

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102846; File No. SR-MIAX-2025-21]

### **Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 402, Criteria for Underlying Securities, Exchange Rule 307, Position Limits, and Exchange Rule 309, Exercise Limits to Allow the Exchange to List and Trade Options on the Grayscale Ethereum Trust, the Grayscale Ethereum Mini Trust, and the Bitwise Ethereum ETF**

April 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2025, Miami International Securities Exchange, LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 402, Criteria for Underlying Securities, Exchange Rule 307, Position Limits, and Exchange Rule 309, Exercise Limits, to list and trade options on the Grayscale Ethereum Trust (the “Grayscale Fund” or “ETHE”), the Grayscale Ethereum Mini Trust (the “Grayscale Mini Fund” or “ETH”), and the Bitwise Ethereum ETF (the “Bitwise Fund” or “ETHW” and, collectively, the “Ether Funds” or “Funds”).

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

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings>, at MIAX’s principal office, 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 Exchange Rule 402, Criteria for Underlying Securities, Exchange Rule 307, Position Limits, and Exchange Rule 309, Exercise Limits,<sup>3</sup> to allow the Exchange to list and trade options on the Ether Funds, designating them as appropriate for options trading on the Exchange.<sup>4</sup> This is a competitive filing based on a similar proposal

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<sup>3</sup> The Exchange notes that its affiliate options exchanges, MIAX PEARL, LLC (“MIAX Pearl”) and MIAX Sapphire, LLC (“MIAX Sapphire”), submitted (or will submit) substantively similar proposals. The Exchange notes that all the rules of Chapter III of MIAX, including Exchange Rules 307 and 309, are incorporated by reference into the MIAX Pearl and MIAX Sapphire rulebooks. The Exchange also notes that all of the rules of Chapter III of MIAX, including Exchange Rules 307 and 309, and the rules of Chapter IV of MIAX, including Exchange Rule 402, are incorporated by reference into the MIAX Emerald, LLC (“MIAX Emerald”) rulebook.

<sup>4</sup> See Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEArca-2023-70; SR-NYSEArca-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; and SRCboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (“Ether ETP Approval Order”); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (SR-NYSEArca-2024-44; and SR-NYSEArca-2024-53) (Order Granting Approval of Proposed Rule Changes To List and Trade Shares of the Grayscale Ethereum Mini Trust and ProShares Ethereum ETF).

submitted by NYSE American, LLC (“NYSE American”), which was approved by the Securities and Exchange Commission (the “Commission”).<sup>5</sup>

Exchange Rule 402(i) provides that, subject to certain other criteria set forth in the Rule, securities deemed appropriate for options trading include Exchange-Traded Fund Shares (or ETFs) as defined in Subparagraphs (1)-(5), including Exchange-Traded Fund Shares that represent certain types of interests, and exchange traded products (“ETPs”), structured as trusts that hold precious metals (which are deemed commodities).<sup>6</sup> Last year, the Exchange received

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<sup>5</sup> See Securities Exchange Act Release No. 102799 (April 9, 2025) (SR-NYSEAMER-2024-45)(Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Exchange Rule 915 To Permit the Listing and Trading of Options on the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust)(“NYSE American Ether Approval Order”).

<sup>6</sup> See Exchange Rule 402(i), which permits options trading on exchange-traded funds that: (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments (“Funds”), including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); (2) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust which when aggregated in some specified minimum number may be surrendered to the trust or similar entity by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”); (3) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool ETFs”); (4) are issued by the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the Aberdeen Standard Silver ETF Trust, the Aberdeen Standard Physical Gold Trust, the Aberdeen Standard Palladium ETF Trust, the Aberdeen Standard Platinum ETF Trust, the Goldman Sachs Physical Gold ETF, the Sprott Physical Gold Trust, the iShares Bitcoin Trust, the Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust, the Bitwise Bitcoin ETF, the Fidelity Wise Origin Bitcoin Fund, the ARK 21 Shares Bitcoin ETF, the Fidelity Ethereum Fund, or iShares Ethereum Trust; or (5) represent an interest in a registered investment company (“Investment Company”) organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in

approval from the Commission to list and trade options on specific funds that hold bitcoin (also deemed a commodity).<sup>7</sup> Like ETPs backed by precious metals and bitcoin (i.e., commodities), the Exchange proposes to allow options trading on the Ether Funds that hold ether -- which is also deemed a commodity.

The Ether Funds are structured as trusts that hold ether. Like ETFs and ETPs currently deemed appropriate for options trading, the investment objective of each Ether Fund trust is for its shares to reflect the performance of ether (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to ether without the complexities of ether delivery. Each Ether Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of ether and are designed to track ether or the performance of the price of ether and offer access to the ether market.<sup>8</sup> The Ether Funds provide investors with cost-efficient alternatives that allow a level of participation in the ether market through the securities market.

