

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2024 - * 54

Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" 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"/>	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 checked="" type="checkbox"/> 19b-4(f)(6)		
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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 *).

A proposed rule to amend Options 4, Section 3, Criteria for Underlying Securities.

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 11/21/2024


(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: 2024.11.21 12:42:57 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-ISE-2024-54 19b-4.docx

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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SR-ISE-2024-54 Exhibit 1.docx

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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SR-ISE-2024-54 Exhibit 5.docx

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

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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.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule to amend Options 4, Section 3, Criteria for Underlying Securities.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
215-496-5692

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend Options 4, Section 3, Criteria for Underlying Securities, to allow the Exchange to list and trade options the (1) Fidelity Wise Origin Bitcoin Fund (“Fidelity Fund”); (2) ARK21Shares Bitcoin ETF (“ARK 21 Fund”); (3) Grayscale Bitcoin Trust (BTC) (the “Grayscale Fund” or “GBTC”); (4) Grayscale Bitcoin Mini Trust BTC (the “Grayscale Mini Fund” or “BTC”); (5) and Bitwise Bitcoin ETF (the “Bitwise Fund” or “BITB”), (collectively “Bitcoin Trusts”) as “Units” deemed appropriate for options trading on the Exchange. Options on each Bitcoin Trust were approved for trading on other options exchanges.³

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

³ 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 Bitcoin Exchange-Traded Funds) (“CBOE-2024-035”). See also Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds) (“NYSEAMER-2024-49”).

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 Bitcoin 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.⁴

⁴ 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-

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 Bitcoin Trusts.⁵

The Bitcoin Trusts are Bitcoin-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 Bitcoin Trust is for its shares to reflect the performance of Bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for Units currently deemed appropriate for options trading, a Bitcoin Trust's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.⁶ The Bitcoin Trusts provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Trusts and Units currently deemed appropriate for options trading are that Units may hold securities, certain financial instruments, and specified precious

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).

⁵ Specifically, the Exchange proposes to amend Options 3, Section 4(h)(iv) to include the name of each Bitcoin Trust to enable options to be listed on the Bitcoin Trusts on the Exchange.

⁶ The trust may include minimal cash.

metals (which are deemed commodities), while Bitcoin Trusts hold Bitcoin (which is also deemed a commodity).

The Exchange believes each Bitcoin Trust satisfies the Exchange's initial listing standards for Units on which the Exchange may list options. Specifically, each Bitcoin 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 Bitcoin 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 Bitcoin Trust satisfies the criteria and guidelines set forth in Options 4, Section 3(b).⁷ Options 4, Section 3(a), a security (which includes a Unit) on which

⁷ 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

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.⁸ Each Bitcoin Trust is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.⁹ The Exchange believes each Bitcoin Trust is characterized by a substantial number of outstanding shares that are widely held and actively traded.

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 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.

⁸ 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.

⁹ 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”).

Fidelity Fund and ARK 21

Cboe Exchange, Inc. (“Cboe”) noted in CBOE-2024-035 that, as of August 7, 2024, that the Fidelity Fund had 201,100,100 shares outstanding and the ARK 21 Fund had 45,495,000 shares outstanding. Further, each Bitcoin Trust had significantly more than 7,000,000 shares outstanding (approximately 29 and 6.5 times that amount, respectively), 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 3(b).¹⁰ Cboe noted in CBOE-2024-035 that this demonstrated that the Fidelity Fund and the ARK 21 Fund were both characterized by a substantial number of outstanding shares. Further, in CBOE-2024-035, Cboe noted that the Fidelity Fund, as of June 27, 2024, had 279,656 beneficial owners and the ARK 21 Fund, as of June 26, 2024, had 69,425 beneficial owners. Cboe noted that the Fidelity Fund and the ARK 21 Fund both had significantly more than 2,000 beneficial holders (approximately 140 and 35 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Options 4, Section 3(b).¹¹ Therefore, Cboe noted in CBOE-2024-035, that it believed the shares of the Fidelity Fund and the ARK 21 Fund are widely held. Cboe noted in CBOE-2024-035 that it believed that the shares of the Fidelity Fund and the ARK 21 Fund are both actively traded. Cboe noted in CBOE-2024-035 that as of August 7, 2024, the total trading volume (by shares) for each fund for the six-month period of February 8 through August 7, 2024, and the approximate average daily volume (“ADV”) (in shares and

¹⁰ See supra note 7.

¹¹ See supra note 7.

notional) over the 30-day period of July 9 through August 7, 2024, for each Bitcoin Trust was as follows:

Bitcoin Trust	6-Month Trading Volume (Shares)	30-Day ADV (Shares)	30-Day ADV (Notional \$)
Fidelity Fund	1,112,861,581	6,014,335	250,354,755
ARK 21 Fund	297,360,739	1,893,335	90,484,307

Cboe noted that as demonstrated above, despite the fact that the Fidelity Fund and the ARK 21 Fund had been trading for approximately seven months (as of January 10, 2024) only as of August 7, 2024, the six-month trading volume for each as of that date was substantially higher than 2,400,000 shares (approximately 464 and 124 times that amount, respectively), which is the minimum 12-month volume the Exchange generally requires for a corporate stock in order to list options on that security as set forth in Options 4, Section 3(b). Additionally, Cboe noted in CBOE-2024-035 that as of August 7, 2024, the trading volume for the Fidelity Fund and the ARK 21 Fund was in the top 5% of all ETFs that are currently trading. Cboe noted in CBOE-2024-035 that this data demonstrates the Fidelity Fund and the ARK 21 Fund are characterized as having shares that are actively traded.

Cboe determined the proposed position and exercise limits considering, among other things, the approximate six-month average daily volume (“ADV”) and outstanding shares of the Fidelity Fund and the ARK 21 Fund noted in the filing (which as discussed above demonstrate that these Bitcoin Trusts are widely held and actively traded and thus justify these conservatively proposed position limits), as set forth in CBOE-2024-035 and below, along with market capitalization (as of August 7, 2024):

Underlying Bitcoin Trust	Six-Month ADV (shares)	Outstanding Shares	Market Capitalization (\$)
Fidelity Fund	8,902,893	201,100,100	14,217,013,188
ARK 21 Fund	2,378,886	45,495,000	2,487,666,600

Cboe then compared the number of outstanding shares of the Fidelity Fund and the ARK 21 Fund to those of other ETFs. The following table in CBOE-2024-035 provided the approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of August 27, 2024), compared to the proposed position and exercise limit for options on the Fidelity Fund and the ARK 21 Fund:

Underlying Bitcoin Trust	Average Limit of Other ETF Options (contracts)	Proposed Limit (contracts)
Fidelity Fund	188,11023 ¹²	25,000
ARK 21 Fund	108,69624 ¹³	25,000

Cboe considered current position and exercise limits of options on ETFs with outstanding shares comparable to those of each the Fidelity Fund and the ARK 21 Fund, with the proposed limit significantly lower (between two and ten times lower) than the average limits of the options on the other ETFs. As discussed above in in CBOE-2024-035, the Fidelity Fund and the ARK 21 Fund are actively held and widely traded: (1) each of these Bitcoin Trusts (as of August 7, 2024) had significantly more than 7,000,000 shares

¹² Cboe noted in CBoe-2024-035 that over 80% of the ETFs used for comparison had a limit of at least 200,000, and more than half had a limit of 250,000. Additionally, the three-month ADV of the majority of the ETFs used for comparison was lower than the Fidelity Fund three-month ADV of 5,665,027 shares.

¹³ Cboe noted in CBoe-2024-035 that nearly 80% of the ETFs used for comparison had a limit of at least 75,000 (and up to 250,000). Additionally, the three-month ADV of the majority of ETFs used for comparison was lower (many more than four times lower) than the ARK 21 Fund three-month ADV of 1,737,327 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 3(b); (2) the Fidelity Fund and the ARK 21 Fund (as of the dates listed above) had significantly more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Options 4, Section 3(b)(2) and; (3) the Fidelity Fund and the ARK 21 Fund had a six-month trading volume substantially higher than 2,400,000 shares, which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Options 4, Section 3.

