

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101387; File No. SR–CBOE–2024–035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; 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

October 18, 2024.

On August 19, 2024, Cboe Exchange, Inc. (“Cboe” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade options on the Fidelity Wise Origin Bitcoin Fund, the ARK21Shares Bitcoin ETF, the Invesco Galaxy Bitcoin ETF, the Franklin Bitcoin ETF, the VanEck Bitcoin Trust, the WisdomTree Bitcoin Fund, the Grayscale Bitcoin Trust BTC, the Bitwise Bitcoin ETF, the iShares Bitcoin Trust ETF, and the Valkyrie Bitcoin Fund.³ The proposed rule change was published for comment in the **Federal Register** on September 4, 2024.⁴ On September 27, 2024, the Exchange filed Amendment No. 1 to the proposed rule change. On September 30, 2024, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposal, which supersedes and replaces the original proposal in its entirety.⁵ On October 10, 2024, the

Exchange filed Amendment No. 3 to the proposal.⁶ The Commission received no comments regarding the proposal. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

I. The Exchange’s Description of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Exchange filed with the Commission a proposal to list and trade options on the Fidelity Wise Origin Bitcoin Fund and the ARK 21Shares Bitcoin ETF. The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also available on the Exchange’s website https://www.cboe.com/us/options/regulation/rule_filings/, at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Rule 4.3 regarding the criteria for

underlying securities. Specifically, the Exchange proposes to amend Rule 4.3, Interpretation and Policy .06(a)(4) to allow the Exchange to list and trade options on Units⁷ that represent interests in the Fidelity Wise Origin Bitcoin Fund (the “Fidelity Fund”) and the ARK 21Shares Bitcoin ETF (the “ARK 21 Fund”) and, with the Fidelity Fund, the “Bitcoin Funds”⁸, designating them as “Units” deemed appropriate for options trading on the Exchange. Current Rule 4.3, Interpretation and Policy .06 provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Units that represent certain types of interests,⁹ including interests in certain

⁷ Rule 1.1 defines a “Unit” (which may also be referred to as an ETF) as a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3.

⁸ 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; SR–CboeBZX–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”).

⁹ See Rule 4.3, Interpretation and Policy .06(a), which permits options trading on Units that represent (1) 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 indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase 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 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); (2) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (“Currency Trust Shares”); (3) 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 Units”); (4) interests in the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the Aberdeen Standard Physical Silver Trust, the Aberdeen Standard Physical Gold Trust, the Aberdeen Standard Physical Palladium Trust, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the trusts underlying the proposed options. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR–NYSEARCA–2021–90; SR–NYSEARCA–2023–44; SR–NYSEARCA–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023–028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SR–CboeBZX–2023–044; SR–CboeBZX–2023–072) (“Bitcoin ETP Order”).

⁴ See Securities Exchange Act Release No. 100861 (Aug. 28, 2024), 89 FR 71982.

⁵ Amendment No. 2 narrows the scope of the proposal to the Fidelity Wise Origin Bitcoin Fund and the ARK 21Shares Bitcoin ETF; proposes new position and exercise limits for options on the funds and provides justification and analysis for the proposed position and exercise limits; provides additional discussion of surveillance procedures that will apply to the proposed options; and eliminates references to the applicability of specified Interpretations and Policies in Exchange Rule 8.30.

⁶ Amendment No. 3 narrows the scope of the proposal by providing that options on the Fidelity Wise Origin Bitcoin Fund and the ARK 21Shares Bitcoin ETF will not be available for FLEX trading. FLEX Options are flexible exchange options. A FLEX Option on an equity security may be referred to as a “FLEX Equity Option,” and a FLEX Option on an index may be referred to as a “FLEX Index Option.” See Exchange Rule 1.1 The Exchange may authorize for trading a FLEX Option class on any equity security or index if it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Exchange Rules 4.3 and 4.10, respectively, even if the Exchange does not list that non-FLEX Option class for trading. See Exchange Rule 4.20. There are no position limits for FLEX Equity Options, other than as set forth in Exchange Rules 8.35(c)(1)(B) and (d). See Exchange Rule 8.35(c)(1)(A). Amendment Nos. 2 and 3 are available on the Exchange’s website at https://www.cboe.com/us/options/regulation/rule_filings/.

specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Bitcoin Funds are Bitcoin-backed commodity ETFs structured as trusts. Similar to any Unit currently deemed appropriate for options trading under Rule 4.3, Interpretation and Policy .06, the investment objective of each Bitcoin Fund 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 Fund'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.¹⁰ The Bitcoin Funds 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 Funds 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 Funds hold Bitcoin (which is also deemed a commodity).

The Exchange believes each Bitcoin Fund satisfies the Exchange's initial listing standards for Units on which the Exchange may list options. Specifically, each Bitcoin Fund satisfies the initial listing standards set forth in Rule 4.3,

¹⁰ Aberdeen Standard Physical Platinum Trust, the Sprott Physical Gold Trust or the Goldman Sachs Physical Gold ETF; or (5) an interest in a registered investment company ("Investment Company") organized as an open-end management investment 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").

¹⁰ The trust may include minimal cash.

Interpretation and Policy .06(b), as is the case for other Units on which the Exchange lists options (including trusts that hold commodities). Rule 4.3, Interpretation and Policy .06 requires that Units must either (1) meet the criteria and standards set forth in Rule 4.3, Interpretation and Policy .01(a),¹¹ or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets 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, as provided in the respective prospectus. Each Bitcoin Fund satisfies Rule 4.3, Interpretation and Policy .06(b)(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 Fund satisfies the criteria and guidelines set forth in Rule 4.3, Interpretation and Policy .01. Pursuant to Rule 4.3(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.¹² Each Bitcoin Fund is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.¹³ The

¹¹ Rule 4.3, Interpretation and Policy .01 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

¹² The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 4.3, Interpretation and Policy .01, subject to exceptions.