The Exchange believes each Ether Fund satisfies the Exchange's initial listing standards

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the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share"); provided that all of the conditions listed in (5)(i) and 5(ii) are met.

<sup>7</sup> See Securities Exchange Act Release Nos. 101698 (November 21, 2024), 89 FR 93802 (November 27, 2024) (SR-MIAX-2024-40) (Self-Regulatory Organizations; MIAX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 402, Criteria for Underlying Securities, Exchange Rule 307, Position Limits, and Exchange Rule 309, Exercise Limits To Allow the Exchange To List and Trade Options on the iShares Bitcoin Trust); 101716 (November 22, 2024), 89 FR 94856 (November 29, 2024) (SR-MIAX-2024-42) (Self-Regulatory Organizations; MIAX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 402, Criteria for Underlying Securities, Exchange Rule 307, Position Limits, and Exchange Rule 309, Exercise Limits To Allow the Exchange To List and Trade Options on the Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust, and the Bitwise Bitcoin ETF ("BTC Approval Order")); 101717 (November 22, 2024), 89 FR 94828 (November 29, 2024) (SR-MIAX-2024-43) (Self-Regulatory Organizations; MIAX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 402, Criteria for Underlying Securities, Exchange Rule 307, Position Limits, and Exchange Rule 309, Exercise Limits To Allow the Exchange To List and Trade Options on the Fidelity Wise Origin Bitcoin Fund (the "Fidelity Fund") and the ARK 21Shares Bitcoin ETF (the "ARK 21 Fund")).

<sup>8</sup> The trust may include minimal cash.

set forth in Exchange Rule 402(b).<sup>9</sup> The Exchange notes that the Ether Funds also satisfy the listing standards applied to ETFs traded on the Exchange that they be available for creation and redemption each business day as set forth in Exchange Rule 402(i)(5)(i)(B).<sup>10</sup>

First, each of the Ether Funds satisfy the criteria and guidelines set forth in Exchange Rule 402(a). Pursuant to Exchange Rule 402(a), a security on which options may be listed and traded on the Exchange must be 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>11</sup> Each of the Ether Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.<sup>12</sup> The Exchange believes each Ether Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

Pursuant to the data presented in the NYSE American Ether Approval Order,<sup>13</sup> as of November 29, 2024, the Ether Funds had the following number of shares outstanding (and corresponding market capitalization):

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<sup>9</sup> Subparagraphs a. and b. of Exchange Rule 402 provide for guidelines to be used by the Exchange when evaluating potential underlying securities for Exchange option transactions.

<sup>10</sup> Exchange Rule 402(i)(5)(i)(B) requires that ETFs 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 ETFs 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>11</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Exchange Rule 402(b), subject to exceptions.

<sup>12</sup> An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

<sup>13</sup> See supra note 5.

<b><u>Ether Fund</u></b>	<b><u>Shares Outstanding</u></b>	<b><u>Market Capitalization</u></b> <b><u>(11/29/24)</u></b>
ETHE	177,838,500	\$5,425,852,635
ETH	45,220,787	\$1,547,003,157
ETHW	16,600,000	\$430,886,200

As shown above, each of the Ether Funds 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 Exchange Rule 402(b)(1).<sup>14</sup> The Exchange believes this demonstrates that each Ether Fund is characterized by a substantial number of outstanding shares.

Further, according to the NYSE American Ether Approval Order<sup>15</sup>, the below table contains information regarding the number of beneficial holders of the Ether Funds as of December 31, 2024.

<b><u>Ether Fund</u></b>	<b><u>Beneficial Holders</u></b> <b><u>(as of 12/31/24)</u></b>
ETHE	112,320
ETH	17,396
ETHW	5,992

As this table shows, each Ether Fund has significantly more than 2,000 beneficial holders (approximately 56, 9, and 3 times more, respectively), which is the minimum number of holders

<sup>14</sup> The Exchange notes that on November 19, 2024, ETH underwent a reverse stock split, reducing the number of shares outstanding -- and increasing the share price -- tenfold.

<sup>15</sup> See supra note 5.

the Exchange generally requires for corporate stock in order to list options on that stock pursuant to pursuant to Exchange Rule 402(b)(2).<sup>16</sup> Therefore, the Exchange believes the shares of each Ether Fund are widely held.