Cboe noted in in CBOE-2024-035 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 the following approximate percentage of current outstanding shares:

Underlying Bitcoin Trust	Proposed Position/Exercise Limit (in equivalent shares)	Outstanding Shares	Percentage of Outstanding Shares
Fidelity Fund	2,500,000	201,100,100	1.2%
ARK 21 Fund	2,500,000	45,495,000	5.5%

As this table demonstrated in CBOE-2024-035, if a market participant held the maximum permissible options positions in either the Fidelity Fund or the ARK 21 Fund and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the particular underlying Bitcoin Trust. Cboe provided a table in in CBOE-2024-035 noting the equivalent shares of the position limits

applicable to equity options, including ETFs, further 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), all of which are higher than the percentages for the Fidelity Fund and the ARK 21 Fund.

Position/Exercise Limit (in equivalent shares)	Minimum Outstanding Shares	Percentage of Outstanding Shares
2,500,000	6,300,000 ¹⁴	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%

CBOE-2024-035 provided that the equivalent shares represented by the proposed position and exercise limits for the Fidelity Fund and the ARK 21 Fund as a percentage of outstanding shares of the underlying Bitcoin Trust is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000 (under 6% compared to 40%) and is lower than that percentage for each current position limit bucket.¹⁵

GBTC, BTC and BITB

NYSE American LLC (“NYSE American”) noted in NYSEAmerican-2024-49 that, as of August 30, 2024, GBTC, BTC and BITB had the following number of shares

¹⁴ This 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 3(b). 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 limits represent an even larger percentage of outstanding shares of the underlying ETF than set forth above.

¹⁵ 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.

outstanding (and corresponding market capitalization):

Bitcoin Trust	Shares Outstanding	Market Value (08/30/2024)
GBTC	284,570,100	\$13,443,091,524
BTC	366,950,100	\$1,930,157,526
BITB	68,690,000	\$2,221,640,670

NYSE American noted in NYSEAmerican-2024-49 that, as displayed in the above table, GBTC, BTC and BITB 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 3(b). NYSE American noted in NYSEAmerican-2024-49 that this demonstrated that GBTC, BTC and BITB are characterized by a substantial number of outstanding shares. Further, as provided in NYSEAmerican-2024-49 the below table contained information regarding the number of beneficial holders of GBTC, BTC and BITB as of August 14, 2024.

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

As shown in NYSEAmerican-2024-49, the table showed that GBTC, BTC and BITB each had significantly more than 2,000 beneficial holders (approximately 232, 7, and 38 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to

pursuant to Options 4, Section 3(b)(2)¹⁶. Therefore, NYSE American noted that the shares of each GBTC, BTC and BITB are widely held. In addition, NYSE American noted that the shares of each GBTC, BTC and BITB are actively traded.

NYSEAmerican-2024-49 provided, as of September 30, 2024, that the total trading volume (by shares and notional) for these funds since they began trading¹⁷ and the average daily volume (“ADV”) over the 30-day period of September 1 through September 30, 2024, was as follows:

Bitcoin Trust	Trading Volume (Shares)	Trading Volume (Notional \$)	ADV (Shares)
GBTC	1,803,567,700	93,472,544,497	3,266,138
BTC	335,492,930	1,792,866,521	6,838,546
BITB	434,815,840	14,433,361,384	1,949,835

As demonstrated above and in NYSEAmerican-2024-49, even though GBTC, BTC and BITB were trading for less than one year (and in the case of the BTC, less than two months), the trading volume for each was substantially higher than 2,400,000 shares (between roughly 165 and 700 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Options 4, Section 3(b). NYSE American noted that this data demonstrated that GBTC, BTC and BITB are characterized by a substantial number of outstanding shares that are actively traded.

¹⁶ See supra note 7.

¹⁷ GBTC and BITB began trading on January 11th and BTC began trading on July 31st. Thus, the measurement period for the trading volume (shares/notional) was January 11 through September 20, 2024, for GBTC and BITB (i.e., nine months) and July 31 through September 20, 2024, for BTC (i.e., two months).

NYSE American noted in NYSEAmerican-2024-49 that BTC began trading on July 31, 2024, and therefore had only two months of trading data available at the time of filing NYSEAmerican-2024-49. In terms of total volume, NYSEAmerican-2024-49 provided the below table.

Bitcoin Trust	Total volume (9/30/2024)
GBTC	723,758,100 (6-months)
BTC	335,492,930 (2-months)
BITB	263,965,870 (6-months)

NYSE American noted in NYSEAmerican-2024-49 that based on the most-recent trading volume, GBTC, BTC and BITB exceeded the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits. By comparison, NYSE American noted that other options symbols with six-month trading volume less than GBTC, BITB, and BTC were eligible for position and exercise limits of at least 250,000.¹⁸ NYSEAmerican-2024-49 provided, with respect to the outstanding shares of each Bitcoin Trust, 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:

¹⁸ 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).

Bitcoin Trust	Proposed Position/Exercise Limit in Equivalent Shares	Outstanding Shares (8/30/24)	Percentage of Outstanding Shares
GBTC	2,500,000	284,570,100	0.9%
BTC	2,500,000	366,950,100	0.7%
BITB	2,500,000	68,690,000	3.6%

As this table demonstrated in NYSEAmerican-2024-49, if a market participant held the maximum permissible options positions in any one of GBTC, BTB or BITB 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 GBTC, BTB or BITB. For example, as noted above, 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 applicable Bitcoin Trust (if that market participant exercised all its options). Based on the number of shares outstanding for each of GBTC, BTB or BITB as of August 30, 2024, NYSE American noted in NYSEAmerican-2024-49 and the table below, that the approximate number of market participants that could hold the maximum of 25,000 same side positions in each of GBTC, BTB and BITB that would equate to the number of shares outstanding of that Bitcoin Trust:

Bitcoin Trust	Shares Outstanding	Number of Market Participants with 25,000 Same Side Positions
GBTC	284,570,100	114
BTC	366,950,100	147
BITB	68,690,000	27

NYSE American concluded in NYSEAmerican-2024-49 that this meant if 114 market participants had 25,000 same side positions in options on GBTC, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 147 market participants had 25,000 same side positions in options on BTC, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Finally, this means if 27 market participants had 25,000 same side positions in options on BITB, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. NYSE American noted in NYSEAmerican-2024-49 that it believed it was highly unlikely for this to occur; however, even if such event did occur, NYSE American would not expect GBTC, BTB or BITC 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 of GBTC, BTB or BITC may create and redeem shares that represent an interest in Bitcoin, NYSE American noted in NYSEAmerican-2024-49 that it is relevant to compare the size of a position limit to the market capitalization of the Bitcoin market. NYSE American noted in NYSEAmerican-2024-49 that, as of August 30, 2024, the global supply of Bitcoin was 19,747, 066, and the price of one Bitcoin was approximately \$59,108.23,39 which equates to a market capitalization of approximately \$1.167 trillion.¹⁹ NYSE American stated in NYSEAmerican-2024-49 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

¹⁹ See <https://www.blockchain.com/explorer/charts/total-bitcoins>.

receipt of no more than 2,500,000 shares of GBTC, BTC, or BITB, as applicable (if that market participant exercised all its options). NYSE American presented the below table with the share price of each of GBTC, BTC and BITB on August 30, 2024, the value of 2,500,000 shares of the particular Bitcoin Trust at that price, and the approximate percentage of that value of the size of the Bitcoin market:

Bitcoin Trust	Aug. 30th Share Price (\$)	Value of 2,500,000 Shares of Bitcoin Trust (\$)	Percentage of Bitcoin Market
GBTC	46.75	116,875,000	0.010%
BTC	5.20	13,000,000	0.001%
BITB	31.95	79,875,000	0.007%

NYSE American concluded that, if a market participant with the maximum 25,000 same side contracts in options on GBTC, BTC, or BITB exercised all positions at one time, such an event would have no practical impact on the Bitcoin market. NYSE American also reviewed the market capitalization of each Bitcoin Trust relative to the market capitalization of the entire bitcoin market, as of August 30, 2024.

