

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101765; File No. SR-ISE-2024-55)

November 26, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FLEX Options Listing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2024, Nasdaq ISE LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the 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 [sic] to amend Options 3A, Section 3, FLEX Options Listings.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 3A, Section 3, FLEX Options Listings, to reflect the addition of the listing of options on: (1) the Fidelity Wise Origin Bitcoin Fund; (2) the ARK21Shares Bitcoin ETF; (3) the Grayscale Bitcoin Trust (BTC); (4) the Grayscale Bitcoin Mini Trust BTC; (5) and the Bitwise Bitcoin ETF (collectively “Bitcoin Trusts”). Specifically, ISE proposes to except FLEX Options on the Bitcoin Trusts from trading as a [sic] FLEX Options contracts. ISE separately filed a rule proposal to list and trade the options on the Bitcoin Trusts.³

ISE recently received approval to list and trade Flexible Exchange Options (“FLEX Options”) on the Exchange’s electronic market.⁴ At this time, the Exchange proposes to amend Options 3A, Section 3, FLEX Options Listings, to specify that ISE will not authorize for trading a FLEX Option on each of the Bitcoin Trusts. For clarity, this exclusion will apply to both physically-settled and cash-settled FLEX ETF options, such that options on the Bitcoin Trusts will be excluded from being eligible to trade as a physically-settled or a cash-settled FLEX ETF option. Options 3A, Section 3 currently provides that the Exchange will not authorize FLEX Options on shares of the iShares Bitcoin Trust ETF.⁵ The Exchange proposes this amendment in light of the position and exercise limits of 25,000 contracts that were set for the Fidelity Wise

³ See SR-ISE-2024-054 (not yet noticed).

⁴ See Securities Exchange Act Release No. 101720 (November 22, 2024), (SR-ISE-2024-12) (not yet noticed). This rule change is approved, but not yet implemented.

⁵ Id.

Origin Bitcoin Fund, the ARK21Shares Bitcoin ETF, the Grayscale Bitcoin Trust (BTC), the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF in the Cboe Approval Order⁶ and the NYSE American Approval Order,⁷ respectively. If the Exchange determines to allow FLEX Options on the Bitcoin Trusts at a later date, it will do so by submitting a 19b4 rule change with the Commission.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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.

The Exchange's proposal to amend Options 3A, Section 3, FLEX Options Listings, to note that it will not authorize for trading a FLEX Option on each of the Bitcoin Trusts is consistent with the spirit of the Cboe Approval Order¹⁰ and the NYSE American Approval Order,¹¹ respectively, that limited the position and exercise limits for each of the Bitcoin Trusts to 25,000 contracts. The proposal will protect investors and the general public because without

⁶ See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-Cboe-2024-035) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds) ("Cboe Approval Order").

⁷ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds) ("NYSE American Approval Order").

⁸ 15 U.S.C. 78f(b)

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See supra note 5.

¹¹ See supra note 6.

this prohibition, trading a FLEX Option on the Bitcoin Trusts would otherwise establish different position and exercise limits than those set by the aforementioned approval orders. For clarity, this exclusion will apply to both physically-settled and cash-settled FLEX ETF options, such that options on the Bitcoin Trusts will be excluded from being eligible to trade as a physically-settled or a cash-settled FLEX ETF option.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange's proposal to amend Options 3A, Section 3 to specify that it will not authorize for trading a FLEX Option on any of the Bitcoin Trusts does not impose an intra-market burden on competition as no ISE Member will be able to transact a FLEX Option on any of Bitcoin Trusts.

The proposal does not impose inter-market burden on competition because other exchanges have not authorized FLEX Options on the Bitcoin Trusts.¹²

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

¹² See e.g. Cboe Rule 4.20 and NYSE American Rule 903G(a)(1).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the not authorizing FLEX options on the Bitcoin Trusts will maintain the 25,000-contract position and exercise limits established for options on the Bitcoin Trusts in the Cboe Approval Order and the NYSE American Approval Order because FLEX options would be subject to different position and exercise limits.¹⁶ The Exchange states that the exclusion will apply to both physically-settled and cash-settled FLEX ETF options, such that options on the Bitcoin Trusts will be excluded from being eligible to trade as a physically-settled or a cash-settled FLEX ETF option. As discussed above, the rules of other option exchanges currently prohibit the listing of FLEX options on the Bitcoin Trusts.¹⁷ The proposal will align the Exchange's rules with the rules of these exchanges and will ensure that all options listed on the Bitcoin Trusts are subject to position and exercise limits of 25,000 contracts. The proposal does not raise new or novel regulatory issues. Therefore, the Commission believes that waiver

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Commission waives this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See supra notes 6 and 7.

¹⁷ See supra note 12.

of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

At any time within 60 days of the filing of such 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.

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. Please include file number SR-ISE-2024-55 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2024-55. This file number should be included on the subject line if email is used. To help the Commission process and review your

¹⁸ 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).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-ISE-2024-55 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.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12), (59).