¹³ 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

Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of August 7, 2024, the Bitcoin Funds had the following number of shares outstanding:

Bitcoin Fund	Shares outstanding
Fidelity Fund	201,100,100
ARK 21 Fund	45,495,000

Each Bitcoin Fund 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 Rule 4.3, Interpretation and Policy .01(a)(1). The Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of the Bitcoin Funds as of the specified dates:

Bitcoin Fund	Beneficial holders	Date
Fidelity Fund	279,656	6/27/2024
ARK 21 Fund	69,425	6/26/2024

As this table shows, each Bitcoin Fund has 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 Rule 4.3, Interpretation and Policy .01(a)(2). Therefore, the Exchange believes the shares of each Bitcoin Fund are widely held.¹⁴

¹⁴ options). See 17 CFR 242.600(b)(64) (definition of "NMS security") and (65) (definition of "NMS stock").

¹⁴ The Exchange continues to believe assets under management ("AUM"), rather than shares outstanding and number of holders, is a better measure of investable capacity of ETFs and a more appropriate figure for determining position and exercise limits of ETFs and looks forward to further discussions with the Commission staff on this topic.

The Exchange also believes the shares of each Bitcoin Fund are actively traded. 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 Fund was as follows:

Bitcoin Fund	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

As demonstrated above, despite the fact that the Bitcoin Funds had been trading for approximately seven months¹⁵ 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 Rule 4.3, Interpretation and Policy .01.

Additionally, as of August 7, 2024, the trading volume for each Bitcoin Fund was in the top 5% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Bitcoin Fund is characterized as having shares that are actively traded.

Options on the Bitcoin Funds will be subject to the Exchange’s continued listing standards set forth in Rule 4.4, Interpretation and Policy .06 for Units deemed appropriate for options trading pursuant to Rule 4.3, Interpretation and Policy .06. Specifically, Rule 4.4, Interpretation and Policy .06 provides that Units that were initially approved for options trading pursuant to Rule 4.3, Interpretation and Policy .06 shall be deemed not 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 that such Units, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market. Additionally, options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Units approved for trading under Rule 4.3, Interpretation and Policy .06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Rule 4.4, Interpretation and Policy .01; (2) in the case of options covering Units approved for trading under Rule 4.3 Interpretation and Policy .06(b)(2) (as is the case for the Bitcoin Funds), following the initial twelve-month period beginning upon the

commencement of trading in the Units on a national securities exchange and are defined as an NMS stock, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Units are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.¹⁶ Consistent with current Rule 4.5, which governs the opening of options series on a specific underlying security (including Units), the Exchange will open at least one expiration month for options on each Bitcoin Fund¹⁷ at the

¹⁶ See Rule 4.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (“OCC”); and Equity Options Product Specifications January 3, 2024), available at Equity Options Specifications (cboe.com); see also OCC Rules, Chapters 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).

¹⁷ See Rule 4.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 4.3. Monthly listings expire the third Friday of the month. The term “expiration date” (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. See OCC By-Laws Article I, Section 1. Pursuant to Rule 4.5(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of

commencement of trading on the Exchange and may also list series of options on a Bitcoin Fund for trading on a weekly,¹⁸ monthly,¹⁹ or quarterly²⁰ basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from 12 to 180 months from the time they are listed.

Pursuant to Rule 4.5, Interpretation and Policy .07, which governs strike prices of series of options on Units, the interval of strikes prices for series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.²¹ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,²² the \$0.50 Strike Program,²³ the \$2.50 Strike Price Program,²⁴ and the \$5 Strike Program.²⁵ Pursuant to Rule 5.4, where the price of a series of a Bitcoin Fund option 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 \$0.10.²⁶ Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum

options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

¹⁸ See Rule 4.5(d).

¹⁹ See Rule 4.5(g).

²⁰ See Rule 4.5(e).

²¹ The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rules 4.5(d), (e), and (g) specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

²² See Rule 4.5, Interpretation and Policy .01(a).

²³ See Rule 4.5, Interpretation and Policy .01(b).

²⁴ See Rule 4.5, Interpretation and Policy .04.

²⁵ See Rule 4.5, Interpretation and Policy .01(f).

²⁶ If options on a Bitcoin Fund are eligible to participate in the Penny Interval Program, the minimum increment will be \$0.01 for series with a price below \$3.00 and \$0.05 for series with a price at or above \$3.00. See 5.4(d) (which describes the requirements for the Penny Interval Program).

¹⁵ The Bitcoin Funds began trading on January 11, 2024.

increments set forth in Rules 4.5 and 5.4, as applicable.

Rule 4.20 currently permits the Exchange to authorize for trading a FLEX option class on any equity security if it may authorize for a trading a non-FLEX option class on that equity security pursuant to Rule 4.3. The proposed rule change amends Rule 4.20 to exclude the Bitcoin Funds from this provision.²⁷

Bitcoin Fund options will trade in the same manner as any other Unit options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments,

margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange, including the precious-metal backed commodity Units already deemed appropriate for options trading on the Exchange pursuant to current Rule 4.3, Interpretation and Policy .06(a)(4).

The Exchange also proposes to amend Rules 8.30 and 8.42. Specifically, the Exchange proposes to adopt Rule 8.30, Interpretation and Policy .10 to provide a position limit of 25,000 same side option contracts for each Bitcoin Fund option. Additionally, pursuant to the

proposed change to Rule 8.42, Interpretation and Policy .02, the exercise limits for options on each Bitcoin Fund will be equivalent to this proposed position limit.²⁸

The Exchange determined these proposed position and exercise limits considering, among other things, the approximate six-month average daily volume (“ADV”) and outstanding shares of each underlying Bitcoin Fund (which as discussed above demonstrate that each Bitcoin Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of August 7, 2024):

Underlying Bitcoin Fund	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

The Exchange then compared the number of outstanding shares of the Bitcoin Funds to those of other ETFs.²⁹ The following table provides 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 the Bitcoin Fund options:³⁰

Underlying Bitcoin Fund	Average Limit of other ETF options (contracts)	Proposed limit (contracts)
Fidelity Fund	188,110	25,000
ARK 21 Fund	108,696	25,000

The Exchange considered current position and exercise limits of options

on ETFs with outstanding shares comparable to those of each Bitcoin 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, the Bitcoin Funds are actively held and widely traded: (1) each Bitcoin Fund (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 Rule 4.3, Interpretation and Policy .01(a)(1); (2) each Bitcoin 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 Rule 4.3, Interpretation and Policy .01(a)(2); and (3) each Bitcoin 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 Rule 4.3, Interpretation and Policy .01.