	Bitcoin/Shares Outstanding	Market Value (8/30/2024)	% of Total Bitcoin Market
Total Bitcoin Market²⁰	19,747,066	\$1,167,214,096,788	100.00%
GBTC	284,570,100	\$13,443,091,524	1.15%
BTC	366,950,100	\$1,930,157,526	0.17%
BITB	68,690,000	\$2,221,640,670	0.19%

²⁰ See [id.](#)

As shown above and in NYSEAmerican-2024-49, GBTC, BTC and BITB collectively represented approximately 1.51% of the global supply of Bitcoin (19,747,066). Based on the \$46.75 price of a GBTC share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,264 GBTC shares. Further, NYSE American noted that another 24,967,146,455 GBTC shares could be created before the supply of Bitcoin was exhausted. NYSEAmerican-2024-49 provided that as a result, 9,987 market participants would have to simultaneously exercise 25,000 same side positions in GBTC options to receive shares of the GBTC holding the entire global supply of Bitcoin. NYSEAmerican-2024-49 also provided that based on the \$5.20 price of a BTC share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 11,367 BTC shares. Another 224,464,249,382 BTC shares could be created before the supply of Bitcoin was exhausted. NYSE American stated that as a result, 89,786 market participants would have to simultaneously exercise 25,000 same side positions in BTC options to receive shares of BTC holding the entire global supply of Bitcoin. Similarly, NYSE American noted that based on the \$31.95 price of a BITB share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,850 BITB shares. NYSEAmerican-2024-49 provided that another 36,532,522,591 BITB shares could be created before the supply of Bitcoin was exhausted. NYSE American concluded that as a result, 14,613 market participants would have to simultaneously exercise 25,000 same side positions in BITB options to receive shares of BITB holding the entire global supply of Bitcoin. NYSE American also concluded that, unlike GBTC, BTB and BITB, the number of shares that corporations may issue is limited. NYSEAmerican-2024-49 provided that, however, like corporations,

which authorize additional shares, repurchase shares, or split their shares, the Bitcoin Trusts may create, redeem, or split shares in response to demand and while the supply of Bitcoin is limited to 21,000,000, it is believed that it will take more than 100 years to fully mine the remaining Bitcoin.²¹ NYSE American noted that the supply of Bitcoin is larger than the available supply of most securities.²² NYSE American concluded that given the significant unlikelihood of any of these events ever occurring, NYSE American noted that it did not believe options on GBTC, BTC and BITB 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 Bitcoin. NYSE American also noted in NYSEAmerican-2024-49 that it believed the proposed limits are appropriate given position limits for Bitcoin futures. NYSE American noted that the Chicago Mercantile Exchange (“CME”) imposed a position limit of 2,000 futures (for the initial spot month) on its Bitcoin futures contract.²³ Further, NYSE American provided that on August 28, 2024, CME Aug 24 Bitcoin Futures settled at \$58,950. NYSE American noted that a position of 2,000 CME Bitcoin futures, therefore, would have a notional value of \$589,500,000. NYSEAmerican-2024-49 provided the following table with the share price of each of GBTC, BTC and BITB on

²¹ See <https://www.blockchain.com/explorer/assets/btc> (citing 21 million as the “total supply” of bitcoin).

²² The market capitalization of Bitcoin would rank in the top 10 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

²³ See CME Rulebook Chapter 350 (description of CME Bitcoin Futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME Bitcoin futures contract is valued at five Bitcoins as defined by the CME CF Bitcoin Reference Rate (“BRR”). See CME Rule 35001.

August 28, 2024, and the approximate number of option contracts that equates to that notional value:

Bitcoin Trust	Aug. 28th Share Price	Number of Options Contracts
GBTC	46.94	125,585
BTC	5.23	1,127,151
BITB	32.08	183,759

NYSE American stated that approximate number of option contracts for GBTC, BTC and BITB that equate to the notional value of CME Bitcoin futures was significantly higher than the proposed limit of 25,000 options contract for each option on GBTC, BTC and BITB. Further, NYSE American noted that 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 Bitcoin Future is 1, further demonstrated how conservative the proposed limits of 25,000 options contracts are for options on GBTC, BTC and BITB.

The Exchange notes, 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).²⁴ 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.²⁵ If a position exceeds position limits because of an option

²⁴ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

²⁵ Id.

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. Considering CME's position limits on futures for Bitcoin, the Exchange believes that that the proposed same side position limits are more than appropriate for the options on Bitcoin Trusts.

NYSE American noted in NYSEAmerican-2024-049 that the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the GBTC, BTC and BITB.²⁶ NYSE American noted stated that position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. NYSE American noted 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.²⁷ "Since the inception of

²⁶ NYSE American in NYSEAmerican-2024-49 stated that it 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-CBOE2005-11) (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 9054 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 Bitcoin Trust options.

²⁷ NYSE American in NYSEAmerican-2024-49 provided an example that supposed an option had a position limit of 25,000 option contracts and there were a total of 10 investors trading that option. If all 10 investors maxed out their positions, that would result in 250,000 option contracts outstanding at that time. However, if 10 more investors decided to begin trading that option and also maxed out their positions. This would result in 500,000 option contracts outstanding at that

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.”²⁸ NYSE American 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, 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.”²⁹

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each of GBTC, BTC and BITB, each of which described the supply of Bitcoin as being limited to 21,000,000 (of which approximately 90% had already been mined), and that the limit would be reached around the year 2140.³⁰ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin Trust to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each of GBTC, BTC and BITB, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that

time. NYSE American concluded that an increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

²⁸ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SRCBOE-1997-11).

²⁹ Id.

³⁰ See, e.g., GBTC Form S-1 Registration Statement, at p. 17, <https://www.sec.gov/Archives/edgar/data/1588489/000119312517013693/d157414ds1.htm>; BTC Form S-1 Registration Statement, at p. 21, <https://www.sec.gov/Archives/edgar/data/2015034/000119312524065444/d785023ds1.htm>; and BITB Amendment No 2. to S-1, at p. 47, https://www.sec.gov/Archives/edgar/data/1763415/000199937123000735/bitwise-s1a_120423.htm (“Bitcoin Trusts Reg. Stmts.”).

permitting an unlimited number of shares for a Bitcoin Trust would impact the supply of Bitcoin.³¹ Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Bitcoin was sufficient to permit the creation of unlimited Bitcoin Trust 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 Bitcoin supply, the proposed positions limits are more than sufficient to protect investors and the market.

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 Fidelity Fund, the ARK 21 Fund, GBTC, BTC and BITB 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 Bitcoin 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 Bitcoin Trusts are actively traded.

Options on the Bitcoin 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

³¹ See NYSEAMER-2024-49.

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 4³² or the ETFs are halted or suspended from trading on their primary market.³³ 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;³⁴

(2) in the case of options covering Fund Shares approved pursuant to Options 4, Section 3(h)(A)(ii),³⁵ 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

³² 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.

³³ See Options 4, Section 4(g).

³⁴ Options 4, Section 4(b)(5)(1) through (4) provides, if: (1) there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Act, (2) there are fewer than 1,600 holders of the underlying security, (3) the trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months, or (4) the underlying security ceases to be an ‘NMS stock’ as defined in Rule 600 of Regulation NMS under the Exchange Act. Options 4, Section 3(h)(i) refers to Financial Instruments and Money Market Instruments. In addition, the Exchange proposes to amend the citation to “Options 4, Section 3(h)(A)(i)” herein to “Options 4, Section 3(h)(i).”

³⁵ Options 4, Section 3(h)(ii) refers to Currency Trust Shares. In addition, the Exchange proposes to amend the citation to “Options 4, Section 3(h)(A)(ii)” herein to “Options 4, Section 3(h)(ii).”

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 Bitcoin Trusts would be physically settled contracts with American-style exercise.³⁶ 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 Bitcoin Trusts and may also list series of options on the Bitcoin Trusts for trading on a weekly³⁷ or quarterly³⁸ basis. The Exchange may also list long-term equity option series (“LEAPS”)³⁹ that expire from twelve to thirty-nine from the time they are listed.

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

³⁶ 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.

³⁷ See Supplementary .03 to Options 4, Section 5.

³⁸ See Supplementary .04 to Options 4, Section 5.

³⁹ See Options 4, Section 8.

