and exercise limit appears extremely conservative.

Despite the proposed addition of FLEX trading in options on GBTC, BTC, and BITB (collectively, “FLEX Fund Options”), the Exchange would continue to limit to 25,000 the number of options on each Fund traded on the Exchange that an investor, acting alone or in concert with others directly or indirectly, may control and thereby mitigate potential manipulation. The Exchange believes that allowing FLEX Fund Options is consistent with the Act given FLEX trading is permitted today in other ETFs overlying a commodity such as SPDR

²³ See <https://www.coingecko.com/en/coins/bitcoin>.

²⁴ This is the approximate price of bitcoin from 4:00 p.m. ET on November 25, 2024.

²⁵ This percentage is arrived at with this equation: (250,000 contract limit * 100 shares per option / 273,950,100 GBTC shares outstanding).

²⁶ This percentage is arrived at with this equation: (250,000 contract limit * 100 shares per option / 82,939,964 BTC shares outstanding).

²⁷ This percentage is arrived at with this equation: (250,000 contract limit * 100 shares per option / 79,950,100 BITB shares outstanding).

Gold Shares (“GLD”) and iShares Silver Trust (“SLV”).²⁸

Further, the Exchange believes that the share creation and redemption process unique to ETFs would mitigate any potential risk of manipulation in FLEX Fund Options. The creation and redemption process is designed to ensure that an ETF’s price closely tracks the value of its underlying asset(s). For example, if a market participant exercised a long call position for 25,000 contracts and purchased 2,500,000 shares of GBTC and this purchase resulted in the value of GBTC shares to trade at a premium to the value of the (underlying) bitcoin held by GBTC, the Exchange believes that other market participants would attempt to arbitrage this price difference by selling short GBTC shares while concurrently purchasing bitcoin. Those market participants (arbitrageurs) would then deliver cash to GBTC and receive shares of GBTC, which would be used to close out any previously established short position in GBTC. Thus, this creation and redemptions process would significantly reduce the potential risk of price dislocation between the value of shares in each Fund and the value of bitcoin holdings.

The Exchange understands that FLEX Equity Options on ETFs are currently traded in the over-the-counter (“OTC”) market by a variety of market participants, e.g., hedge funds, proprietary trading firms, and pension funds, to name a few. The Exchange believes there is room for significant growth if a comparable product were introduced for trading on a regulated market. The Exchange expects that users of these OTC products would be among the primary users of FLEX Fund Options. The Exchange also believes that the trading of FLEX Fund Options would allow these same market participants to better manage the risk associated with the volatility of positions in the underlying ETF (i.e., GBTC, BTC, or BITB) given the enhanced liquidity that an exchange-traded product would bring.

Additionally, the Exchange believes that FLEX Fund Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market.

²⁸ GLD and SLV, like the each of the Funds, holds one asset in trust.

First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by The Options Clearing Corporation (“OCC”). Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer FLEX Fund Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers.

The Exchange has analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of FLEX Fund Options. The Exchange believes any additional traffic that would be generated from the trading of FLEX Fund Options would be manageable. The Exchange believes ATP Holders will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems.

The Exchange represents that the same surveillance procedures applicable to the Exchange’s other options products listed and traded on the Exchange, including non-FLEX options in each Fund, will apply to FLEX Fund Options, and that it has the necessary systems capacity to support such options. FLEX options products (and their respective symbols) are integrated into the Exchange’s existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange’s market surveillance staff (including staff of the Financial Industry Regulatory Authority (“FINRA”) who perform surveillance and

investigative work on behalf of the Exchange pursuant a regulatory services agreement) conducts surveillances with respect to GBTC, BTC, and BITB (i.e., the underlying ETFs) and, as appropriate, would review activity in applicable ETF when conducting surveillances for market abuse or manipulation in the FLEX Fund Options.²⁹ The Exchange does not believe that allowing FLEX Fund Options would render the marketplace for non-FLEX options in any of the Funds, or equity options in general, more susceptible to manipulative practices.

The Exchange represents that its existing trading surveillances are adequate to monitor the trading in GBTC, BTC, and BITB, as well as any subsequent trading of FLEX Fund Options on the Exchange. Additionally, the Exchange is a member of the Intermarket Surveillance Group (“ISG”) under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in GBTC, BTC, and BITB and in other pertinent underlying securities on other exchanges through ISG. In addition, and as referenced above, the Exchange has a regulatory services agreement with FINRA, pursuant to which FINRA conducts certain surveillances on behalf of the Exchange. Further, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.³⁰ The Exchange will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of FLEX Fund Options.