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 Fund	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 demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin Fund options and exercised

all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Bitcoin Fund.

Cboe Options Rule 8.30, Interpretation and Policy .02, provides two methods of qualifying for a position limit tier above 25,000 option contracts.

²⁷ See Amendment No. 3 at 3.

²⁸ The Exchange also proposes to amend the last sentence of Rule 8.30 by deleting the references to Interpretations and Policies .02 and .04. Therefore, the rule as proposed would state that limits shall be determined in the manner described in the Interpretations and Policies in that Rule. The Exchange believes all the Interpretations and

Policies to Rule 8.30 are relevant for determining position limits pursuant to Rule 8.30, not just the two currently specified ones.

²⁹ Over 80% of the ETFs used for comparison have a limit of at least 200,000, and more than half have 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.

³⁰ Nearly 80% of the ETFs used for comparison have 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 first method is based on six-month trading volume in the underlying security, and the second method is based on slightly lower six-month trading volume *and* number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on

trading volume and number of shares outstanding would be required to have the minimum number of outstanding shares as shown in middle column of the table below. The table, which provides 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 Bitcoin Funds.³¹

	Position/exercise limit (in equivalent shares)	Minimum outstanding shares	Percentage of outstanding shares
2,500,000		6,300,000	40.0
5,000,000		40,000,000	12.5
7,500,000		120,000,000	6.3
20,000,000		240,000,000	8.3
25,000,000		300,000,000	8.3

The equivalent shares represented by the proposed position and exercise limits for each Bitcoin Fund as a percentage of outstanding shares of the underlying Bitcoin Fund 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.³²

Further, the proposed position and exercise limits for each Bitcoin Fund option are significantly below the limits that would otherwise apply pursuant to current Rule 8.30. 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 market capitalization, average daily volume, and high number of outstanding shares of the Bitcoin Funds.

All of the above information demonstrates that the proposed position and exercise limits for the Bitcoin Fund options are more than reasonable and appropriate. The trading volume, ADV, and outstanding shares of each Bitcoin Fund demonstrate that these funds are actively traded and widely held, and proposed position and exercise limits are well below those of other ETFs with similar market characteristics. The

proposed position and exercise limits are the lowest position and exercise limits available for equity options in the industry, are extremely conservative, and are more than appropriate given each Bitcoin Fund’s market capitalization, ADV, and high number of outstanding shares.

Today, the Exchange has an adequate surveillance program in place for options. Cboe intends to apply those same program procedures to options on the Bitcoin Funds that it applies to the Exchange’s other options products.³³ Cboe’s market surveillance staff would have access to the surveillances conducted by Cboe BZX Exchange, Inc.³⁴ with respect to the Bitcoin Funds and would review activity in the underlying Bitcoin Funds when conducting surveillances for market abuse or manipulation in the options on the Bitcoin Funds. Additionally, the Exchange 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, Cboe has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) for certain market surveillance,

investigation and examinations functions. Pursuant to a multi-party 17d–2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.³⁵

The underlying shares of spot bitcoin exchange-traded products (“ETPs”), including the Bitcoin Funds, 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 ETPs, “[e]ach 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.³⁶ 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

³¹ In the “Minimum Shares Outstanding” column in the chart below, 6,300,000 shares 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 Rule 4.5, Interpretation and Policy .01. 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 represents [sic] an even larger percentage of outstanding shares of the underlying ETF than set forth above.

³² 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.

³³ The surveillance program includes surveillance patterns for price and volume movements as well as patterns for potential manipulation (e.g., spoofing and marking the close).

³⁴ Cboe BZX Exchange, Inc. is an affiliated market of the Exchange.

³⁵ Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (“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.

³⁶ See Bitcoin ETP Approval Order.

“expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].”³⁷ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,³⁸ 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 Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on Bitcoin Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to two classes, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin Fund options will be manageable.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (“OTC”)

options market,³⁹ but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Units that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any Unit options, including Units that hold commodities (*i.e.*, precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴¹ requirements that the rules of an exchange be 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)⁴² 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 Funds 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 Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options 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 Bitcoin Fund options 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,⁴³ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds 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 Funds 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 Fund is characterized by a substantial number

³⁷ See Bitcoin ETP Approval Order, 89 FR at 3010–11.

³⁸ See Securities Exchange Act Release No. 99290 (January 8, 2024), 89 FR 2338, 2343, 2347–2348 (January 12, 2024) (SR–CboeBZX–2023–044) Notice of Filing of Amendment No. 3 to a Proposed Rule Change to List and Trade Shares of the Fidelity Wise Origin Bitcoin Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); and 99288 (January 8, 2024), 89 FR 2387, 2392, 2399–2400 (January 12, 2024) (SR–CboeBZX–2023–028) (Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares). See also 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; SR–CboeBZX–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”).

³⁹ The Exchange understands from customers that investors have historically transacted in options on Units in the OTC options market if such options were not available for trading in a listed environment.

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² *Id.*

⁴³ See Rule 4.3, Interpretation and Policy .06(a)(4).

of shares that are widely held and actively traded. Bitcoin Fund options 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 Funds in the same manner.

