

By Authority of the Board.

**Stephanie Hillyard,**  
Secretary to the Board.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101631; File No. SR–CBOE–2024–036]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Options on Ethereum Exchange-Traded Funds

November 14, 2024.

#### I. Introduction

On August 19, 2024, Cboe Exchange, Inc. (“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”) <sup>1</sup> and Rule 19b–4 thereunder, <sup>2</sup> a proposed rule change to allow the listing and trading of options on Units <sup>3</sup> that represent interests in the Fidelity Ethereum Fund (the “Fidelity Fund”), the 21Shares Core Ethereum ETF (the “21Shares Fund”), the Invesco Galaxy Ethereum ETF (the “Invesco Fund”), the Franklin Ethereum ETF (the “Franklin Fund”), the VanEck Ethereum Trust (the “VanEck Fund”), the Grayscale Ethereum Trust (the “Grayscale Fund”), the Grayscale Mini Ethereum Trust (the “Grayscale Mini Fund”), the Bitwise Ethereum ETF (the “Bitwise Fund”), and the iShares Ethereum Trust ETF (the “iShares Fund” and, collectively, the “Ethereum Funds”). <sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on September 4, 2024. <sup>5</sup> The Commission has received no comments regarding the proposal.

On October 11, 2024, pursuant to Section 19(b)(2) of the Exchange Act, <sup>6</sup> the Commission designated a longer

period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. <sup>7</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act <sup>8</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposed Rule Change

As described more fully in the Notice, <sup>9</sup> the Exchange proposes to amend Exchange Rule 4.3, Interpretation and Policy .06(a)(4) to allow the Exchange to list and trade options on Units of the Ethereum Funds. The Exchange states that current Exchange Rule 4.3, Interpretation and Policy .06(a) 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, including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities). <sup>10</sup>

The Exchange states that the Ethereum Funds are Ethereum-backed commodity ETFs structured as trusts, and that, similar to any Unit currently deemed appropriate for options trading under Exchange Rule 4.3, Interpretation and Policy .06, the investment objective of each Ethereum Fund trust is for its shares to reflect the performance of Ethereum (less the expenses of the trust’s operations), offering investors an opportunity to gain exposure to Ethereum without the complexities of Ethereum delivery. <sup>11</sup> The Exchange states that, as is the case for Units currently deemed appropriate for options trading, an Ethereum Fund’s shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Ethereum and are designed to track Ethereum or the performance of the price of Ethereum and offer access to the Ethereum market. <sup>12</sup> The Exchange states that the Ethereum Funds provide investors with cost-efficient alternatives that allow a level of participation in the Ethereum

market through the securities market, and that the primary substantive difference between Ethereum 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 Ethereum Funds hold Ethereum (which is also deemed a commodity). <sup>13</sup>

The Exchange states that it believes that the Ethereum Funds satisfy the Exchange’s initial listing standards in Exchange Rule 4.3, Interpretation and Policy .06(b) that Units must either (1) meet the criteria and standards set forth in Rule 4.3, Interpretation and Policy .01(a), 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. <sup>14</sup> The Exchange states that the Ethereum Funds satisfy Exchange Rule 4.3, Interpretation and Policy .06(b)(2), as they are all subject to this creation and redemption process. <sup>15</sup>

The Exchange further states that, while not required by the Exchange’s Rules for purposes of options listings, the majority of the Ethereum Funds satisfy the criteria and guidelines set forth in Exchange Rule 4.3, Interpretation and Policy .01. <sup>16</sup> The Exchange states that, pursuant to Exchange 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 Act), and be characterized by a substantial number of outstanding shares that are widely held and actively traded. <sup>17</sup> The Exchange states that each of the Ethereum Funds is an NMS Stock, as defined in Rule 600 of Regulation

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Cboe Rule 1.1 defines a “Unit” (which may also be referred to as an exchange-traded fund (“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.

<sup>4</sup> The Commission approved proposals by several exchanges to list and trade shares of trusts that hold Ether, including the Ethereum Funds. See Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024).

<sup>5</sup> See Securities Exchange Act Release No. 100862 (Aug. 28, 2024), 89 FR 72146 (“Notice”).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 101321 (Oct. 11, 2024), 89 FR 83723 (Oct. 17, 2024) (designating December 3, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> See *supra* note 5.

<sup>10</sup> See Notice, 89 FR at 72146–7.

<sup>11</sup> See *id.* at 72147.

<sup>12</sup> The Exchange states that the trusts may include minimal cash. See *id.* at note 5.