The Exchange also believes that, based on trading volume since the Funds began trading on July 23, 2024, shares of the Ether Funds are actively traded. In particular, according to the NYSE American Ether Approval Order,<sup>17</sup> the table below sets forth the total trading volume (by shares and notional) from the inception of trading through either November 29, 2024 (for ETHE and ETH) or December 31, 2024 (for ETHW). In addition, the below table illustrates the average daily volume (“ADV”) over the 30-day period of either October 29, 2024 - through November 29, 2024 (for ETHE and ETH) or November 29, 2024 - through December 31, 2024 (for ETHW).<sup>18</sup>

<b><u>Ether Fund</u></b>	<b><u>Trading Volume (Shares)</u></b>	<b><u>Trading Volume (Notional \$)</u></b>	<b><u>ADV (Shares)</u></b>
ETHE	427,312,540	\$10,289,781,199	4,237,811
ETH	172,400,020	\$4,614,428,230	3,065,796
ETHW	44,477,060	\$959,491,343	291,627

As demonstrated above, even though the Ether Funds have been trading for less than one year, the trading volume for each Ether Fund is substantially higher than 2,400,000 shares (roughly 178, 72, and 16 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in

<sup>16</sup> The number of beneficial holders of ETH may have been impacted by the 10:1 reverse stock split, as investors with fewer than 10 shares would have received a cash payout.

<sup>17</sup> See supra note 5.

<sup>18</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>.

Exchange Rule 402(b). The Exchange believes this data demonstrates that each Ether Fund is characterized by a substantial number of outstanding shares that are actively traded.

In addition to satisfying the Exchange's initial listing standards, options on the Ether Funds will be subject to the Exchange's continued listing standards as set forth in Exchange Rule 403(g).<sup>19</sup> Pursuant to Exchange Rule 403(g), the Exchange will not open for trading any additional series of option contracts covering a fund traded on the Exchange if such fund ceases to be an "NMS stock" as provided for Exchange Rule 402(b) or the fund is halted from trading on its primary market.<sup>20</sup> Additionally, options on funds traded on the Exchange may be subject to the suspension of opening transactions as follows: (1) the fund no longer meets the terms of Exchange Rule 403(b); (2) following the initial twelve-month period beginning upon the commencement of trading of the fund, there are fewer than 50 record and/or beneficial holders of the fund for 30 or more consecutive trading days; (3) the value of the underlying commodity is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Options on each Ether Fund will be physically settled contracts with American-style exercise.<sup>21</sup> Consistent with Exchange Rule 404, which governs the opening of options series on a specific underlying security (including ETFs and ETPs), the Exchange will open at least one

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<sup>19</sup> The Exchange proposes to amend Exchange Rule 402(i)(4) to include the Ether Funds in the list of ETPs deemed "Exchange-Traded Fund Shares" -- of ETFs -- for purposes of the continued listing standards set forth in Exchange Rule 403(g). See proposed Exchange Rule 402(i)(4).

<sup>20</sup> See Exchange Rule 403(g).

<sup>21</sup> See Exchange Rule 401 (Rights and Obligations of Holders and Writers), which provides that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Options Clearing Corporation ("OCC"). See also OCC Rules, Chapter VIII, which governs exercise and assignment, and Chapter IX, which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts. OCC Rules can be located at: [https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ\\_rules.pdf](https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf).



expiration month for options on each Ether Fund<sup>22</sup> at the commencement of trading on the Exchange and may also list series of options on Ether Funds for trading on a weekly,<sup>23</sup> monthly,<sup>24</sup> or quarterly<sup>25</sup> basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from twelve to thirty-nine months from the time they are listed.<sup>26</sup>

Pursuant to Exchange Rule 404(g), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Ether 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.<sup>27</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>28</sup> the \$0.50 Strike Program,<sup>29</sup> and the \$2.50 Strike Price Program.<sup>30</sup> Pursuant to Exchange Rule 510, where the price of a series of an Ether 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

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<sup>22</sup> See Exchange Rule 404. The monthly expirations are subject to certain listing criteria for underlying securities described within Exchange Rule 402. 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 Exchange Rule 404(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. Pursuant to Exchange Rule 404(e), new series of 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.

<sup>23</sup> See Exchange Rule 404, Interpretation and Policy .02.

<sup>24</sup> See Exchange Rule 404, Interpretation and Policy .13.

<sup>25</sup> See Exchange Rule 404, Interpretation and Policy .03.

<sup>26</sup> See Exchange Rule 406.

<sup>27</sup> 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, Exchange Rules 404, Interpretation and Policies .02, .03, and .13, specifically set forth intervals between strike prices on Short Term Option Series, Quarterly Options Series, and Monthly Options Series, respectively.

<sup>28</sup> See Exchange Rule 404, Interpretation and Policy .01.

<sup>29</sup> See Exchange Rule 404, Interpretation and Policy .04.

<sup>30</sup> See Exchange Rule 404(f).

increment will be \$0.10.<sup>31</sup> Any and all new series of Ether Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Exchange Rules 404 and 510, as applicable. Further, the Exchange notes that Exchange Rule 1502, which governs margin requirements applicable to the trading of all options on the Exchange, including options on ETFs and ETPs, will also apply to the trading of Ether Fund options.