The Exchange believes the proposed rule change to exclude the Bitcoin Funds from being eligible for trading as FLEX options is consistent with the Act, because it will permit the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position limits for ETF options.⁴⁴

The Exchange believes the proposed position and exercise limits are designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as they are designed to address potential manipulative schemes and adverse market impacts surrounding the

use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits in this Amendment No. 2 for the Bitcoin Fund options are 25,000 contracts, which is currently the lowest limit applicable to any equity options (including ETF options).⁴⁵ The Exchange believes the proposed position and exercise limits are extremely conservative for each Bitcoin Fund option given the trading volume and outstanding shares for each. The information above demonstrates that the average position and exercise limits of options on ETFs with comparable outstanding shares and trading volume to those of the Bitcoin Funds are significantly higher than the proposed position and exercise limits for Bitcoin Fund options. Therefore, the proposed position and exercise limits for the Bitcoin Fund options are conservative relative to options on ETFs with comparable market characteristics.

Further, given that the issuer of each Bitcoin Fund may create and redeem shares that represent an interest in

Bitcoin, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the Bitcoin market. As of August 27, 2024, the global supply of Bitcoin was 19,745,940, and the price of one Bitcoin was approximately \$59,466.82,⁴⁶ which equates to a market capitalization of approximately \$1.165 trillion. Consider the proposed position and exercise limit of 25,000 option contracts for each Bitcoin Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 of Fidelity Fund shares or ARK 21 Fund shares, as applicable (if that market participant exercised all its options). The following table shows the share price of each Bitcoin Fund on August 27, 2024, the value of 2,500,000 shares of the Bitcoin Fund at that price, and the approximate percentage of that value of the size of the Bitcoin market:

Bitcoin Fund	August 27, 2024 share price (\$)	Value of 2,500,000 shares of Bitcoin Fund (\$)	Percentage of bitcoin market
Fidelity Fund	54.33	135,825,000	0.01%
ARK 21 Fund	62.08	155,200,000	0.01%

Therefore, if a market participant with the maximum 25,000 same side contracts in either Fidelity Fund options or ARK 21 Fund options exercised all positions at one time, such an event would have no practical impact on the Bitcoin market.

The Exchange also believes the proposed limits are appropriate given position limits for Bitcoin futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 2,000 futures (for the initial spot month) on its Bitcoin futures contract.⁴⁷ On August 28, 2024, CME Aug 24 Bitcoin Futures settled at \$58,950. A position of 2,000 CME Bitcoin futures, therefore, would have a notional value of \$589,500,000. The following table shows the share price of each Bitcoin Fund on August 28, 2024 and the

approximate number of option contracts that equates to that notional value:

Bitcoin Fund	August 28, 2024 Share price (\$)	Number of option contracts
Fidelity Fund	51.47	114,532
ARK 21 Fund	58.83	100,203

The approximate number of option contracts for each Bitcoin Fund that equate to the notional value of CME Bitcoin futures is significantly higher than the proposed limit of 25,000 options contract for each Bitcoin Fund option. The fact that many options ultimately expire out-of-the-money and thus are not exercised for shares of the underlying, while the delta of a Bitcoin Future is 1, further demonstrates how

conservative the proposed limits of 25,000 options contracts are for the Bitcoin Fund options.

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).⁴⁸ 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.⁴⁹ If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess

⁴⁴ The Exchange will submit a separate rule filing that would permit the Exchange to authorize for trading FLEX options on the Bitcoin Funds (which filing may propose changes to existing FLEX option position limits for such options if appropriate). See Amendment No. 3 at 4.

⁴⁵ See Rule 8.30. The Exchange notes in the initial Rule Filing, the position and exercise limit for each Bitcoin Fund option would have been 25,000 contracts once the options began trading (pursuant to Rule 8.30, no Bitcoin Fund option would have

a higher position and exercise limit until the next time the Exchange conducted the review of limits). Therefore, this Amendment No. 2 is proposing to adopt the same or lower position and exercise limits as were practically proposed in the initial Rule Filing.

⁴⁶ See Blockchain.com | Charts—Total Circulating Bitcoin.

⁴⁷ 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.

⁴⁸ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

⁴⁹ *Id.*

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 Bitcoin Fund options.

The Exchange believes the proposed position and exercise limits in this Amendment No. 2 will have no material impact to the supply of Bitcoin. For example, consider again the proposed position limit of 25,000 option contracts for each Bitcoin Fund option. 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 Fund (if that market participant exercised all its options). As of August 7, 2024, the Bitcoin Funds had the number of shares outstanding set forth in the table below. The table below also sets forth the approximate number of market participants that could hold the maximum of 25,000 same side positions in each Bitcoin Fund that would equate to the number of shares outstanding of that Bitcoin Fund:

Bitcoin Fund	Shares outstanding	Number of market participants with 25,000 same side positions
Fidelity Fund	201,100,100	80
ARK 21 Fund	45,495,000	18

This means if 80 market participants had 25,000 same side positions in Fidelity Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 18 market participants had 25,000 same side positions in ARK 21 Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for either such event to occur; however, even if either such event did occur, the Exchange would not expect either Bitcoin Fund to be under stress

because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

As of August 7, 2024, the global supply of Bitcoin was approximately 19,736,528.⁵⁰ Based on the \$47.88 price of a Fidelity Fund share on August 7, 2024, a market participant could have redeemed one Bitcoin for approximately 1,149 Fidelity Fund shares. Another 22,677,270,672 Fidelity Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 9,070 market participants would have to simultaneously exercise 25,000 same side positions in Fidelity Fund options to receive shares of the Fidelity Fund holding the entire global supply of Bitcoin. Similarly, based on the \$54.68 price of an ARK 21 Fund share on August 7, 2024, a market participant could have redeemed one Bitcoin for approximately 1,006 ARK 21 Fund Shares. Another 19,855 ARK 21 Fund shares could be created before the supply of Bitcoin were exhausted. As a result, 7,941 market participants would have to simultaneously exercise 25,000 same side positions in ARK 21 Fund options to receive shares of the ARK 21 Fund holding the entire global supply of Bitcoin. Unlike the Bitcoin Funds, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Bitcoin Funds may create, redeem, or split shares in response to demand. 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.⁵¹ The supply of Bitcoin is larger than the available supply of most securities.⁵² Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Bitcoin Funds should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity

options in the industry) to protect the supply of Bitcoin.⁵³

The Exchange believes the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the Bitcoin Funds.⁵⁴ Position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. Position and exercise limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.⁵⁵ "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."⁵⁶ 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

⁵³ This would be even more unlikely with respect to the Bitcoin Funds for which the Exchange proposes lower position limits.

