

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102014; File No. SR-NYSEAMER-2024-78)

December 20, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change to Amend Certain Rules Related to Flexible Exchange Options

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 13, 2024, NYSE American LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend certain rules related to Flexible Exchange (“FLEX”) Options to permit FLEX Options on the Grayscale Bitcoin Trust (BTC) (“GBTC”). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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

1. Purpose

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options.⁴

GBTC is an Exchange-Traded Fund (or ETF) that holds bitcoin and is listed on NYSE Arca, Inc., the Exchange’s affiliated equities exchange.⁵ Recently, the Commission approved options trading on GBTC and, on November 22, 2024, the Exchange began trading GBTC options.⁶ The position and exercise limits established for GBTC options is 25,000 contracts, the lowest limit available in options.⁷ Additionally, GBTC options are currently not approved for FLEX trading.⁸ Except for a few enumerated exceptions, FLEX Options are not subject to position limits.⁹ The Exchange proposes to permit FLEX Equity Options on GBTC (“FLEX

⁴ A “FLEX Equity Option” is an option on a specified underlying equity security that is subject to the rules of Section 15. See Rule 900G(b)(10).

⁵ On January 11, 2024, GBTC began trading on NYSE Arca after the Commission approved rule changes to list and trade shares of “Bitcoin-Based Commodity-Based Trust Shares” pursuant to NYSE Arca Rule 8.201-E(c)(1) (Commodity-Based Trust Shares), including GBTC. See Securities Exchange Act Release No. 99306 (January 10, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units), 89 FR 3008 (January 17, 2024) (SR-NYSEARCA-2021-90).

⁶ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Order approving the listing and trading of options on GBTC, among other funds that hold bitcoin, pursuant to Rule 915, Commentary .10(a) (the “GBTC Options Approval Order”). See also Trader Update, November 21, 2024 (announcing that on November 22, 2024, the Exchange would begin listing and trading options on GBTC, among other funds that hold bitcoin), available here, <https://www.nyse.com/trader-update/history#110000945911>.

⁷ See Rule 904, Commentary .07(f). The Exchange notes that this 25,000-contract exercise and position limit applies to all options on ETFs that hold bitcoin. See id.

⁸ See Rule 903G(a)(1) (excluding GBTC from the general principle that the Exchange may approve and open for trading any FLEX Equity Options series on any equity security that is eligible for Non-FLEX Options trading, “except those set forth in Commentary .10(a) to Rule 915”, which includes GBTC).

⁹ See Rule 906G(b) (subject to the exceptions enumerated in the rule “there shall be no position limits for

GBTC”) and to impose position limits on FLEX GBTC. As proposed, FLEX GBTC options would have the same 25,000-contract position limit as Non-FLEX Options on GBTC, and positions in FLEX GBTC will be aggregated with positions in Non-FLEX GBTC. In other words, the position limit for options on GBTC -- both FLEX GBTX and non-FLEX GBTC -- will be 25,000 contracts.¹⁰

Per the Commission “rules regarding position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options positions.”¹¹ For this reason, the Commission requires that “position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security.”¹² Based on its review of the data and analysis provided by the Exchange, the Commission concluded that the 25,000-contract position limit for non-FLEX GBTC options satisfied these objectives.¹³

As proposed, the Exchange will aggregate position (and exercise) limits for all GBTC

FLEX Equity options.”)

¹⁰ See proposed Rules 903G(a)(1) (excepting GBTC from the prohibition of FLEX trading) and 906G(b)(iv) (providing that position limits for FLEX GBTC “will be the same as Non-FLEX Options on GBTC, as set forth in Rule 906G, Commentary .07(f), except that positions in FLEX GBTC shall be aggregated with positions in Non-FLEX GBTC for the purpose of calculating position limits.”). The Exchange notes there is precedent for aggregating position limits of FLEX options with non-FLEX options for purposes of calculating position limits. See Rule 906G(b)(iii) (proving that “FLEX ByRDs [Binary Return Derivatives] shall be the same as Non-FLEX ByRDs, as set forth in Rule 904ByRDs(a), except that positions in FLEX ByRDs shall be aggregated with positions in Non-FLEX ByRDs on the same or similar underlying (‘comparable Non- FLEX ByRDs’) for the purpose of calculating position limits.”).

¹¹ See supra note 6, GBTC Options Approval Order, 89 FR 84971.

¹² See id.

¹³ See id. (noting that the Commission considered and reviewed the Exchange’s analysis that, based on the number of GBTC shares outstanding as of August 30th, “if 114 market participants had 25,000 same side positions in options on GBTC, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress.”).

options, thus limiting positions for options on all GBTC options -- FLEX and non-FLEX -- to 25,000 contracts. This proposed aggregated limit effectively restricts a market participant from holding positions that could result in the receipt of more than 2,500,000 shares, aggregated for FLEX GBTC and non-FLEX GBTC (if that market participant exercised all its GBTC options). The Exchange believes that capping the aggregated position limit at 25,000 contracts, the lowest limit available in options, would be sufficient to address concerns related to manipulation and the protection of investors. The Exchange notes that this number is conservative for GBTC and therefore appropriate given its liquidity.