#### Position and Exercise Limits

Position and exercise limits for options, including options on Ether Funds, are determined pursuant to Exchange Rules 307 and 309, respectively. Position and exercise limits for options vary according to the number of outstanding shares and the trading volumes of the underlying security over the past six months, where the largest in capitalization and the most frequently traded funds 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 funds 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>32</sup>

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<sup>31</sup> See Exchange Rule 510(a). If options on an Ether Fund are eligible to participate in the Penny Interval Program, the minimum increment of \$0.01 below \$3.00 and \$0.50 above \$3.00 would apply. See Exchange Rule 510(a)(3). See also Exchange Rule 510(c) (which describes the requirements for the Penny Interval Program).

<sup>32</sup> See Exchange Rule 307. For an option to be eligible for the 50,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 20,000,000 shares, or most recent six-month trading volume of at least 15,000,000 shares and at least 40,000,000 shares currently outstanding. For an option to be eligible for the 75,000-contract limit, the underlying security must have most recent six-month trading volume of at least 40,000,000 shares, or most recent six-month trading volume of at least 30,000,000 shares and at least 120,000,000 shares currently outstanding. For an option to be eligible for the 200,000-contract limit, the underlying security must have most recent six-month trading volume of at least 80,000,000 shares, or most recent six-month trading volume of at least 60,000,000 shares and at least 240,000,000 shares currently outstanding. For an option to be eligible for the 250,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 100,000,000 shares, or most recent six-month trading volume of at least 75,000,000 shares and at least 300,000,000 shares currently outstanding. The 25,000-contract limit applies to options on underlying securities that do not qualify for a higher contract limit. See Exchange Rule 307. In addition, Interpretation and Policy .01 to Exchange Rule 307 establishes higher position limits for options on certain ETFs.

Position limits are designed to limit the number of options contracts traded on the Exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control. The purpose of position limits, which are set forth in Exchange Rule 307, is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. As such, position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that investors may use for legitimate economic purposes. To achieve this balance, the Exchange proposes to set the position and exercise limits for the options on the Ether Funds at 25,000 contracts, a limit which has already been approved for options on ETPs that holds [sic] bitcoin.<sup>33</sup> Capping the position limit at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative for the Ether Funds and therefore appropriate given their liquidity. While the Exchange believes that the proposed 25,000-contract position limit is conservative for options on the Ether Funds, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.<sup>34</sup>

As noted above, Exchange Rules set forth position (and exercise) limits for options, which vary according to the number of shares outstanding and the amount of trading in underlying during the most recent six-month period.<sup>35</sup> The Exchange believe that the trading

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<sup>33</sup> See BTC Approval Order. See also Exchange Rule 307, Interpretation and Policy .01.

<sup>34</sup> The Exchange may file a subsequent rule change to amend the position and exercise limit for options on any or all the Ether Funds based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position limit would allow institutional investors to utilize options on the Ether Funds for prudent risk management purposes.

<sup>35</sup> See Exchange Rule 307.

volume in each Fund is sufficient to qualify each Fund for position limits in excess of the proposed 25,000-contract limit,<sup>36</sup> as shown in the table below, provided in the NYSE American Ether Approval Order.<sup>37</sup>

<u>Ether Fund</u>	<u>Total volume</u>
ETHE	<b>427,312,540</b> ((7/23/24 - 11/29/24))
ETH	<b>172,400,020</b> ((7/23/24 - 11/29/24))
ETHW	<b>44,477,060</b> ((7/23/24 - 12/31/24))

Specifically, the trading volume referenced in the table above in ETHE and ETH well exceeds the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits.<sup>38</sup> By comparison, other options symbols with less trading volume for six months than ETHE and ETH are eligible for position and exercise limits of at least 250,000.<sup>39</sup> Further, the most-recent [sic] trading volume referenced in the table above for ETHW well exceeded the requisite minimum of 40,000,000 shares necessary to qualify for the 75,000-contract position (and exercise) limit, which is three times the proposed 25,000-contract

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<sup>36</sup> See FactSet, 11/29/2024 and 12/31,24, <https://www.factset.com/data-attribution>. The Exchange notes that the Commission approved a 25,000-contract position limit for options trading on the Grayscale Bitcoin Mini Trust BTC which traded 335,492,9030 shares during its first two months of trading -- well over the minimum requisite of 100,000,000 shares as required by Exchange Rule 307(d)(5). See BTC Approval Order.

<sup>37</sup> See *supra* note 5.

<sup>38</sup> Exchange Rule 307(d)(5) states that to be eligible for the 250,000 option contract limit, either the most recent six-month trading volume of the underlying security must have totaled at least 100,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 75,000,000 shares and the underlying security must have at least 300,000,000 currently outstanding.