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.⁴⁰ 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 \$150.⁴¹ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,⁴² the \$0.50 Strike Program,⁴³ the \$2.50 Strike Price Program,⁴⁴ and the \$5 Strike Program.⁴⁵ 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 Bitcoin Trusts is less than \$3.00 the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10⁴⁶ consistent with the minimum increments for options on other ETFs listed on the Exchange. Any and all new series of

⁴⁰ See Supplementary Material .03(e) to Options 4, Section 5.

⁴¹ Id.

⁴² See Supplementary Material .01 to Options 4, Section 5.

⁴³ See Supplementary Material .05 to Options 4, Section 5.

⁴⁴ See Supplementary Material .02 to Options 4, Section 5.

⁴⁵ See Supplementary Material .06 to Options 4, Section 5.

⁴⁶ 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.

options on the Bitcoin 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.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options the Bitcoin Trusts that it applies to the Exchange's other options products.⁴⁷ ISE's market surveillance staff would have access to the surveillances conducted by Nasdaq⁴⁸ with respect to the Bitcoin Trusts and would review activity in the underlying Bitcoin Trusts when conducting surveillances for market abuse or manipulation in the options on the Bitcoin 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.⁴⁹

⁴⁷ 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).

⁴⁸ The Nasdaq Stock Market LLC is an affiliated market of ISE.

⁴⁹ 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 Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on the Bitcoin Trusts. Also, the Exchange represents that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including the proposed options on the Bitcoin Trusts. The underlying shares of spot bitcoin ETPs, including the Bitcoin Trusts, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in the orders approving proposals of several exchanges to list and trade shares of spot bitcoin-based exchange-traded products:⁵⁰

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.⁵¹

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

the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

⁵⁰ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, 3009 (January 17, 2024) (SR-NYSEArca-2021-90; SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (“Bitcoin ETP Approval Order”).

⁵¹ Id.

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].”⁵² In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Trusts,⁵³ the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin 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 Bitcoin 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 Bitcoin Trust will be manageable.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵⁵ 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

⁵² Id.

⁵³ Id.

⁵⁴ 15 U.S.C. 78f(b).

⁵⁵ 15 U.S.C. 78f(b)(5).

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)⁵⁶ 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 Bitcoin 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 Bitcoin Trusts will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Trust, including cost efficiencies and increased hedging strategies. The Exchange believes that offering options on the Bitcoin 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 Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of options on the Bitcoin Trusts will provide investors with the ability to transact in such options in a listed 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,⁵⁷ which, as described above, are trusts structured in substantially the same manner as

⁵⁶ 15 U.S.C. 78(f)(b)(5).

⁵⁷ See Options 4, Section 3(h)(iv).

Bitcoin Trusts and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed 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 Bitcoin 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 Bitcoin Trust is characterized by a substantial number of shares that are widely held and actively traded. Options on the Bitcoin 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 Bitcoin 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 Bitcoin Trusts satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all ETFs and ETPs, including ETPs that hold other commodities already deemed appropriate for

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

The proposed position and exercise limit for options on the Bitcoin 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 Bitcoin Trusts' market capitalization, average daily volume, number of beneficial holders, and high number of outstanding shares.⁵⁸ The proposed position and exercise limits are consistent with the Act as they address concerns related to manipulation and protection of investors because the position and exercise limits are extremely conservative and more than appropriate given the Bitcoin Trusts are actively traded.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options the Bitcoin Trusts that it applies to the Exchange's other options products.⁵⁹ ISE's market

⁵⁸ The Exchange notes that IBIT-- which has been approved for options trading-- represents a larger percentage of the bitcoin market than all proposed Bitcoin Trusts. As noted herein, the Bitcoin Trusts collectively represent approximately 1.51% of the bitcoin market. By comparison, IBIT options have an approved position limit of 25,000 contracts per side, which represents 4% of total underlying spot BTC liquidity, and IBIT is the most liquid spot Bitcoin ETF.

⁵⁹ 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).

surveillance staff would have access to the surveillances conducted by Nasdaq⁶⁰ with respect to the Bitcoin Trusts and would review activity in the underlying Bitcoin Trusts when conducting surveillances for market abuse or manipulation in the options on the Bitcoin 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. ISE would be able to obtain information regarding trading and shares of the Bitcoin Trusts from their primary listing market, and from other markets that trade shares of the Bitcoin Trusts, through ISG. 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.⁶¹

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on the Bitcoin Trusts. Also, the Exchange represents that it has the necessary systems capacity to support the new option series. The Exchange believes that its

⁶⁰ The Nasdaq Stock Market LLC is an affiliated market of ISE.

⁶¹ 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.

existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including the proposed options on the Bitcoin Trusts. The underlying shares of spot bitcoin ETPs, including the Bitcoin Trusts, 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.⁶²

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].”⁶³ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Trusts,⁶⁴ the Exchange believes that existing surveillance

⁶² 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).

⁶³ Id.

⁶⁴ Id.

procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin 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 Bitcoin 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 Bitcoin Trusts will be manageable.

4. 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.

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 Bitcoin Trusts would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them. Additionally, options on the Bitcoin 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 Bitcoin 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 Bitcoin 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 Bitcoin 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 Bitcoin Trusts, holds bitcoin.⁶⁵ Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin Trusts. The Exchange notes that listing and trading options on Bitcoin 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 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 Bitcoin Trusts for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means

⁶⁵ See supra note 3.

to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)⁶⁶ of the Act and Rule 19b-4(f)(6) thereunder⁶⁷ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposal does not significantly affect the protection of investors or the public interest because offering options on the Bitcoin Trusts will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Trusts, including cost efficiencies and increased hedging strategies. Offering options on the Bitcoin Trusts will benefit investors by providing them with a relatively lower-cost risk management tool,

⁶⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶⁷ 17 CFR 240.19b-4(f)(6).

which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of options on the Bitcoin Trusts will provide investors with the ability to transact in such options in a listed 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. Options on the Bitcoin 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 Bitcoin Trust is characterized by a substantial number of shares that are widely held and actively traded. Options on the Bitcoin 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 Bitcoin Trusts in the same manner.

The proposal does not impose any significant burden on competition because Bitcoin Trusts would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them. Additionally, options on the Bitcoin 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 Bitcoin Trusts.

Furthermore, Rule 19b-4(f)(6)(iii)⁶⁸ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may immediately list and trade these options on the Bitcoin Trusts which are able to trade on other options exchanges. The Exchange believes that permitting options to trade on multiple venues provides market participants with a greater selection of exchanges that would accept and trade options on the Bitcoin Trusts.

⁶⁸ 17 CFR 240.19b-4(f)(6)(iii).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

This rule change proposes to list and trade options on Bitcoin Trusts that have been approved for other options markets, namely options on Fidelity Fund, ARK 21 Fund, GBTC, BTC, and BITB.⁶⁹

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

⁶⁹ 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 Bitcoin Exchange-Traded Funds) (“CBOE-2024-035”). See also Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds) (“NYSEAMER-2024-49”).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-ISE-2024-54)

November __, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change to List and Trade Various Bitcoin Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on November 21, 2024, 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, II, and III, below, which Items have been prepared by the Exchange. 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 to amend Options 4, Section 3, Criteria for Underlying Securities.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the (1) Fidelity Wise Origin Bitcoin Fund (“Fidelity Fund”); (2) ARK21Shares Bitcoin ETF (“ARK 21 Fund”); (3) Grayscale Bitcoin Trust (BTC) (the “Grayscale Fund” or “GBTC”); (4) Grayscale Bitcoin Mini Trust BTC (the “Grayscale Mini Fund” or “BTC”); (5) and Bitwise Bitcoin ETF (the “Bitwise Fund” or “BITB”), (collectively “Bitcoin Trusts”) as “Units” deemed appropriate for options trading on the Exchange. Options on each Bitcoin Trust were approved for trading on other options exchanges.³

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

³ 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 Bitcoin Exchange-Traded Funds) (“CBOE-2024-035”). See also Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds) (“NYSEAMER-2024-49”).

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 Bitcoin 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.⁴

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 Bitcoin Trusts.⁵

The Bitcoin Trusts are Bitcoin-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 Bitcoin Trust is for its shares to reflect the performance of Bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for Units currently deemed appropriate for options trading, a Bitcoin Trust's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.⁶ The Bitcoin Trusts provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Trusts and Units currently deemed appropriate for options trading are that Units may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Trusts hold Bitcoin (which is also deemed a commodity).