⁵⁴ The Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits. *See, e.g.,* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the "listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits and margin"). The Exchange notes when the Commission approved this filing, the position limits in Rule 8.30 were the same as they are today. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF ("GLD") and options on iShares Silver Trust ("SLV") are 250,000 contracts, or 10 times that proposed position and exercise limit for the Bitcoin Fund options.

⁵⁵ For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

⁵⁶ *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁵⁰ *See* Blockchain.com | Charts—Total Circulating Bitcoin (which also shows the price of one Bitcoin equal to \$55,033.47).

⁵¹ *See* Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53-54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

⁵² 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/>.

disruption of the options market itself, especially in illiquid options classes.”⁵⁷

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each Bitcoin Fund, 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 2140.⁵⁸ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin ETF to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, 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 Fund would impact the supply of Bitcoin.⁵⁹ 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 Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, given the significant size of the Bitcoin supply, the proposed position limits are more than sufficient to protect investors and the market.

Based on the above information demonstrating, among other things, that each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, the Exchange believes the proposed position and exercise limits are extremely conservative compared to those of ETF options with similar market characteristics. The proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying as well as the Bitcoin market.⁶⁰

⁵⁷ See *id.*

⁵⁸ See Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53–54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

⁵⁹ See Bitcoin ETP Approval Order.

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

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. As discussed above, the Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading Unit options, including Bitcoin Fund options.

Finally, the Exchange believes the proposed change to amend the last sentence of Rule 8.30 by deleting the references to Interpretations and Policies .02 and .04 is consistent with the Act and will perfect the mechanism of a free and open market, by clarifying and making more accurate the Exchange’s Rulebook.

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 the Bitcoin Funds will be equally available to all market participants who wish to trade such options and will trade generally in the same manner as other options. The Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange. Also, and as stated above, the Exchange already lists options on other commodity-based Units.⁶¹ Further, the Bitcoin Funds would need to satisfy the maintenance listing standards set forth in the Exchange Rules in the same manner as any other Unit for the Exchange to continue listing options on them.

The Exchange does not believe that the proposal to list and trade options on Bitcoin Funds 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 Bitcoin Fund options trading on the Exchange may make the

⁶¹ See Rule 4.3, Interpretation and Policy .06(a)(4).

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. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin Funds.⁶² The Exchange notes that listing and trading Bitcoin Fund options 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 Bitcoin Fund options 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.

Finally, the Exchange does not believe the proposed change to amend the last sentence of Rule 8.30 by deleting the references to Interpretations and Policies .02 and .04 will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The change is clarifying in nature, as the Exchange believes all the Interpretations and Policies to Rule 8.30 are relevant for determining position limits pursuant to Rule 8.30, not just the two currently specified ones, and therefore, the proposed change makes the Exchange’s Rulebook more accurate.

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

The Exchange neither solicited nor received written comments on the proposed rule change.

⁶² The Exchange notes the Commission recently approved a rule filing of another exchange to permit the listing and trading of options on the iShares Bitcoin Trust. See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03).

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁶³ and, in particular, the requirements of Section 6 of the Act.⁶⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶⁵ which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

A. Widely Held and Actively Traded

The Exchange's initial listing standards require, among other things, that the security underlying a listed option be "characterized by a substantial number of outstanding shares that are widely held and actively traded."⁶⁶ As described above, the Exchange states that, as of August 7, 2024, the Fidelity Fund had 201,100,100 shares outstanding and that, as of June 27, 2024, the Fidelity Fund had 279,656 beneficial holders.⁶⁷ The Exchange states that, as of August 7, 2024, the ARK 21 Fund had 45,495,000 shares outstanding and that, as of June 26, 2024, the ARK 21 Fund had 69,425 beneficial holders.⁶⁸ In addition, the Exchange states that, as of August 7, 2024, the Fidelity Fund had six-month total trading volume of 1,112,861,581 shares and, for the period from July 9, 2024, through August 7, 2024, 30-day average daily volume of 6,014,335 shares and 30-day average notional daily volume of \$250,354,755.⁶⁹ The Exchange states that, as of August 7, 2024, the ARK 21 Fund had six-month total trading volume of 297,360,739 shares and, for the period from July 9, 2024, through August 7, 2024, 30-day average daily volume of 1,893,335 shares and 30-day average notional daily volume of \$90,484,307.⁷⁰ The Exchange further states that, as of August 7, 2024, the trading volume for

both Bitcoin Funds was in the top 5% of all ETFs trading at that time.⁷¹ In addition, the Exchange states that, as of August 7, 2024, the Fidelity Fund had a market capitalization of \$14,217,013,188 and the ARK 21 Fund had a market capitalization of \$2,487,666,600.⁷²

The Commission has reviewed the Exchange's analysis and publicly available data regarding the Bitcoin Funds. Based on this review of information provided by the Exchange and publicly available information—including information regarding the number of shares outstanding and the number of beneficial holders for each Bitcoin Fund, the ADV of each Bitcoin Fund, and the market capitalization of each Bitcoin Fund—the Commission concludes that it is reasonable for the Exchange to determine that the Bitcoin Funds satisfy the requirement of Exchange Rule 4.3(a)(2) that the security underlying a listed option be widely held and actively traded.