<sup>39</sup> See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/Series-Search> (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

limit.<sup>40</sup> Finally, the proposed 25,000-contract position limit is the default for options that do not otherwise qualify for a higher limit and is therefore an adequate limit for each Ether Fund.<sup>41</sup> With respect to the outstanding shares of each Ether Fund, if a market participant held the maximum number of contracts possible pursuant to the proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position/exercise limit (2,500,000 shares) would represent the following approximate percentage of current outstanding shares according to the data presented in the NYSE American Ether Approval Order:<sup>42</sup>

<b><u>Ether Fund</u></b>	<b><u>Proposed Position/Exercise Limits in Equivalent Shares</u></b>	<b><u>Outstanding Shares (11/29/24)</u></b>	<b><u>Percentage of Outstanding Shares</u></b>
ETHE	2,500,000	177,838,500	1.4%
ETH	2,500,000	45,220,787	5.5%
ETHW	2,500,000	16,600,000	15.1%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Ether 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 Ether Fund. For example, as noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Ether Fund (if that market participant exercised all its

<sup>40</sup> Exchange Rule 307(d)(3) states that to be eligible for the 75,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least forty (40) million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least thirty (30) million shares and the underlying security must have at least 120 million shares currently outstanding.

<sup>41</sup> Exchange Rule 307(d)(1) states that a 25,000 contract limit applies to those options having an underlying security that does not meet the requirements for a higher option contract limit.

<sup>42</sup> See supra note 5.

options). Based on the number of shares outstanding for each Ether Fund as of November 29, 2024, as presented in the NYSE American Ether Approval Order,<sup>43</sup> the table below sets forth the approximate number of market participants that could hold the maximum of 25,000 same side positions in each Ether Fund that would equate to the number of shares outstanding of that Ether Fund:

<b><u>Ether Fund</u></b>	<b><u>Outstanding Shares</u></b>	<b><u>Number of Market Participants with 25,000 Same Side Positions</u></b>
ETHE	177,838,500	71
ETH	45,220,787	18
ETHW	16,600,000	7

This means if 71 market participants had 25,000 same side positions in options on ETHE, 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 options on the ETH, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Finally, this means if 7 market participants had 25,000 same side positions in options on ETHW, 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 this to occur for any of these scenarios; however, even if such event did occur, the Exchange would not expect any of the Ether Funds to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption

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<sup>43</sup> See supra note 5.

process.

Further, given that the issuer of each Ether Fund may create and redeem shares that represent an interest in ether, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the ether market. As of November 29, 2024, based on date [sic] presented in the NYSE American Ether Approval Order,<sup>44</sup> the global supply of ether was approximately 120.44 million, and the price of one ether was approximately \$3,593.49,<sup>45</sup> which equates to a market capitalization of approximately \$439.78 billion. Consider the proposed position and exercise limit of 25,000 option contracts for each Ether 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 shares of the ETHE, ETH, and ETHW, as applicable (if that market participant exercised all its options). The following table from the NYSE American Ether Approval Order<sup>46</sup> shows the share price of each shows the share price of each Ether Fund on November 29, 2024, the value of 2,500,000 shares of the Ether Fund at that price, and the approximate percentage of that value of the size of the ether market:

<b><u>Ether Fund</u></b>	<b><u>Nov. 29th Share Price (\$)</u></b>	<b><u>Value of 2,500,000 Shares</u></b>	<b><u>Percentage of Ether Market</u></b>
ETHE	\$30.15	\$75,250,000	0.017%
ETH	\$33.84	\$84,600,000	0.020%
ETHW	\$25.80	\$64,500,000	0.015%

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<sup>44</sup> See supra note 5.

<sup>45</sup> See <https://finance.yahoo.com/quote/ETH-USD/history>.

<sup>46</sup> See supra note 5.

Therefore, if a market participant with the maximum 25,000 same side contracts in options on any of ETHE, ETH, ETHW exercised all positions at one time, such an event would have no practical impact on the ether market.

The Exchange also reviewed data presented in the NYSE American Ether Approval Order<sup>47</sup> regarding the market capitalization of each of the Ether Funds relative to the market capitalization of the entire ether market, as of November 29, 2024:

	<b><u>Ether/Shares Outstanding</u></b>	<b><u>Market Capitalization (\$)</u></b> <b><u>(11/29/2024)</u></b>	<b><u>% of Total Ether Market</u></b>
<b>Total Ethereum Market</b>	120,440,000	\$432,799,935,600	100%
ETHE	177,838,500	\$5,425,852,635	1.25%
ETH	45,220,787	\$1,547,003,157	0.36%
ETHW	16,600,000	\$430,886,200	0.10%

As this data gathered by NYSE American demonstrates, the Ether Funds collectively represent approximately 1.71% of the global supply of Ether (120,440,000).<sup>48</sup> Based on the \$30.15 price of an ETHE share on November 29, 2024, a market participant could have redeemed one ether for approximately 119 ETHE shares. Another 14,354,890,070 ETHE shares could be created before the supply of ether was exhausted. As a result, 5,742 market participants would have to simultaneously exercise 25,000 same side positions in ETHE options to receive shares of the ETHE holding the entire global supply of ether. Similarly, based on the \$33.84 price of an ETH share on November 29, 2024, a market participant could have redeemed one

<sup>47</sup> See *supra* note 5.