²⁹ See supra note 9, Fund Options Approval Order, 89 FR 84966-68 (regarding surveillance procedures applicable to GBTC, BTC, and BITB).

³⁰ Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

The proposed rule change is designed to allow investors seeking to trade options on the Funds to utilize FLEX Fund Options. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to members' evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX Fund Options. The Exchange believes that introducing FLEX Fund Options would further broaden the base of investors that use FLEX Equity Options (and options on the Funds in general) to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market on the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow.

As discussed herein, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX option positions in each Fund at the (most conservative) 25,000-contract position and exercise limit, which currently applies solely to non-FLEX options on each Fund, should provide an adequate safeguard.

Finally, the Exchange proposes to make technical changes to Rule 904, Commentary. 07(f) to update the name of the Grayscale Bitcoin Mini Trust ETF (previously known as the Grayscale Bitcoin Mini Trust (BTC)) and to correct the symbol associated with Fidelity Ethereum Fund, which changes will add accuracy and internal consistent to Exchange rules making them easier to comprehend and understand.³¹

Implementation

³¹ See proposed Rule 904, Commentary .07(f) (updating the name of the Grayscale Bitcoin Mini Trust (BTC) to Grayscale Bitcoin Mini Trust ETF and correcting the trading symbol for the Fidelity Ethereum Fund from "ETH" to "FETH").

The Exchange will announce the implementation date by Trader Update within sixty (60) days of the rule approval.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),³² in general, and furthers the objectives of Section 6(b)(5) of the Act,³³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that introducing FLEX Fund Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk. The proposed rule change is designed to allow investors seeking to trade options on any of the Funds to utilize FLEX Fund Options.

The Exchange believes that the proposal to permit FLEX Fund Options would remove impediments to and perfect the mechanism of a free and open market. The Exchange believes that offering FLEX Fund Options will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and provide a hedging vehicle to meet their investment needs in connection with a bitcoin-related product. Moreover, the proposal would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that offering FLEX Fund Options may appeal to retail investors interested in options trading (both FLEX and non-FLEX) on GBTC, BTC, and BITB.

Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Fund Options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate any FLEX and non-FLEX options in each Fund at the current (and most conservative) 25,000-contract limit should provide an adequate safeguard. As noted herein, the purpose of position (and exercise) limits is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The Exchange believes the proposal will benefit investors and public interest because the aggregated position and exercise limits for (FLEX and non-FLEX) options on the same underlying Fund at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative and therefore appropriate given the sufficient liquidity in each Fund.

The Exchange believes that offering innovative products benefits the investing public. A robust and competitive market requires that exchanges respond to the evolving needs of their

members by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX Fund Options. The Exchange does not believe that allowing FLEX Fund Options would render the marketplace for equity options more susceptible to manipulative practices.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in FLEX Fund Options. Regarding the proposed FLEX Fund Options, the Exchange would use the same surveillance procedures utilized for FLEX Options currently listed on the Exchange (as well as for non-FLEX options on each Fund). For surveillance purposes, the Exchange would have access to information regarding trading activity in the underlying Funds (i.e., GBTC, BTC, and BITB).³⁴ In light of surveillance measures related to both options and the underlying Funds, 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 FLEX Fund Options.

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.

Intra-market competition. The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as all market participants would have the option of utilizing the FLEX Fund Options. The proposed rule change is designed to allow investors seeking option exposure to bitcoin to trade FLEX Fund Options. Moreover, the Exchange believes that the proposal to permit FLEX Fund Options would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options.

Inter-market competition. The Exchange does not believe that its proposed rule change

³⁴ See *supra* note 9, Fund Options Approval Order, 89 FR at 84966-68 (regarding surveillance procedures applicable to GBTC, BTC, and BITB).

will impose any burden on inter-market competition as all market participants would have the option of utilizing the FLEX Fund Options. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues. The proposed rule change would support that intermarket competition by allowing the Exchange to offer additional functionality to ATP Holders. The Exchange believes that the proposed FLEX Fund Options will increase the variety of options products available for trading in general and bitcoin-related products in particular and, as such, will provide a valuable tool for investors to manage risk.

As such, the Exchange believes that this proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets. The Exchange notes that, upon approval of this proposal, competing options exchanges will be free to offer products like the proposed FLEX Fund Options.

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR- NYSEAMER-2024-78 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- NYSEAMER-2024-78. 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- NYSEAMER-2024-78 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.³⁵

Sherry R. Haywood,

Assistant Secretary.

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