<sup>13</sup> See Notice, 89 FR at 72147.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> The Exchange states that the criteria and guidelines for a security to be considered widely held and actively traded are set forth in Exchange Rule 4.3, Interpretation and Policy .01, subject to exceptions. See *id.* at note 7.

NMS under the Act, and that each Ethereum Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>18</sup>

The Exchange states that, as of August 7, 2024, the Ethereum Funds had the following number of shares outstanding:<sup>19</sup>

| Ethereum fund             | Shares outstanding |
|---------------------------|--------------------|
| Fidelity Fund .....       | 10,850,000         |
| 21Shares Fund .....       | 760,000            |
| Invesco Fund .....        | 468,000            |
| Franklin Fund .....       | 1,500,000          |
| VanEck Fund .....         | 1,725,000          |
| Grayscale Fund .....      | 228,468,500        |
| Grayscale Mini Fund ..... | 380,898,500        |
| Bitwise Fund .....        | 12,370,000         |
| iShares Fund .....        | 37,200,000         |

The Exchange states that, despite the fact that these Ethereum Funds were in only their third week of trading (they began trading on July 23, 2024), five of these funds already have 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 Exchange Rule 4.3, Interpretation and Policy .01(a)(1).<sup>20</sup> However, the Exchange states that

shares outstanding (*i.e.*, free float),<sup>21</sup> while commonly used to determine investable capacities of corporate stocks, has little utility with respect to ETFs due to the market structure of ETFs.<sup>22</sup>

The Exchange states that proofing of ETF baskets, in addition to the efficiency of creation/redemption mechanisms, decouple concepts of “floating” ETF shares against the impacts of ETF liquidity to the liquidity of ETF constituents.<sup>23</sup> The Exchange states that although ETF market makers may often limit the amount of floating ETF shares, primary market mechanisms enable virtually limitless capacity to create and redeem ETF shares on a daily basis.<sup>24</sup> The Exchange states that, as evidenced during their brief time in market, the gross value of daily shares created or redeemed for each Ethereum Fund approximates its assets under management (“AUM”) as of July 24, 2024, which were as follows:<sup>25</sup>

| Ethereum Fund        | AUM           |
|----------------------|---------------|
| Fidelity Fund .....  | 9,481,360     |
| 21Shares Fund .....  | 148,080,600   |
| Invesco Fund .....   | 37,197,280    |
| Franklin Fund .....  | 19,301,340    |
| VanEck Fund .....    | 9,013,556     |
| Grayscale Fund ..... | 8,040,436,000 |

| Ethereum Fund             | AUM           |
|---------------------------|---------------|
| Grayscale Mini Fund ..... | 1,043,203,000 |
| Bitwise Fund .....        | 230,788,700   |
| iShares Fund .....        | 287,328,200   |

The Exchange states that this demonstrates that each Ethereum Fund is characterized by a substantial number of outstanding shares.<sup>26</sup> The Exchange further states that, given how recently Ethereum Funds began trading, the Exchange does not have access to the number of beneficial holders of Ethereum Funds at this time.<sup>27</sup> However, the Exchange states that, given the significant trading volumes of the Ethereum Funds, it is reasonable to expect that shares of all of the Ethereum Funds are characterized by a substantial number of outstanding shares that are widely held.<sup>28</sup> The Exchange also believes each Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded.<sup>29</sup> The Exchange states that, as of August 7, 2024, the total trading volume (by shares and notional) for each fund since they began trading on July 23, 2024, and the average daily volume (“ADV”) over the five-day period of August 2 through August 7, 2024, for each Ethereum Fund was as follows:<sup>30</sup>

| Ethereum Fund             | Trading volume (shares) | Trading volume (notional \$) | ADV (shares)  |
|---------------------------|-------------------------|------------------------------|---------------|
| Fidelity Fund .....       | 32,751,647              | 1,023,590,893.88             | 1,279,085.00  |
| 21Shares Fund .....       | 2,995,673               | 46,584,597.69                | 183,032.80    |
| Invesco Fund .....        | 2,398,977               | 75,800,517.49                | 116,423.80    |
| Franklin Fund .....       | 3,726,018               | 89,987,417.90                | 114,194.60    |
| VanEck Fund .....         | 5,557,411               | 247,424,935.45               | 288,519.00    |
| Grayscale Fund .....      | 221,839,519             | 5,934,238,584.03             | 7,429,260.00  |
| Grayscale Mini Fund ..... | 387,753,619             | 1,117,121,565.01             | 24,800,550.00 |
| Bitwise Fund .....        | 27,454,355              | 638,820,845.28               | 806,202.19    |
| iShares Fund .....        | 124,839,230             | 2,896,601,784.35             | 6,720,303.00  |