<sup>48</sup> See <https://finance.yahoo.com/quote/ETH-USD/history>.



ether for approximately 106 ETH shares. Another 12,789,596,206 ETH shares could be created before the supply of ether was exhausted. As a result, 5,116 market participants would have to simultaneously exercise 25,000 same side positions in ETH options to receive shares of ETH holding the entire global supply of ether. Similarly, based on the \$25.80 price of an ETHW share on November 29, 2024, a market participant could have redeemed one ether for approximately 139 ETHW shares. Another 16,775,191,302 ETHW shares could be created before the supply of ether was exhausted. As a result, 6,710 market participants would have to simultaneously exercise 25,000 same side positions in ETHW options to receive shares of ETHW holding the entire global supply of ether. Unlike the Ether 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 Ether Funds may create, redeem, or split shares in response to demand. The supply of ether is larger than the available supply of most securities.<sup>49</sup> Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Ether 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 ether.

The Exchange also believes the proposed limits are appropriate given position limits for ether futures. The NYSE American Ether Approval Order presented data<sup>50</sup> that compared the proposed position limits to the position limit of Chicago Mercantile Exchange (“CME”) Ethereum futures. CME imposes a position limit of 8,000 futures (for the initial spot month) on

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<sup>49</sup> The market capitalization of ether would rank in the top 20 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

<sup>50</sup> See supra note 5.

its ether futures contract.<sup>51</sup> On November 29, 2024, CME Jan 25 ether futures settled at \$3,629.69. A position of 8,000 CME Ethereum futures, therefore, would have a notional value of \$1,451,876,000. The following table, as presented in the NYSE American Ether Approval Order<sup>52</sup> shows the share price of each Ether Fund on November 29, 2024, and the approximate number of option contracts that equates to that notional value:

<b><u>Ether Fund</u></b>	<b><u>Nov. 29<sup>th</sup></u> <b><u>Share Price (\$)</u></b></b>	<b><u>Number of Option Contracts</u></b>
ETHE	\$30.15	481,551
ETH	\$33.84	429,041
ETHW	\$25.80	562,743

The approximate number of option contracts for each Ether Fund that would equate to the notional value of CME ether futures is significantly higher than the proposed limit of 25,000 options contract for each Ether 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 an ether future is 1, further demonstrates how conservative the proposed limits of 25,000 options contracts are for the Ether 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).<sup>53</sup> Therefore, if a portfolio includes positions

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<sup>51</sup> See CME Rulebook Chapter 349 (description of CME ether futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME ether futures contract is valued at fifty ethers as defined by the CME CF Ether Reference Rate (“ERR”). See CME Rulebook Chapter 349.

<sup>52</sup> See *supra* note 5.

<sup>53</sup> See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

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.<sup>54</sup> If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. Considering CME's position limits on futures for ether, the Exchange believes that that the proposed same side position limits are more than appropriate for the Ether Fund options.

Consistent with its position regarding the irrelevance of bitcoin supply to position limits for options on bitcoin ETPs, the Exchange likewise believes the available supply of ether is not relevant to the determination of position and exercise limits for Ether Fund options.<sup>55</sup> Position and exercise limits are not a tool that should be used to address an underlying of an underlying. Position and exercise limits do not limit the total number of options that may be held, but rather

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<sup>54</sup> Id.

<sup>55</sup> See BTC Approval Order, 89 FR at 94862, n. 50 (asserting that, outside of the bitcoin context, 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 the position limits in Exchange Rule 307 are the same as when the Commission approved this filing. 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 Ether Fund options.

they limit the number of positions a single customer may hold or exercise at one time.<sup>56</sup> “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.”<sup>57</sup> Position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”<sup>58</sup>

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each Ether Fund, each of which described the supply of ether as being unlimited.<sup>59</sup> Each Registration Statement permits an unlimited number of shares of the applicable Ether Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Ether Fund, which approval did not comment on the sufficient supply of ether or address whether there was a risk that permitting an unlimited

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<sup>56</sup> 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.

<sup>57</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

<sup>58</sup> Id.

<sup>59</sup> See, e.g., ETHE Form S-1 Registration Statement, at p. 77, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524106957/d756153ds1.htm>; ETH Amendment No. 5 to Form S-1 Registration Statement, at p. 79, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524181081/d756153ds1a.htm>; and ETHW Form S-1 Registration Statement 1, at p. 17, [https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a\\_061824.htm](https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a_061824.htm) (“Ether Funds Reg. Stmt.”).

number of shares for an Ether Fund would impact the supply of ether.<sup>60</sup> Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of ether was sufficient to permit the creation of unlimited Ether 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 ether supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the foregoing, the Exchange believes the proposal to list options on the Ether Funds with positions and exercise limits of 25,000 on the same side, the lowest position limit available in the options industry, is conservative and appropriate given the market capitalization, average daily volume, and high number of outstanding shares for each of the Ether Funds. 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 Ether Funds as well as the ether market.<sup>61</sup>

As described herein, options on the Ether Funds will trade in the same manner as any other ETF or ETP options on the Exchange. The Exchange Rules that currently apply to the listing and trading of options on the Exchange, including, for example, Rules that govern listing criteria, expiration and exercise prices, minimum increments, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Ether Funds on the

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<sup>60</sup> See BTC Approval Order.