B. Position and Exercise Limits

Position and exercise limits serve as a regulatory tool designed to deter manipulative schemes and adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise. Options position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market to benefit the options position.⁷³ In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid classes.⁷⁴ As the Commission has previously recognized, markets with active and deep trading interest, as well as with broad public ownership, are more difficult to manipulate or disrupt than less active and deep markets with smaller public floats.⁷⁵ The Commission also has recognized that position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading

volume of the underlying security.⁷⁶ At the same time, the Commission has recognized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.⁷⁷

The Exchange proposes a position limit of 25,000 contracts on the same side of the market for options on each Bitcoin Fund and an equivalent exercise limit.⁷⁸ In proposing these position and exercise limits, the Exchange considered, among other things, the approximate six-month ADV, outstanding shares, and market capitalization of each Bitcoin Fund.⁷⁹ The Exchange states that the proposed position and exercise limits of 25,000 contracts are significantly lower than the position and exercise limits of options on other ETFs with a similar number of outstanding shares.⁸⁰ In addition, the Exchange states that the number of shares represented by the proposed position and exercise limits were equal to approximately 1.2% of the outstanding shares of the Fidelity Fund and approximately 5.5% of the outstanding shares of the ARK 21 Fund.⁸¹ The Exchange further states that "[t]he proposed position and exercise limits are the lowest position and exercise limits available for equity options in the industry, are extremely conservative, and are more than appropriate given each Bitcoin Fund's market capitalization, ADV, and high number of outstanding share."⁸²

The Exchange also compared the size of the position and exercise limits to the market capitalization of the Bitcoin market, which, according to the Exchange, had a market capitalization of

⁶³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶⁴ 15 U.S.C. 78f.

⁶⁵ 15 U.S.C. 78f(b)(5).

⁶⁶ See Exchange Rule 4.3(a)(2).

⁶⁷ See Amendment No. 2 at 8 and 12.

⁶⁸ See *id.*

⁶⁹ See Amendment No. 2 at 8.

⁷⁰ See *id.*

⁷¹ See Amendment No. 2 at 9.

⁷² See *id.* at 12.

⁷³ See Securities Exchange Act Release No. 39489 (Dec. 24, 1997), 63 FR 276, 279 (Jan 5, 1998) (order approving File No. SR-Cboe-97-11) ("Position Limit Order").

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See, e.g., Securities Exchange Act Release Nos. 21907 (Mar. 29, 1985), 50 FR 13440, 13441 (Apr. 4, 1985) (order approving File Nos. SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1); and 40875 (Dec. 31, 1998), 64 FR 1842, 1843 (Jan. 12, 1999) (order approving File Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and Phlx-98-36).

⁷⁷ See *id.*

⁷⁸ See Amendment No. 2 and proposed Exchange Rules 8.30, Interpretation and Policy .10, and 8.42, Interpretation and Policy .02.

⁷⁹ See Amendment No. 2 at 13-14.

⁸⁰ The Exchange states that options on ETFs with outstanding shares similar to the Fidelity Fund had average position and exercise limits of 188,110 contracts, and that options on ETFs with outstanding shares similar to the ARK 21 Fund had average position and exercise limits of 108,696 contracts. See Amendment No. 2 at 13.

⁸¹ See Amendment No. 2 at 14 (using outstanding shares as of August 7, 2024).

⁸² Amendment No. 2 at 16.

\$1.165 trillion as of August 27, 2024.⁸³ The Exchange calculated that with a position limit of 25,000 contracts (2,500,000 shares of the underlying Fund), as of August 27, 2024, a market participant could hold a position in shares of the Fidelity Fund that represented 0.01% of the bitcoin market, and a position in ARK 21 Fund shares that represented 0.01% of the Bitcoin market, positions that the Exchange states “would have no practical impact on the Bitcoin market.”⁸⁴

The Exchange states that the proposed position and exercise limits also are appropriate given position limits for Bitcoin futures.⁸⁵ The Exchange states that the Chicago Mercantile Exchange (“CME”) establishes a position limit of 2,000 Bitcoin futures for the spot month and that, as of August 28, 2024, such a position would have had a notional value of \$589,500,000.⁸⁶ The Exchange states that, as of that date, 114,532 options on the Fidelity Fund, and 100,203 options on the ARK 21 Fund, would be the equivalent of the \$589,500,000 CME bitcoin futures notional value.⁸⁷ The Exchange states that the option contract equivalent numbers are significantly higher than the proposed position and exercise limit of 25,000 contracts.⁸⁸

In addition, the Exchange states that with a position limit of 25,000 contracts, 80 market participants, each with a position of 25,000 contracts, would have to exercise all of their Fidelity Fund options to place the Fidelity Fund shares under stress, and 18 market participants, each with a position of 25,000 contracts, would have exercised all of their ARK 21 Fund options to place the ARK 21 Fund shares under stress.⁸⁹ Based on the information provided, demonstrating, among other things, that each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, the Exchange believes the proposed position and exercise limits are extremely conservative compared to those of ETF options with similar market characteristics.⁹⁰ The Exchange states that the proposed position and exercise limits reasonably and appropriately

balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange further states that the proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying as well as the Bitcoin market.⁹¹

The Commission finds that the proposed position and exercise limits are consistent with the Act, and in particular, with the requirements in Section 6(b)(5) that the rules of a national securities exchange designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As discussed above, the Commission has recognized that position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security.⁹² In addition, the Commission has stated previously that rules regarding position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.⁹³ Based on its review of the data and analysis provided by the Exchange, the Commission concludes that the proposed position and exercise limits satisfy these objectives. Specifically, the Commission has considered and reviewed the Exchange’s analysis that, as of August 7, 2024, the proposed position and exercise limits of 25,000 contracts represented 1.2% of the outstanding shares of the Fidelity Fund and 5.5% of the outstanding shares of the ARK 21 Fund.⁹⁴ The Commission also has considered and reviewed the Exchange’s statement that with a position limit of 25,000 contracts, 80 market participants, each with a same side position of 25,000 contracts, would have to exercise all of their Fidelity Fund options to place the Fidelity Fund shares under stress, and 18 market participants, each with a same side position of 25,000 contracts, would have to exercise all of their ARK 21 Fund options to place the ARK 21 Fund

shares under stress.⁹⁵ Based on the Commission’s review of this information and analysis, the Commission concludes that the proposed position and exercise limits are designed to prevent investors from disrupting the market for the underlying securities by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security, and 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.