The Exchange states that the trading volume for each except one Ethereum Fund is higher (and several significantly higher) than 2,400,000 shares (and that one is only 1,023 shares below that number), 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 Exchange Rule 4.3, Interpretation and Policy .01.<sup>31</sup> Additionally, the Exchange states that from July 23 (the first day the

Ethereum Funds began trading) through August 7, 2024, the ADV for each Ethereum Fund is in the top 25% of all ETFs that are currently trading.<sup>32</sup> The Exchange states that this data demonstrates each Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded.<sup>33</sup>

The Exchange states that options on Ethereum Funds will be subject to the Exchange’s continued listing standards

in Exchange Rule 4.4, Interpretation and Policy .06 for Units deemed appropriate for options trading pursuant to Exchange Rule 4.3, Interpretation and Policy .06.<sup>34</sup> The Exchange states that Exchange Rule 4.4, Interpretation and Policy .06 provides that Units that were initially approved for options trading pursuant to Exchange Rule 4.3, Interpretation and Policy .06 shall be deemed not to meet the requirements for continued approval, and the Exchange

<sup>18</sup> See Notice, 89 FR at 72147.

<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

<sup>21</sup> The Exchange states that all outstanding ETF shares are considered free float because there are no restricted ETF shares or shares held by insiders, as is the case with respect to corporate stocks. See *id.* at note 9.

<sup>22</sup> See *id.*

<sup>23</sup> See Notice, 89 FR at 72147.

<sup>24</sup> The Exchange states that this is the primary reasoning for why the Exchange may list options on ETFs as long as they are subject to the creation and redemption process and generally do not need to satisfy the criteria set forth in Interpretation and Policy .01. See *id.* note 10.

<sup>25</sup> See Notice, 89 FR at 72148.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

shall not open for trading any additional series of option contracts of the class covering such Unit, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market.<sup>35</sup> Additionally, the Exchange states that 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 Exchange Rule 4.3, Interpretation and Policy .06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Exchange Rule 4.4, Interpretation and Policy .01; (2) in the case of options covering Units approved for trading under Exchange Rule 4.3, Interpretation and Policy .06(b)(2) (as is the case for the Ethereum Funds), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange, 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.<sup>36</sup>

The Exchange states that options on each Ethereum Fund will be physically settled contracts with American-style exercise.<sup>37</sup> As described more fully in the Notice, the Exchange states that Ethereum Fund options will trade in the same manner as any other Unit options on the Exchange.<sup>38</sup> The Exchange states that Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Exchange Rules that govern listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Ethereum Funds 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 Exchange Rule 4.3, Interpretation and Policy .06(a)(4).<sup>39</sup>

The Exchange states that position and exercise limits for options on Units, including options on Ethereum Funds, will be determined pursuant to Exchange Rules 8.30 and 8.42, respectively.<sup>40</sup> The Exchange states that position and exercise limits for Unit options vary according to the number of outstanding shares and the trading volumes of the underlying Unit over the past six months, where the largest in capitalization and the most frequently traded Units have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization Units have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.<sup>41</sup>

The Exchange represents that the same surveillance procedures applicable to all other options on Units currently listed and traded on the Exchange will apply to options on Ethereum Funds, and that it has the necessary systems capacity to support the new option series.<sup>42</sup> The Exchange states that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading Unit options.<sup>43</sup> The Exchange further states that it may obtain information from CME Group Inc.'s designated contract markets that are members of the Intermarket Surveillance Group related to any financial instrument that is based, in whole or in part, upon an interest in or performance of Ethereum, as applicable.<sup>44</sup> The Exchange states that it has analyzed its capacity and believes that the Exchange and the Options Price Reporting Authority 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 Ethereum Funds up to the number of expirations currently permissible under the Exchange's Rules.<sup>45</sup> The Exchange states that because the proposal is limited to Units on a single commodity, any additional traffic that may be

generated from the introduction of Ethereum Fund options will be manageable.<sup>46</sup>

The Exchange states that offering options on Ethereum Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Ethereum and a hedging vehicle to meet their investment needs in connection with Ethereum-related products and positions.<sup>47</sup> The Exchange states that it expects investors will transact in options on Ethereum Funds in the unregulated over-the-counter ("OTC") options market, but may prefer to trade such options in a listed environment to receive the benefits of trading listed options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra party creditworthiness due to the role of OCC as issuer and guarantor of all listed options.<sup>48</sup> The Exchange states that listing Ethereum Fund options may cause investors to bring this liquidity to the Exchange, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow.<sup>49</sup> The Exchange states that 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 the Ethereum Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets.<sup>50</sup> The Exchange states 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.<sup>51</sup>

The Exchange states that 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)(5) of the Act.<sup>52</sup> The Exchange states that the proposal to list and trade options on Ethereum 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 Ethereum Funds will provide investors with an

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

<sup>38</sup> See *id.* at 72149.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> See *id.*

<sup>47</sup> See *id.*

<sup>48</sup> See *id.*

<sup>49</sup> See *id.*

<sup>50</sup> See *id.*

<sup>51</sup> See *id.* at 72150.