<sup>61</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

Exchange in the same manner as they apply to all other ETFs and ETPs that are listed and traded on the Exchange, including the precious metal-backed commodity ETPs already deemed appropriate for options trading on the Exchange pursuant to Exchange Rule 402. Further, as described above, Exchange Rules regarding position and exercise limits will likewise apply to options on the Ether Funds except that, as proposed, the position and exercise limits will be set at 25,000 on the same side.

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The Exchange notes that options on Ether Funds would not be available for trading until The Options Clearing Corporation (“OCC”) represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of options on Ether Funds. The Exchange believes any additional traffic that would be generated from the trading of options on Ether Funds would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange represents that the same surveillance procedures applicable to all other options currently listed and traded on the Exchange will apply to options on Ether Funds, and that it has the necessary systems capacity to support the new option series. The Exchange’s existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious metal-commodity backed ETP options as well as the proposed options on Ether Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Ether Funds in all trading sessions and to deter and

detect violations of Exchange rules. Specifically, the Exchange’s market surveillance staff will have access to surveillances that it conducts, and that FINRA conducts on its behalf, with respect to the Ether Funds and, as appropriate, would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on the Ether 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 to the surveillance that is conducted by the Exchange’s market surveillance staff, the Exchange would also be able to obtain information regarding trading in shares of the Ether Funds on other exchanges through ISG. Further, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”). Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.<sup>62</sup> The Exchange notes that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ether Funds.

The underlying shares of spot ether ETP, 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 ether-based ETPs,

[e]ach Exchange has a comprehensive surveillance sharing agreement with the

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<sup>62</sup> Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

[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 ethereum futures market.<sup>63</sup>

The Exchange states that, given the consistently high correlation between the CME ether futures market and the spot ether market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Ether ETPs].”<sup>64</sup>

In light of surveillance measures related to both options and futures as well as the Ether Funds,<sup>65</sup> 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 Ether Funds. Further, the Exchange represents that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Ether Funds.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association (“CTA”) high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and

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<sup>63</sup> See Ether ETP Approval Order, 89 FR at 46938.

<sup>64</sup> See Ether ETP Approval Order, 89 FR at 46939.

<sup>65</sup> See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-70), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370-475871-1363474.pdf>; Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Bitwise Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-31), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-31/srnysearca202431-475891-1363514.pdf>; and Amendment No.2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum Mini ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-44), filed May 22, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-44/srnysearca202444-476231-1364174.pdf>.



last sale information for options on the Ether Funds will be available via Options Price Reporting Authority (“OPRA”) and major market data vendors. The Exchange believes that offering options on Ether Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of ether and hedging vehicle to meet their investment needs in connection with Ether-related products and positions. The Exchange expects investors will transact in options on Ether Funds in the unregulated over-the-counter (“OTC”) options market,<sup>66</sup> 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. The Exchange believes that listing Ether Funds 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 Exchange notes that the ETPs that hold precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Ether 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 options on any ETFs or ETPs that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange.

Finally, the Exchange notes that applicable Exchange rules will require that customers receive appropriate disclosure before trading options in Ether Funds.<sup>67</sup> Further, brokers opening

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<sup>66</sup> The Exchange understands from customers that investors have historically transacted in options on ETFs in the OTC options market if such options were not available for trading in a listed environment.

<sup>67</sup> See Exchange Rules 1307(b) and (e).

accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>68</sup>

## 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.<sup>69</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>70</sup> 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)<sup>71</sup> 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 Ether 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 Ether Funds will provide investors with a greater opportunity to realize the benefits of utilizing options on Ether Funds, including cost efficiencies and increased hedging strategies.

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<sup>68</sup> See Exchange Rule 1309.

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

<sup>70</sup> 15 U.S.C. 78f(b)(5).

<sup>71</sup> Id.

The Exchange believes that offering Ether 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 ether and with ether-related products and positions. Additionally, the Exchange's offering of Ether 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 ETPs,<sup>72</sup> which, as described above, are trusts structured in substantially the same manner as Ether Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Ether rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed ETP 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 Ether Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all ETFs, including ETFs that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Ether Fund is characterized by a substantial number of shares that are widely held and actively traded. Ether Fund options will trade in the same manner as any other ETF options

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<sup>72</sup> See Exchange Rule 402(i)(4).

— the same Exchange Rules that currently govern the listing and trading of all options on ETFs, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits (as proposed herein), and margin requirements, will govern the listing and trading of options on Ether Funds in the same manner.