The proposal excludes the Bitcoin Fund options from FLEX trading.⁹⁶ Excluding Bitcoin Fund options from FLEX trading will allow the Commission to consider the listing of FLEX options on the Bitcoin Funds in the context of any separate proposal the Exchange files to list such options.

C. Surveillance

As described more fully above, the Exchange states that it will apply its existing options surveillance program procedures to options on the Bitcoin Funds.⁹⁷ The Exchange states that its market surveillance staff would have access to the surveillances conducted by Cboe BZX Exchange, Inc.⁹⁸ with respect to the Bitcoin Funds and would review activity in the underlying Bitcoin Funds when conducting surveillances for market abuse or manipulation in the options on the Bitcoin Funds.⁹⁹ Additionally, the Exchange states that it is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement, and that ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.¹⁰⁰ CME also is a member of ISG. In

⁹⁵ The Exchange bases this calculation on the number of Fidelity Fund and ARK 21 Fund shares outstanding as of August 7, 2024. See Amendment No. 2 at 25–26.

⁹⁶ The Exchange states that excluding Bitcoin Fund options from FLEX trading will allow the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position limits for ETF options. See Amendment No. 3 at 4.

⁹⁷ The surveillance program includes surveillance patterns for price and volume movements as well as patterns for potential manipulation (e.g., spoofing and marking the close). See Amendment No. 2 at 16.

⁹⁸ Cboe BZX Exchange, Inc. is an affiliated market of the Exchange. See Amendment No. 2 at 17, footnote 28.

⁹⁹ See Amendment No. 2 at 17.

¹⁰⁰ See *id.*

⁸³ See Amendment No. 2 at 23.

⁸⁴ *Id.*

⁸⁵ See *id.*

⁸⁶ See *id.* at 23–24.

⁸⁷ See *id.* at 24.

⁸⁸ See *id.*

⁸⁹ The Exchange bases this calculation on the number of Fidelity Fund and ARK 21 Fund shares outstanding as of August 7, 2024. See Amendment No. 2 at 26.

⁹⁰ See *id.* at 34.

⁹¹ See *id.* at 29–30 (citing the Position Limit Order, *supra* note 70).

⁹² See *supra* note 73 and accompanying text.

⁹³ See Securities Exchange Act Release No. 57352 (Feb. 19, 2008), 73 FR 10076, 10080 (Feb. 25, 2008) (order approving File No. SR–Cboe–2008–07).

⁹⁴ See Amendment No. 2 at 14.

approving the Bitcoin ETPs, the Commission concluded that:

fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is highly correlated to spot bitcoin—can reasonably be expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of [the Bitcoin ETPs].¹⁰¹

Together, these surveillance procedures should allow the Exchange to investigate suspected manipulations or other trading abuses in options on the Bitcoin Funds.

D. Retail Customers

Existing rules governing broker-dealer conduct when dealing with retail customers will apply to the proposed Bitcoin Fund options. For example, the Exchange's rules require its members to "exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation."¹⁰² In fulfilling this obligation, the member must consider, among other things, a customer's investment objectives; employment status; estimated annual income; estimated net worth; and investment experience and knowledge.¹⁰³ Further, FINRA's heightened suitability requirements for options trading accounts require that a person recommending an opening position in any option contract have "a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract."¹⁰⁴

E. Additional Change

The Exchange proposes to amend Exchange Rule 8.30 to delete references to Interpretation and Policies .02 and .04. The Exchange states that the proposed change is designed to clarify the rule by indicating that all of the Interpretations and Policies to Exchange Rule 8.30 are relevant for determining position limits pursuant to Exchange Rule 8.30, not just the two currently specified provisions. The Commission agrees that this change will help to

clarify and ensure the accuracy of Exchange Rule 8.30 by indicating that all of the Interpretations and Policies to Exchange Rule 8.30, not only Interpretation and Policies .02 and .04, apply when determining position limits.

IV. Solicitation of Comments on Amendment Nos. 2 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-035 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-CBOE-2024-035. 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-CBOE-2024-035 and should be submitted on or before November 14, 2024.

V. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment Nos. 2 and 3 prior to the 30th day after the date of publication of notice of Amendment Nos. 2 and 3 in the **Federal Register**. Amendment No. 2 narrows the scope of the proposal to the Fidelity Fund and the ARK 21 Fund; proposes new position and exercise limits for options on the Bitcoin Funds and provides justification and analysis for the proposed position and exercise limits; provides additional discussion of surveillance procedures that will apply to the proposed options; and eliminates references to the applicability of specified Interpretations and Policies in Exchange Rule 8.30. As described above, in Amendment No. 2 the Exchange provided data and analysis supporting the proposed position and exercise limits and stated, among other things, that the proposed position and exercise limits would represent 1.2% of the outstanding shares of the Fidelity Fund and 5.5% of the outstanding shares of the ARK 21 Fund.¹⁰⁵ The Commission concludes that the proposed position and exercise limits are designed to minimize the potential for manipulations or disruptions of the underlying market.¹⁰⁶ Amendment No. 2 also describes in greater detail the surveillance procedures that will apply to the proposed Bitcoin Fund options. The additional information regarding these procedures assists the Commission in evaluating the proposal and determining that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, as discussed above. The proposed change to Exchange Rule 8.30 to delete references to specified Interpretations and Policies, and to indicate that all of the Interpretations and Policies in

¹⁰⁵ See Amendment No. 2.