⁴ 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).

⁵ Specifically, the Exchange proposes to amend Options 3, Section 4(h)(iv) to include the name of each Bitcoin Trust to enable options to be listed on the Bitcoin Trusts on the Exchange.

⁶ The trust may include minimal cash.

The Exchange believes each Bitcoin Trust satisfies the Exchange's initial listing standards for Units on which the Exchange may list options. Specifically, each Bitcoin 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 Bitcoin 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 Bitcoin Trust satisfies the criteria and guidelines set forth in Options 4, Section 3(b).⁷ Options 4, Section

⁷ 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 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

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.⁸ Each Bitcoin Trust is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.⁹ The Exchange believes each Bitcoin Trust is characterized by a substantial number of outstanding shares that are widely held and actively traded.

Fidelity Fund and ARK 21

Cboe Exchange, Inc. (“Cboe”) noted in CBOE-2024-035 that, as of August 7, 2024, that the Fidelity Fund had 201,100,100 shares outstanding and the ARK 21 Fund had 45,495,000 shares outstanding. Further, each Bitcoin Trust had significantly more than 7,000,000 shares outstanding (approximately 29 and 6.5 times that amount, respectively), 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 3(b).¹⁰ Cboe noted in CBOE-2024-035 that this demonstrated that the Fidelity Fund and the ARK 21 Fund were both characterized by a substantial number of outstanding shares. Further, in CBOE-2024-035, Cboe noted that the Fidelity Fund, as of June 27, 2024, had 279,656 beneficial owners and the ARK 21 Fund, as of June 26, 2024, had 69,425 beneficial owners. Cboe noted that the Fidelity Fund and the ARK 21 Fund both had significantly more than 2,000 beneficial holders (approximately 140 and 35 times

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.

⁸ 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.

⁹ 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”).

¹⁰ See supra note 7.

more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Options 4, Section 3(b).¹¹ Therefore, Cboe noted in CBOE-2024-035, that it believed the shares of the Fidelity Fund and the ARK 21 Fund are widely held. Cboe noted in CBOE-2024-035 that it believed that the shares of the Fidelity Fund and the ARK 21 Fund are both actively traded. Cboe noted in CBOE-2024-035 that as of August 7, 2024, the total trading volume (by shares) for each fund for the six-month period of February 8 through August 7, 2024, and the approximate average daily volume (“ADV”) (in shares and notional) over the 30-day period of July 9 through August 7, 2024, for each Bitcoin Trust was as follows:

Bitcoin Trust	6-Month Trading Volume (Shares)	30-Day ADV (Shares)	30-Day ADV (Notional \$)
Fidelity Fund	1,112,861,581	6,014,335	250,354,755
ARK 21 Fund	297,360,739	1,893,335	90,484,307

Cboe noted that as demonstrated above, despite the fact that the Fidelity Fund and the ARK 21 Fund had been trading for approximately seven months (as of January 10, 2024) only as of August 7, 2024, the six-month trading volume for each as of that date was substantially higher than 2,400,000 shares (approximately 464 and 124 times that amount, respectively), which is the minimum 12-month volume the Exchange generally requires for a corporate stock in order to list options on that security as set forth in Options 4, Section 3(b). Additionally, Cboe noted in in CBOE-2024-035 that as of August 7, 2024, the trading volume for the Fidelity Fund and the ARK 21 Fund was in the top 5% of all ETFs that are currently trading. Cboe noted in CBOE-2024-035 that this data demonstrates the Fidelity Fund and the ARK 21 Fund are characterized as having shares that are actively traded.

Cboe determined the proposed position and exercise limits considering, among other things, the approximate six-month average daily volume (“ADV”) and outstanding shares of the Fidelity Fund and the ARK 21 Fund noted in the filing (which as discussed above demonstrate that these Bitcoin Trusts are widely held and actively traded and thus justify these conservatively proposed position limits), as set forth in in CBOE-2024-035 and below, along with market capitalization (as of August 7, 2024):

¹¹ See supra note 7.

Underlying Bitcoin Trust	Six-Month ADV (shares)	Outstanding Shares	Market Capitalization (\$)
Fidelity Fund	8,902,893	201,100,100	14,217,013,188
ARK 21 Fund	2,378,886	45,495,000	2,487,666,600

Cboe then compared the number of outstanding shares of the Fidelity Fund and the ARK 21 Fund to those of other ETFs. The following table in CBOE-2024-035 provided the approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of August 27, 2024), compared to the proposed position and exercise limit for options on the Fidelity Fund and the ARK 21 Fund:

Underlying Bitcoin Trust	Average Limit of Other ETF Options (contracts)	Proposed Limit (contracts)
Fidelity Fund	188,11023 ¹²	25,000
ARK 21 Fund	108,69624 ¹³	25,000

Cboe considered current position and exercise limits of options on ETFs with outstanding shares comparable to those of each the Fidelity Fund and the ARK 21 Fund, with the proposed limit significantly lower (between two and ten times lower) than the average limits of the options on the other ETFs. As discussed above in in CBOE-2024-035, the Fidelity Fund and the ARK 21 Fund are actively held and widely traded: (1) each of these Bitcoin Trusts (as of August 7, 2024) 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 3(b); (2) the Fidelity Fund and the ARK 21 Fund (as of the dates listed above) had significantly more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Options 4, Section 3(b)(2) and; (3) the Fidelity Fund and the ARK 21 Fund had a six-month trading volume substantially higher than 2,400,000 shares, which is

¹² Cboe noted in CBoe-2024-035 that over 80% of the ETFs used for comparison had a limit of at least 200,000, and more than half had a limit of 250,000. Additionally, the three-month ADV of the majority of the ETFs used for comparison was lower than the Fidelity Fund three-month ADV of 5,665,027 shares.

¹³ Cboe noted in CBoe-2024-035 that nearly 80% of the ETFs used for comparison had a limit of at least 75,000 (and up to 250,000). Additionally, the three-month ADV of the majority of ETFs used for comparison was lower (many more than four times lower) than the ARK 21 Fund three-month ADV of 1,737,327 shares.

the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Options 4, Section 3.

Cboe noted in in CBOE-2024-035 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 the following approximate percentage of current outstanding shares:

Underlying Bitcoin Trust	Proposed Position/Exercise Limit (in equivalent shares)	Outstanding Shares	Percentage of Outstanding Shares
Fidelity Fund	2,500,000	201,100,100	1.2%
ARK 21 Fund	2,500,000	45,495,000	5.5%

As this table demonstrated in CBOE-2024-035, if a market participant held the maximum permissible options positions in either the Fidelity Fund or the ARK 21 Fund and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the particular underlying Bitcoin Trust. Cboe provided a table in in CBOE-2024-035 noting the equivalent shares of the position limits applicable to equity options, including ETFs, further 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), all of which are higher than the percentages for the Fidelity Fund and the ARK 21 Fund.

Position/Exercise Limit (in equivalent shares)	Minimum Outstanding Shares	Percentage of Outstanding Shares
2,500,000	6,300,000 ¹⁴	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%

¹⁴ This 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 3(b). 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 limits represent an even larger percentage of outstanding shares of the underlying ETF than set forth above.

CBOE-2024-035 provided that the equivalent shares represented by the proposed position and exercise limits for the Fidelity Fund and the ARK 21 Fund as a percentage of outstanding shares of the underlying Bitcoin Trust is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000 (under 6% compared to 40%) and is lower than that percentage for each current position limit bucket.¹⁵

GBTC, BTC and BITB

NYSE American LLC (“NYSE American”) noted in NYSEAmerican-2024-49 that, as of August 30, 2024, GBTC, BTC and BITB had the following number of shares outstanding (and corresponding market capitalization):

Bitcoin Trust	Shares Outstanding	Market Value (08/30/2024)
GBTC	284,570,100	\$13,443,091,524
BTC	366,950,100	\$1,930,157,526
BITB	68,690,000	\$2,221,640,670

NYSE American noted in NYSEAmerican-2024-49 that, as displayed in the above table, GBTC, BTC and BITB 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 3(b). NYSE American noted in NYSEAmerican-2024-49 that this demonstrated that GBTC, BTC and BITB are characterized by a substantial number of outstanding shares. Further, as provided in NYSEAmerican-2024-49 the below table contained information regarding the number of beneficial holders of GBTC, BTC and BITB as of August 14, 2024.

