

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 5

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 03

Amendment No. (req. for Amendments *) 5

Filing by Nasdaq ISE, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq ISE, LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/19/2024


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.



Date: 2024.09.19
15:58:40 -04'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

SR-ISE-2024-03 Partial A-5.docx

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Partial Amendment No. 5 to SR-ISE-2024-03

At this time, ISE submits this Partial Amendment No. 5 to SR-ISE-2024-03. ISE is filing this Partial Amendment No. 5 to SR-ISE-2024-03 to provide additional information regarding the Exchange's surveillance program.

The Exchange proposes the following amendments:

Surveillance

- 1) The Exchange proposes to add the below paragraphs, concerning surveillance, after the second full paragraphs on pages 13 and 32 of the 19b4 and the carryover paragraphs on pages 16 and 35 of the Exhibit 1.

Today, the Exchange has an adequate surveillance program in place for options. ISE intends to apply those same program procedures to options on the Trust that it applies to the Exchange's other options products.¹ ISE's market surveillance staff would have access to the surveillances conducted by Nasdaq² with respect to the Trust and would review activity in the underlying Trust when conducting surveillances for market abuse or manipulation in the options on the Trust. 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.³

¹ The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing).

² The Nasdaq Stock Market LLC is an affiliated market of ISE.

³ 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.

The underlying shares of spot bitcoin 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 bitcoin-based exchange-traded products (“Bitcoin ETP Order”):

Each Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.⁴

The Exchange states that, given the consistently high correlation between the CME bitcoin futures market and the spot bitcoin market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].”⁵

In light of surveillance measures related to both options and futures as well as the underlying Trust,⁶ 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 Trust.

* * * * *

The Exchange requests that the Commission find good cause to grant accelerated approval of SR-ISE-2024-03, as amended by this Partial Amendment No. 5, pursuant to Section 19(b)(2) of the Act. On January 9, 2024, ISE filed with the Commission a proposed rule change to amend ISE’s Options 4, Section 3, Criteria for Underlying Securities and on January 11, 2024, ISE filed Amendment No. 1 to the proposal, which superseded the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, 3009 (January 17, 2024) (File Nos. SR-NYSEArca-2021-90; SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units).

⁵ See Bitcoin ETP Order, 89 FR at 3010-11.

⁶ See Securities Exchange Act Release No. 99295 (January 8, 2024), 89 FR 2321, 2334-35 (January 12, 2024) (SR-NASDAQ-2023-016) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the iShares Bitcoin Trust Under Nasdaq Rule 5711(d)).

The Commission published the Proposal in the Federal Register for notice and comment on January 25, 2024.⁷ On March 6, 2024, the staff extended the time to review the Proposal.⁸ On April 24, 2024, the staff issued an Order Instituting Proceedings.⁹ On July 19, 2024, the staff utilized its second extension.¹⁰ On September 12, 2024, the Exchange file a Partial Amendment No. 4 to make clear that position and exercise limits would be set to 25,000 contracts along with other amendments. The Exchange requested accelerated approval of Partial Amendment No. 4.

Accelerated approval of this Partial Amendment No. 5 would allow the Exchange to further supplement Amendment No. 1 to SR-ISE-2024-03 with information related to its surveillance program, without delay, permitting the amendment's approval at the same time as Amendment No. 1 to SR-ISE-2024-03. Partial Amendment No. 5 provides additional detail regarding the Exchange's surveillance program including the manner in which it would surveil suspicious trading activity in the underlying and where the Exchange would obtain information about the bitcoin market. ISE believes that there is good cause to grant accelerated approval of this Partial Amendment No. 5 because it would promote transparency and clarity with respect to the Exchange's surveillance program.

⁷ See Securities Exchange Act Release No. 99396 (January 19, 2024), 89 FR 5047 (January 25, 2024) (SR-ISE-2024-03) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Options on iShares Bitcoin Trust).

⁸ See Securities Exchange Act Release No. 99681 (March 6, 2024), 89 FR 17886 (March 12, 2024) (SR-ISE-2024-03) (Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Options on iShares Bitcoin Trust).

⁹ See Securities Exchange Act Release No. 100024 (April 24, 2024), 89 FR 34290 (April 30, 2024) (SR-ISE-2024-03) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Permit the Listing and Trading of Options on Trusts That Hold Bitcoin).

¹⁰ See Securities Exchange Act Release No. 1000567 (July 19, 2024), 89 FR 60482 (July 25, 2024) (SR-ISE-204-03) (Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Permit the Listing and Trading of Options on Trusts That Hold Bitcoin).