¹⁰⁶ The Commission recognizes that position limits should not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market. See, e.g., Securities Exchange Act Release Nos. 21907 (Mar. 29, 1985), 50 FR 13440 (Apr. 4, 1985) (order approving File Nos. SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1); 40875 (Dec. 31, 1998), 64 FR 1842, 1843 (Jan. 12, 1999) (order approving File Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and Phlx-98-36). The Commission finds that the proposed position and exercise limits are consistent with these objectives.

¹⁰¹ See Bitcoin ETP Order, 89 FR at 3010-11.

¹⁰² See Exchange Rule 9.1(b).

¹⁰³ See *id.*

¹⁰⁴ See FINRA Rule 2360(b)(19).

Exchange Rule 8.30 apply when determining position limits, is designed to clarify and make the Exchange's rule more accurate. Amendment No. 3 revises the proposal to exclude Bitcoin Fund options from FLEX trading. Excluding Bitcoin Fund options from FLEX trading will allow the Commission to consider the listing of FLEX options on the Bitcoin Funds in the context of any separate proposal the Exchange files to list such options. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰⁷ to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.¹⁰⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰⁹ that the proposed rule change (SR-CBOE-2024-035), as modified by Amendment Nos. 2 and 3, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-24641 Filed 10-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101386; File No. SR-NYSEAMER-2024-49]

Self-Regulatory Organizations; NYSE American LLC; 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

October 18, 2024.

On August 15, 2024, NYSE American LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and

Rule 19b-4 thereunder,² a proposed rule change to list and trade options on the Fidelity Wise Origin Bitcoin Fund (the "Fidelity Fund"), the ARK21Shares Bitcoin ETF (the "ARK 21Shares Fund"), the Invesco Galaxy Bitcoin ETF (the "Invesco Fund"), the Franklin Bitcoin ETF (the "Franklin Fund"), the VanEck Bitcoin Trust (the "VanEck Fund"), the WisdomTree Bitcoin Fund (the "WisdomTree Fund"), the Grayscale Bitcoin Trust BTC (the "Grayscale Fund"), the Grayscale Bitcoin Mini Trust (the "Grayscale Mini Fund"), the Bitwise Bitcoin ETF (the "Bitwise Fund"), the iShares Bitcoin Trust ETF (the "iShares Fund"), and the Valkyrie Bitcoin Fund.³ The proposed rule change was published for comment in the **Federal Register** on September 4, 2024.⁴ On September 9, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original proposal in its entirety. On October 7, 2024, the Exchange filed Amendment No. 2 to the proposal, which replaced and superseded Amendment No. 1 in its entirety. On October 11, 2024, the Exchange filed Amendment No. 3 to the proposal, which replaces and supersedes Amendment No. 2 in its entirety.⁵ The

² 17 CFR 240.19b-4.

³ On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the trusts underlying the proposed options. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) ("Bitcoin ETP Order").

⁴ See Securities Exchange Act Release No. 100861 (Aug. 28, 2024), 89 FR 71982.

⁵ On September 9, 2024, the Exchange filed Amendment No. 1 to SR-NYSEAMER-2024-49, which replaced and superseded the original filing in its entirety and, on October 7, 2024, the Exchange filed Amendment No. 2 to SR-NYSEAMER-2024-49, which replaced and superseded in its entirety both Amendment No. 1 and the original filing. See <https://www.sec.gov/comments/sr-nyseamer-2024-49/srnyseamer202449-518495-1491742.pdf> and <https://www.sec.gov/comments/sr-nyseamer-2024-49/srnyseamer202449-527736-1516262.pdf>, respectively. Amendment No. 3, which supersedes and replaces Amendment No. 2 in its entirety, modifies the original filing by (1) including reference to, and reliance on, the "ISE IBIT Approval Order," as referenced *infra*; (2) narrowing the scope of the original filing by (i) eliminating the following bitcoin-related funds, and any information related thereto: the ARK21Shares Bitcoin ETF, the Invesco Galaxy Bitcoin ETF, the Franklin Bitcoin ETF, the VanEck Bitcoin Trust, and the WisdomTree Bitcoin Fund, and (ii) excluding the (remaining) Bitcoin Fund options from being available for flexible ("FLEX") option trading; (3) providing additional information and analysis of trading data for the Bitcoin Funds in

Commission received no comments regarding the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 3

The Exchange proposes to amend Rule 915 regarding the criteria for underlying securities. This Amendment No. 3 supersedes and replaces Amendment No. 2 to the original filing in its entirety. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Rule 915 (Criteria for Underlying Securities). Specifically, the Exchange proposes to amend Rule 915, Commentary .10 to allow the Exchange to list and trade options on the following exchange-traded products: the

support of this proposal, including the proposed position limits of 25,000 per side for the options on the Bitcoin Funds; and (4) supplementing information related to the Exchange's surveillance program, including the manner in which it would surveil suspicious trading activity in the underlying Bitcoin Funds and where the Exchange would obtain information about the bitcoin market. Amendment No. 3 is available on the Exchange's website at <https://www.nyse.com/regulation/rule-filings>. A FLEX Option is a customized options contract that is subject to the rules in Section 15 of the Exchange's rules. A FLEX Equity Option is an option on a specified underlying equity security that is subject to the rules in Section 15 of the Exchange's rules. See Exchange Rules 900G(b)(1) and (10). Except as provided in Exchange Rules 906G(b)(i) and (ii), there are no position limits for FLEX Equity options. See Exchange Rule 906G(b).

¹⁰⁷ 15 U.S.C. 78s(b)(2).

¹⁰⁸ 15 U.S.C. 78f(b)(5).

¹⁰⁹ 15 U.S.C. 78s(b)(2).

¹¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).