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

¹⁵ 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.

As shown in NYSEAmerican-2024-49, the table showed that GBTC, BTC and BITB each had significantly more than 2,000 beneficial holders (approximately 232, 7, and 38 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Options 4, Section 3(b)(2)¹⁶. Therefore, NYSE American noted that the shares of each GBTC, BTC and BITB are widely held. In addition, NYSE American noted that the shares of each GBTC, BTC and BITB are actively traded. NYSEAmerican-2024-49 provided, as of September 30, 2024, that the total trading volume (by shares and notional) for these funds since they began trading¹⁷ and the average daily volume (“ADV”) over the 30-day period of September 1 through September 30, 2024, was as follows:

Bitcoin Trust	Trading Volume (Shares)	Trading Volume (Notional \$)	ADV (Shares)
GBTC	1,803,567,700	93,472,544,497	3,266,138
BTC	335,492,930	1,792,866,521	6,838,546
BITB	434,815,840	14,433,361,384	1,949,835

As demonstrated above and in NYSEAmerican-2024-49, even though GBTC, BTC and BITB were trading for less than one year (and in the case of the BTC, less than two months), the trading volume for each was substantially higher than 2,400,000 shares (between roughly 165 and 700 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Options 4, Section 3(b). NYSE American noted that this data demonstrated that GBTC, BTC and BITB are characterized by a substantial number of outstanding shares that are actively traded.

NYSE American noted in NYSEAmerican-2024-49 that BTC began trading on July 31, 2024, and therefore had only two months of trading data available at the time of filing NYSEAmerican-2024-49. In terms of total volume, NYSEAmerican-2024-49 provided the below table.

¹⁶ See supra note 7.

¹⁷ GBTC and BITB began trading on January 11th and BTC began trading on July 31st. Thus, the measurement period for the trading volume (shares/notional) was January 11 through September 20, 2024, for GBTC and BITB (i.e., nine months) and July 31 through September 20, 2024, for BTC (i.e., two months).

Bitcoin Trust	Total volume (9/30/2024)
GBTC	723,758,100 (6-months)
BTC	335,492,930 (2-months)
BITB	263,965,870 (6-months)

NYSE American noted in NYSEAmerican-2024-49 that based on the most-recent trading volume, GBTC, BTC and BITB exceeded the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits. By comparison, NYSE American noted that other options symbols with six-month trading volume less than GBTC, BITB, and BTC were eligible for position and exercise limits of at least 250,000.¹⁸ NYSEAmerican-2024-49 provided, with respect to the outstanding shares of each Bitcoin Trust, 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:

Bitcoin Trust	Proposed Position/Exercise Limit in Equivalent Shares	Outstanding Shares (8/30/24)	Percentage of Outstanding Shares
GBTC	2,500,000	284,570,100	0.9%
BTC	2,500,000	366,950,100	0.7%
BITB	2,500,000	68,690,000	3.6%

As this table demonstrated in NYSEAmerican-2024-49, if a market participant held the maximum permissible options positions in any one of GBTC, BTB or BITB 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 GBTC, BTB or BITB. For example, as noted above, 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 applicable Bitcoin Trust (if that market participant exercised all its options). Based on the number of shares outstanding for each of GBTC, BTB or BITB as of August 30,

¹⁸ 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).

2024, NYSE American noted in NYSEAmerican-2024-49 and the table below, that the approximate number of market participants that could hold the maximum of 25,000 same side positions in each of GBTC, BTB and BITB that would equate to the number of shares outstanding of that Bitcoin Trust:

Bitcoin Trust	Shares Outstanding	Number of Market Participants with 25,000 Same Side Positions
GBTC	284,570,100	114
BTC	366,950,100	147
BITB	68,690,000	27

NYSE American concluded in NYSEAmerican-2024-49 that this meant if 114 market participants had 25,000 same side positions in options on GBTC, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 147 market participants had 25,000 same side positions in options on BTC, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Finally, this means if 27 market participants had 25,000 same side positions in options on BITB, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. NYSE American noted in NYSEAmerican-2024-49 that it believed it was highly unlikely for this to occur; however, even if such event did occur, NYSE American would not expect GBTC, BTB or BITC 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 of GBTC, BTB or BITC may create and redeem shares that represent an interest in Bitcoin, NYSE American noted in NYSEAmerican-2024-49 that it is relevant to compare the size of a position limit to the market capitalization of the Bitcoin market. NYSE American noted in NYSEAmerican-2024-49 that, as of August 30, 2024, the global supply of Bitcoin was 19,747,066, and the price of one Bitcoin was approximately \$59,108.23,39 which equates to a market capitalization of approximately \$1.167 trillion.¹⁹ NYSE American stated in NYSEAmerican-2024-49 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

¹⁹ See <https://www.blockchain.com/explorer/charts/total-bitcoins>.

no more than 2,500,000 shares of GBTC, BTC, or BITB, as applicable (if that market participant exercised all its options). NYSE American presented the below table with the share price of each of GBTC, BTC and BITB on August 30, 2024, the value of 2,500,000 shares of the particular Bitcoin Trust at that price, and the approximate percentage of that value of the size of the Bitcoin market:

Bitcoin Trust	Aug. 30th Share Price (\$)	Value of 2,500,000 Shares of Bitcoin Trust (\$)	Percentage of Bitcoin Market
GBTC	46.75	116,875,000	0.010%
BTC	5.20	13,000,000	0.001%
BITB	31.95	79,875,000	0.007%

NYSE American concluded that, if a market participant with the maximum 25,000 same side contracts in options on GBTC, BTC, or BITB exercised all positions at one time, such an event would have no practical impact on the Bitcoin market. NYSE American also reviewed the market capitalization of each Bitcoin Trust relative to the market capitalization of the entire bitcoin market, as of August 30, 2024.

	Bitcoin/Shares Outstanding	Market Value (8/30/2024)	% of Total Bitcoin Market
Total Bitcoin Market²⁰	19,747,066	\$1,167,214,096,788	100.00%
GBTC	284,570,100	\$13,443,091,524	1.15%
BTC	366,950,100	\$1,930,157,526	0.17%
BITB	68,690,000	\$2,221,640,670	0.19%

As shown above and in NYSEAmerican-2024-49, GBTC, BTC and BITB collectively represented approximately 1.51% of the global supply of Bitcoin (19,747, 066). Based on the \$46.75 price of a GBTC share on August 30, 2024, a market participant could

²⁰ See [id.](#)

have redeemed one Bitcoin for approximately 1,264 GBTC shares. Further, NYSE American noted that another 24,967,146,455 GBTC shares could be created before the supply of Bitcoin was exhausted. NYSE American-2024-49 provided that as a result, 9,987 market participants would have to simultaneously exercise 25,000 same side positions in GBTC options to receive shares of the GBTC holding the entire global supply of Bitcoin. NYSE American-2024-49 also provided that based on the \$5.20 price of a BTC share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 11,367 BTC shares. Another 224,464,249,382 BTC shares could be created before the supply of Bitcoin was exhausted. NYSE American stated that as a result, 89,786 market participants would have to simultaneously exercise 25,000 same side positions in BTC options to receive shares of BTC holding the entire global supply of Bitcoin. Similarly, NYSE American noted that based on the \$31.95 price of a BITB share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,850 BITB shares. NYSE American-2024-49 provided that another 36,532,522,591 BITB shares could be created before the supply of Bitcoin was exhausted. NYSE American concluded that as a result, 14,613 market participants would have to simultaneously exercise 25,000 same side positions in BITB options to receive shares of BITB holding the entire global supply of Bitcoin. NYSE American also concluded that, unlike GBTC, BTB and BITB, the number of shares that corporations may issue is limited. NYSE American-2024-49 provided that, however, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Bitcoin Trusts may create, redeem, or split shares in response to demand and while the supply of Bitcoin is limited to 21,000,000, it is believed that it will take more than 100 years to

fully mine the remaining Bitcoin.²¹ NYSE American noted that the supply of Bitcoin is larger than the available supply of most securities.²² NYSE American concluded that given the significant unlikelihood of any of these events ever occurring, NYSE American noted that it did not believe options on GBTC, BTC and BITB 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 Bitcoin. NYSE American also noted in NYSEAmerican-2024-49 that it believed the proposed limits are appropriate given position limits for Bitcoin futures. NYSE American noted that the Chicago Mercantile Exchange (“CME”) imposed a position limit of 2,000 futures (for the initial spot month) on its Bitcoin futures contract.²³ Further, NYSE American provided that on August 28, 2024, CME Aug 24 Bitcoin Futures settled at \$58,950. NYSE American noted that a position of 2,000 CME Bitcoin futures, therefore, would have a notional value of \$589,500,000. NYSEAmerican-2024-49 provided the following table with the share price of each of GBTC, BTC and BITB on August 28, 2024, and the approximate number of option contracts that equates to that notional value:

Bitcoin Trust	Aug. 28th Share Price	Number of Options Contracts
GBTC	46.94	125,585
BTC	5.23	1,127,151
BITB	32.08	183,759

²¹ See <https://www.blockchain.com/explorer/assets/btc> (citing 21 million as the “total supply” of bitcoin).

²² The market capitalization of Bitcoin would rank in the top 10 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

²³ See CME Rulebook Chapter 350 (description of CME Bitcoin Futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME Bitcoin futures contract is valued at five Bitcoins as defined by the CME CF Bitcoin Reference Rate (“BRR”). See CME Rule 35001.

NYSE American stated that approximate number of option contracts for GBTC, BTC and BITB that equate to the notional value of CME Bitcoin futures was significantly higher than the proposed limit of 25,000 options contract for each option on GBTC, BTC and BITB. Further, NYSE American noted that 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 Bitcoin Future is 1, further demonstrated how conservative the proposed limits of 25,000 options contracts are for options on GBTC, BTC and BITB.

The Exchange notes, 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).²⁴ 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.²⁵ 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. Considering CME's position limits

²⁴ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

²⁵ Id.

on futures for Bitcoin, the Exchange believes that that the proposed same side position limits are more than appropriate for the options on Bitcoin Trusts.

NYSE American noted in NYSEAmerican-2024-049 that the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the GBTC, BTC and BITB.²⁶ NYSE American noted that position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. NYSE American noted 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.²⁷ “Since 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.”²⁸ NYSE American noted that position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives

²⁶ NYSE American in NYSEAmerican-2024-49 stated that it 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-CBOE2005-11) (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 9054 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 Bitcoin Trust options.

²⁷ NYSE American in NYSEAmerican-2024-49 provided an example that supposed an option had a position limit of 25,000 option contracts and there were a total of 10 investors trading that option. If all 10 investors maxed out their positions, that would result in 250,000 option contracts outstanding at that time. However, if 10 more investors decided to begin trading that option and also maxed out their positions. This would result in 500,000 option contracts outstanding at that time. NYSE American concluded that an increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

²⁸ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SRCBOE-1997-11).

to manipulate or disrupt the underlying market so as to benefit the options position. In particular, 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.”²⁹

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each of GBTC, BTC and BITB, each of which described the supply of Bitcoin as being limited to 21,000,000 (of which approximately 90% had already been mined), and that the limit would be reached around the year 2140.³⁰ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin Trust to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each of GBTC, BTC and BITB, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Trust would impact the supply of Bitcoin.³¹ Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Bitcoin was sufficient to permit the creation of unlimited Bitcoin Trust shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its

²⁹ Id.

³⁰ See, e.g., GBTC Form S-1 Registration Statement, at p. 17, <https://www.sec.gov/Archives/edgar/data/1588489/000119312517013693/d157414ds1.htm>; BTC Form S-1 Registration Statement, at p. 21, <https://www.sec.gov/Archives/edgar/data/2015034/000119312524065444/d785023ds1.htm>; and BITB Amendment No 2. to S-1, at p. 47, https://www.sec.gov/Archives/edgar/data/1763415/000199937123000735/bitwise-s1a_120423.htm (“Bitcoin Trusts Reg. Stmts.”).

³¹ See NYSEAMER-2024-49.

lack of relevance to the purpose of position and exercise limits. However, given the significant size of the Bitcoin supply, the proposed positions limits are more than sufficient to protect investors and the market.

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 Fidelity Fund, the ARK 21 Fund, GBTC, BTC and BITB 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 Bitcoin 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 Bitcoin Trusts are actively traded.

Options on the Bitcoin 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 4³² or the

³² 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

ETFs are halted or suspended from trading on their primary market.³³ 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;³⁴

(2) in the case of options covering Fund Shares approved pursuant to Options 4, Section 3(h)(A)(ii),³⁵ 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.

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.

³³ See Options 4, Section 4(g).

³⁴ Options 4, Section 4(b)(5)(1) through (4) provides, if: (1) there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Act, (2) there are fewer than 1,600 holders of the underlying security, (3) the trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months, or (4) the underlying security ceases to be an ‘NMS stock’ as defined in Rule 600 of Regulation NMS under the Exchange Act. Options 4, Section 3(h)(i) refers to Financial Instruments and Money Market Instruments. In addition, the Exchange proposes to amend the citation to “Options 4, Section 3(h)(A)(i)” herein to “Options 4, Section 3(h)(i).”

³⁵ Options 4, Section 3(h)(ii) refers to Currency Trust Shares. In addition, the Exchange proposes to amend the citation to “Options 4, Section 3(h)(A)(ii)” herein to “Options 4, Section 3(h)(ii).”

Options on the Bitcoin Trusts would be physically settled contracts with American-style exercise.³⁶ 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 Bitcoin Trusts and may also list series of options on the Bitcoin Trusts for trading on a weekly³⁷ or quarterly³⁸ basis. The Exchange may also list long-term equity option series (“LEAPS”)³⁹ that expire from twelve to thirty-nine from the time they are listed.

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

³⁶ 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.

³⁷ See Supplementary .03 to Options 4, Section 5.

³⁸ See Supplementary .04 to Options 4, Section 5.

³⁹ See Options 4, Section 8.

be the same as the strike price intervals for the Short Term Option.⁴⁰ 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 \$150.⁴¹ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,⁴² the \$0.50 Strike Program,⁴³ the \$2.50 Strike Price Program,⁴⁴ and the \$5 Strike Program.⁴⁵ 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 Bitcoin Trusts is less than \$3.00 the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10⁴⁶ consistent with the minimum increments for options on other ETFs listed on the Exchange. Any and all new series of options on the Bitcoin 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.

⁴⁰ See Supplementary Material .03(e) to Options 4, Section 5.

⁴¹ Id.

⁴² See Supplementary Material .01 to Options 4, Section 5.

⁴³ See Supplementary Material .05 to Options 4, Section 5.

⁴⁴ See Supplementary Material .02 to Options 4, Section 5.

⁴⁵ See Supplementary Material .06 to Options 4, Section 5.

⁴⁶ 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.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options the Bitcoin Trusts that it applies to the Exchange's other options products.⁴⁷ ISE's market surveillance staff would have access to the surveillances conducted by Nasdaq⁴⁸ with respect to the Bitcoin Trusts and would review activity in the underlying Bitcoin Trusts when conducting surveillances for market abuse or manipulation in the options on the Bitcoin 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.⁴⁹

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to

⁴⁷ 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).

⁴⁸ The Nasdaq Stock Market LLC is an affiliated market of ISE.

⁴⁹ 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.

options on the Bitcoin Trusts. Also, the Exchange represents that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including the proposed options on the Bitcoin Trusts. The underlying shares of spot bitcoin ETPs, including the Bitcoin Trusts, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in the orders approving proposals of several exchanges to list and trade shares of spot bitcoin-based exchange-traded products:⁵⁰

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.⁵¹

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].”⁵² In light of surveillance measures related to both options and futures as well as

⁵⁰ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, 3009 (January 17, 2024) (SR-NYSEArca-2021-90; SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (“Bitcoin ETP Approval Order”).

⁵¹ Id.