The proposed position and exercise limits for options on each of the Ether Funds is 25,000 contracts, which proposed limits were recently approved for certain ETPs that hold bitcoin.<sup>73</sup> 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 each Ether Fund's market capitalization, ADV, number of beneficial holders, and high number of outstanding shares.<sup>74</sup> The proposed position limit, and exercise limit, is consistent with the Act as it addresses concerns related to manipulation and protection of investors because, as demonstrated above, the position limit (and exercise limit) is extremely conservative and more than appropriate given the Ether Funds are actively traded.

The Exchange represents that it has the necessary systems capacity to support the new Ether Fund options. 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 options, including Ether Fund options. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious metal-commodity backed ETP options as well as the proposed options on Ether Funds. The Exchange believes that its surveillance procedures are adequate to properly

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<sup>73</sup> See BTC Approval Order. See also Exchange Rule 307, Interpretation and Policy .01.

<sup>74</sup> As noted herein, the Ether Funds collectively represent approximately 1.71% of the ether market.

monitor the trading of options on Ether Funds in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange’s market surveillance staff will have access to surveillances that it conducts, and that FINRA conducts on its behalf, with respect to the Ether Funds and, as appropriate, would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on the Ether Funds. Additionally, the Exchange is a member of the 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 to the surveillance that is conducted by the Exchange’s market surveillance staff, the Exchange would also be able to obtain information regarding trading in shares of the Ether Funds on other exchanges through ISG. Further, the Exchange has a Regulatory Services Agreement with the FINRA and as noted herein, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ether Funds. The underlying shares of spot ether ETPs, including the Ether 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 ether-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 ether futures market.”<sup>75</sup> The Exchange states that, given the consistently high correlation between the CME

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<sup>75</sup> See Ether ETP Approval Order, 89 FR, at 46938.

ethereum futures market and the spot ethereum market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Ether ETPs].”<sup>76</sup>

In light of surveillance measures related to both options and futures as well as the underlying Ether Funds,<sup>77</sup> 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 Ether Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on ether ETPs.

Finally, the Exchange notes that this proposal 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 applicable Exchange rules will require that customers receive appropriate disclosure before trading options in Ether Funds<sup>78</sup> and will require that brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>79</sup>

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<sup>76</sup> See Ether ETP Approval Order, 89 FR, at 46941.

<sup>77</sup> See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-70), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370-475871-1363474.pdf>; Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Bitwise Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-31), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-31/srnysearca202431-475891-1363514.pdf>; and Amendment No.2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum Mini ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-44), filed May 22, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-44/srnysearca202444-476231-1364174.pdf>.

<sup>78</sup> See Exchange Rules 1307(b) and (e).

<sup>79</sup> See Exchange Rule 1309.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the filing submitted by NYSE American.<sup>80</sup>

*Intramarket Competition:* 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 options on the Ether Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them. Additionally, Ether Fund options will be equally available to all market participants who wish to trade such options. Exchange Rules currently applicable to the listing and trading of options on ETFs on the Exchange will apply in the same manner to the listing and trading of all options on Ether Funds. Also, and as stated above, the Exchange already lists options on other commodity-based ETPs.<sup>81</sup>

*Intermarket Competition:* The Exchange does not believe that the proposal to list and trade options on Ether 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 the Ether Funds options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the Ether

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<sup>80</sup> See supra note 5.

<sup>81</sup> See Exchange Rule 402(i).

Funds. The Exchange notes that listing and trading Ether Funds 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 the Ether Funds 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 ether prices and ether-related products and positions on a listed options exchange.

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

Written comments were neither solicited nor received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>82</sup> and Rule 19b-4(f)(6) thereunder.<sup>83</sup> Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective

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<sup>82</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>83</sup> 17 CFR 240.19b-4(f)(6).



pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>84</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>85</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>86</sup> under the Act does not normally become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>87</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission previously approved the listing and trading of options on the Ethereum Funds.<sup>88</sup> The Exchange has provided information regarding the underlying Ethereum Funds, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the Ethereum Funds. The proposal also establishes position and exercise limits for options on the Ethereum Funds and provides information regarding the surveillance procedures that will apply to Ethereum Fund options. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading Ethereum Fund options. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public

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<sup>84</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>85</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

<sup>86</sup> 17 CFR 240.19b-4(f)(6).

<sup>87</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>88</sup> See Securities Exchange Act Release No. 102799 (April 9, 2025) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Exchange Rule 915 To Permit the Listing and Trading of Options on the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust) (SR-NYSEAMER-2025-45).

interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>89</sup>

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

#### IV. Solicitation of Comments

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

##### 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-MIAX-2025-21 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.

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<sup>89</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to file number SR-MIAX-2025-21. 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-MIAX-2025-21 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>90</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>90</sup> 17 CFR 200.30-3(a)(12), (59).