<sup>52</sup> 15 U.S.C. 78f(b)(5). See Notice, 89 FR at 72150.

opportunity to realize the benefits of utilizing options on a Ethereum Fund, including cost efficiencies and increased hedging strategies.<sup>53</sup> The Exchange further states that offering Ethereum 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 Ethereum and with Ethereum-related products and positions.<sup>54</sup> Additionally, the Exchange states that its offering of Ethereum 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.<sup>55</sup> The Exchange states that it already lists options on other commodity-based Units, which are trusts structured in substantially the same manner as Ethereum Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.*, Ethereum rather than precious metals), and for which the Exchange has not identified any issues with their continued listing and trading.<sup>56</sup> The Exchange states that 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.<sup>57</sup> The Exchange states that options on Ethereum 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.<sup>58</sup> In addition, the Exchange states that each Ethereum Fund is characterized by a substantial number of shares that are widely held and actively traded.<sup>59</sup> In addition, the Exchange states that Ethereum 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 position and exercise limits and margin requirements, will govern the listing and trading of options on Ethereum Funds in the same manner.<sup>60</sup>

The Exchange states that the proposed position and exercise limits for the Ethereum Fund options are consistent with the Exchange Act, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because 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.<sup>61</sup> The Exchange states that the proposed position and exercise limits are the same limits that apply to other ETF options, including other commodity ETF options.<sup>62</sup> The Exchange states that the proposed position and exercise limits balance the liquidity provisioning in the market against the prevention of manipulation, as they currently do for other equity options (including commodity ETF options).<sup>63</sup> The Exchange further states that the available supply in the markets of Ethereum is not relevant when establishing position limits for options on the Ethereum Funds, as what is held by an ETF has historically not been a relevant factor considered by the Commission when it has considered rule filings to list options on ETFs, including commodity ETFs.<sup>64</sup> The Exchange states that when the Commission previously approved rules to list options on other commodity ETFs, the Commission did not require consideration of whether the available supply of those commodities should be considered when the Exchange established those position limits.<sup>65</sup> The Exchange states that position limits in the Exchange's Rules at that time were the same as they are today as set forth in Exchange Rule 8.30 (and as proposed to be applicable to options on the Ethereum Funds).<sup>66</sup>

### III. Proceedings To Determine Whether To Approve or Disapprove SR-CBOE-2024-036 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>67</sup> to determine

whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>68</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,<sup>69</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and protect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."<sup>70</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>71</sup> and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>72</sup> The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act. In particular, the Commission asks commenters to address whether the proposal includes sufficient data and analysis to support a conclusion that the proposal is consistent with the

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

<sup>56</sup> See *id.*

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See *id.*

<sup>66</sup> See *id.*

<sup>67</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>68</sup> *Id.*

<sup>69</sup> 15 U.S.C. 78f(b)(5).

<sup>70</sup> 17 CFR 201.700(b)(3).

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

requirements of Section 6(b)(5) of the Act.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>73</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 11, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 26, 2024.

Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2024-036 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-2024-036. 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

<sup>73</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2024-036 and should be submitted on or before December 11, 2024. Rebuttal comments should be submitted by December 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>74</sup>

**Vanessa A. Countryman,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101630; File No. SR-NYSEARCA-2024-97]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 7.13-E To Remove References to the Chair of the Board

November 14, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 8, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the

<sup>74</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Arca Rule 7.13-E to remove references to the Chair of the Board. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend NYSE Arca Rule 7.13-E (Trading Suspensions) to remove references to the Chair of the Board of Directors of the Exchange (“Board”).

Under current Rule 7.13-E,<sup>4</sup> except as otherwise stated in Rule 5.5, the Chair of the Board or the President of the Exchange, or the officer designee of the Chair or the President, has the power to suspend trading on any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than two days or as soon

<sup>4</sup> The current text of Rule 7.13-E was adopted in 2017 when the Exchange's subsidiary NYSE Arca Equities Inc. was merged into the Exchange. See Securities and Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, in Connection With the Proposed Merger of Its Wholly Owned Subsidiary NYSE Arca Equities, Inc. With and Into the Exchange).