⁵² Id.

the underlying Bitcoin Trusts,⁵³ the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin 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 Bitcoin 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 Bitcoin Trust will be manageable.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵⁵ 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)⁵⁶ requirement that the rules

⁵³ Id.

⁵⁴ 15 U.S.C. 78f(b).

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78(f)(b)(5).

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 Bitcoin 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 Bitcoin Trusts will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Trust, including cost efficiencies and increased hedging strategies. The Exchange believes that offering options on the Bitcoin 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 Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of options on the Bitcoin Trusts will provide investors with the ability to transact in such options in a listed 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,⁵⁷ which, as described above, are trusts structured in substantially the same manner as Bitcoin Trusts and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Unit options it currently lists for trading.

⁵⁷ See Options 4, Section 3(h)(iv).

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on the Bitcoin 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 Bitcoin Trust is characterized by a substantial number of shares that are widely held and actively traded. Options on the Bitcoin 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 Bitcoin 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 Bitcoin Trusts satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all ETFs and ETPs, including ETPs that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Bitcoin Trust is characterized by a substantial number of shares that are widely held and actively traded. Options on the Bitcoin 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 Bitcoin Trusts in the same manner.

The proposed position and exercise limit for options on the Bitcoin 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 Bitcoin Trusts' market capitalization, average daily volume, number of beneficial holders, and high number of outstanding shares.⁵⁸ The proposed position and exercise limits are consistent with the Act as they address concerns related to manipulation and protection of investors because the position and exercise limits are extremely conservative and more than appropriate given the Bitcoin Trusts are actively traded.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options the Bitcoin Trusts that it applies to the Exchange's other options products.⁵⁹ ISE's market surveillance staff would have access to the surveillances conducted by Nasdaq⁶⁰ with respect to the Bitcoin Trusts and would review activity in the underlying Bitcoin Trusts when conducting surveillances for market abuse or manipulation in the options on the

⁵⁸ The Exchange notes that IBIT-- which has been approved for options trading-- represents a larger percentage of the bitcoin market than all proposed Bitcoin Trusts. As noted herein, the Bitcoin Trusts collectively represent approximately 1.51% of the bitcoin market. By comparison, IBIT options have an approved position limit of 25,000 contracts per side, which represents 4% of total underlying spot BTC liquidity, and IBIT is the most liquid spot Bitcoin ETF.

⁵⁹ 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).

⁶⁰ The Nasdaq Stock Market LLC is an affiliated market of ISE.

Bitcoin 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. ISE would be able to obtain information regarding trading and shares of the Bitcoin Trusts from their primary listing market, and from other markets that trade shares of the Bitcoin Trusts, through ISG. 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.⁶¹

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on the Bitcoin Trusts. Also, the Exchange represents that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including the proposed options on the Bitcoin Trusts. The underlying shares of spot bitcoin ETPs, including the Bitcoin Trusts, are also subject to safeguards related to

⁶¹ 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.

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.⁶²

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].”⁶³ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Trusts,⁶⁴ the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin 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

⁶² 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).

⁶³ Id.

⁶⁴ Id.

that may result from the introduction of options on the Bitcoin 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 Bitcoin Trusts 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.

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 Bitcoin Trusts would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them. Additionally, options on the Bitcoin 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 Bitcoin 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 Bitcoin 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 Bitcoin 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 Bitcoin Trusts, holds bitcoin.⁶⁵ Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin Trusts. The Exchange notes that listing and trading options on Bitcoin 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 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 Bitcoin 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 Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

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

No written comments were either solicited or received.

⁶⁵ See supra note 3.

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

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 Act⁶⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶⁷

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

IV. Solicitation of Comments

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

⁶⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

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-ISE-2024-54 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-2024-54. 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-2024-54 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.⁶⁸

Sherry R. Haywood,

Assistant Secretary.

⁶⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq ISE, LLC Rules

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Options Rules

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Options 4 Options Listing Rules

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Section 3. Criteria for Underlying Securities

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(h) Securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that are traded on a national securities exchange and are defined as an “NMS” stock under Rule 600 of Regulation NMS, and that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments) or (ii) represent interests in a trust 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 Bitcoin Trust, or the Fidelity Wise Origin Bitcoin Fund, or the ARK21Shares Bitcoin ETF, or the Grayscale Bitcoin Trust (BTC), or the Grayscale Bitcoin Mini Trust BTC, or the Bitwise Bitcoin ETF 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"); provided that:

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Options 9 Business Conduct

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Section 13. Position Limits

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Supplementary Material to Options 9, Section 13

.01 The position limits applicable to option contracts on the securities listed in the chart below are as follows:

Security Underlying Option	Position Limit
SPDR Dow Jones® Industrial Average ETF Trust (DIA)	300,000 contracts
SPDR® S&P 500® ETF Trust (SPY)	3,600,000 contracts
iShares® Russell 2000® ETF (IWM)	1,000,000 contracts
INVESCO QQQ Trust SM , Series 1 (QQQ)	1,800,000 contracts
iShares MSCI Emerging Markets ETF (EEM)	1,000,000 contracts
iShares China Large-Cap ETF (FXI)	1,000,000 contracts
iShares MSCI EAFE ETF (EFA)	1,000,000 contracts
iShares MSCI Brazil Capped ETF (EWZ)	500,000 contracts
iShares 20+ Year Treasury Bond Fund ETF (TLT)	500,000 contracts

iShares MSCI Japan ETF (EWJ)	500,000 contracts
iShares iBoxx High Yield Corporate Bond Fund (HYG)	500,000 contracts
Financial Select Sector SPDR Fund (XLF)	500,000 contracts
iShares iBoxx \$ Investment Grade Corporate Bond ETF (“LQD”)	500,000 contracts
VanEck Vectors Gold Miners ETF (“GDX”)	500,000 contracts
iShares Bitcoin Trust	25,000 contracts
<u>Fidelity Wise Origin Bitcoin Fund</u>	<u>25,000 contracts</u>
<u>ARK 21Shares Bitcoin ETF</u>	<u>25,000 contracts</u>
<u>Grayscale Bitcoin Trust (BTC)</u>	<u>25,000 contracts</u>
<u>Grayscale Bitcoin Mini Trust BTC</u>	<u>25,000 contracts</u>
<u>Bitwise Bitcoin ETF</u>	<u>25,000 contracts</u>

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Section 15. Exercise Limits

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Supplementary Material to Option 9, Section 15

.01 The exercise limits applicable to option contracts on the securities listed in the chart below is as follows:

Security Underlying Option	Position Limit
SPDR Dow Jones® Industrial Average ETF Trust (DIA)	300,000 contracts
SPDR® S&P 500® ETF Trust (SPY)	3,600,000 contracts
iShares® Russell 2000® ETF (IWM)	1,000,000 contracts
INVESCO QQQTrust SM , Series 1 (QQQ)	1,800,000 contracts
iShares MSCI Emerging Markets ETF (EEM)	1,000,000 contracts

iShares China Large-Cap ETF (FXI)	1,000,000 contracts
iShares MSCI EAFE ETF (EFA)	1,000,000 contracts
iShares MSCI Brazil Capped ETF (EWZ)	500,000 contracts
iShares 20+ Year Treasury Bond Fund ETF (TLT)	500,000 contracts
iShares MSCI Japan ETF (EWJ)	500,000 contracts
iShares iBoxx High Yield Corporate Bond Fund (HYG)	500,000 contracts
Financial Select Sector SPDR Fund (XLF)	500,000 contracts
iShares iBoxx \$ Investment Grade Corporate Bond ETF (“LQD”)	500,000 contracts
VanEck Vectors Gold Miners ETF (“GDX”)	500,000 contracts
iShares Bitcoin Trust	25,000 contracts
<u>Fidelity Wise Origin Bitcoin Fund</u>	<u>25,000 contracts</u>
<u>ARK 21Shares Bitcoin ETF</u>	<u>25,000 contracts</u>
<u>Grayscale Bitcoin Trust (BTC)</u>	<u>25,000 contracts</u>
<u>Grayscale Bitcoin Mini Trust BTC</u>	<u>25,000 contracts</u>
<u>Bitwise Bitcoin ETF</u>	<u>25,000 contracts</u>

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