While the Exchange proposes an aggregated 25,000-contract position limit for all GBTC options, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.¹⁴ For example, GBTC currently qualifies for the 250,000-contract position limit available to other ETFs pursuant to the criteria in Rule 904, Commentary .07(a)(i), which requires that, for the most recent six-month period, trading volume for the underlying security be at least 100,000,000 shares.¹⁵ As of September 30, 2024, GBTC had traded 723,758,100 shares during the six-month period from March 30, 2024 to September 30, 2024, well above the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position limit. By comparison, other options symbols with six-month trading volume less than GBTC are currently eligible and do in fact have position and exercise limits of at least

¹⁴ The Exchange may file a subsequent rule change to increase the position and exercise limit for options on GBTC 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 GBTC options for prudent risk management purposes. In this regard, the Exchange would address the impact of higher position (and exercise) limits on the proposed FLEX GBTC options.

¹⁵ Per Commentary .07(a) to Rule 904, to qualify for the 250,000-contract position limit for options, the underlying security must (i) have trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) have trading volume of at least 75,000,000 shares during the most recent six-month trading period *and* have at least 300,000,000 shares currently outstanding.

250,000 contracts.¹⁶

Further, the Exchange believes that the share creation and redemption process unique to ETFs would mitigate any potential risk of manipulation in FLEX trading in GBTC options. The creation and redemption process is designed to ensure that an ETF's price closely tracks the value of its underlying asset(s). For example, if a market participant exercised a long call position for 25,000 contracts and purchased 2,500,000 shares of GBTC and this purchase resulted in the value of GBTC shares to trade at a premium to the value of the (underlying) bitcoin held by GBTC, the Exchange believes that other market participants would attempt to arbitrage this price difference by selling short GBTC shares while concurrently purchasing bitcoin. Those market participants (arbitrageurs) would then deliver cash to GBTC and receive shares of GBTC, which would be used to close out any previously established short position in GBTC. Thus, this creation and redemptions process would significantly reduce the potential risk of price dislocation between the value of GBTC shares and the value of bitcoin holdings.

The Exchange understands that FLEX Options on ETFs are currently traded in the over-the-counter ("OTC") market by a variety of market participants, e.g., hedge funds, proprietary trading firms, and pension funds, to name a few. The Exchange believes there is room for significant growth if a comparable product were introduced for trading on a regulated market. The Exchange expects that users of these OTC products would be among the primary users of FLEX GBTC options. The Exchange also believes that the trading of FLEX GBTC options would allow these same market participants to better manage the risk associated with the volatility of GBTC (the underlying ETF) positions given the enhanced liquidity that an

¹⁶

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).

exchange-traded product would bring.

Additionally, the Exchange believes that FLEX GBTC options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by The Options Clearing Corporation (“OCC”). Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer FLEX GBTC options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers.

The Exchange has 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 FLEX GBTC options. The Exchange believes any additional traffic that would be generated from the trading of FLEX GBTC options would be manageable. The Exchange believes ATP Holders will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems.

The Exchange represents that the same surveillance procedures applicable to the Exchange's other options products listed and traded on the Exchange, including non-FLEX GBTC options, will apply to FLEX GBTC options, and that it has the necessary systems capacity to support such options. FLEX options products (and their respective symbols) are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange's market surveillance staff (including staff of the Financial Industry Regulatory Authority ("FINRA") who perform surveillance and investigative work on behalf of the Exchange pursuant a regulatory services agreement) conducts surveillances with respect to GBTC (the underlying ETF) and, as appropriate, would review activity in GBTC when conducting surveillances for market abuse or manipulation in the FLEX GBTC options.¹⁷ The Exchange does not believe that allowing FLEX GBTC options would render the marketplace for non-FLEX GBTC options, or equity options in general, more susceptible to manipulative practices.

The Exchange represents that its existing trading surveillances are adequate to monitor the trading in GBTC and subsequent trading of FLEX GBTC options on the Exchange. 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. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities. In addition, and as referenced above, the Exchange has a regulatory services agreement with FINRA, pursuant to which FINRA conducts

¹⁷ See supra note 6, GBTC Options Approval Order, 89 FR at 84966-68 (regarding surveillance procedures applicable to GBTC and other funds that hold bitcoin).

certain surveillances on behalf of the Exchange. Further, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.¹⁸ The Exchange will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of GBTC options.

The proposed rule change is designed to allow investors seeking to trade options on GBTC to utilize FLEX GBTC options. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to member's evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX GBTC options. The Exchange believes that introducing FLEX GBTC options would further broaden the base of investors that use FLEX Options (and options on GBTC in general) to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market on the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow.

Finally, as discussed herein, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX GBTC options at the (most conservative) 25,000-contract limit, which currently applies solely to

¹⁸ 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.

non-FLEX GBTC options, should provide an adequate safeguard.

Implementation

The Exchange will announce the implementation date by Trader Update within sixty (60) days of the rule approval.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, the Exchange believes that introducing FLEX GBTC options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk. The proposed rule change is designed to allow investors seeking to trade options on GBTC to utilize FLEX GBTC options.

The Exchange believes that the proposal to permit FLEX GBTC options would remove impediments to and perfect the mechanism of a free and open market. The Exchange believes that offering FLEX GBTC options will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and provide a hedging vehicle to meet their investment needs in connection with a bitcoin-related product. Moreover, the proposal would broaden the base of investors that use FLEX Options to manage their trading

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

and investment risk, including investors that currently trade in the OTC market for customized options. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that offering FLEX GBTC options may open up the market for options on GBTC to more retail investors.

Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX GBTC options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX GBTC options at the (most conservative) 25,000-contract limit should provide an adequate safeguard. The purpose of position limits 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. The Exchange believes the proposal will benefit investors and public interest because the aggregated position limit for all options on GBTC (FLEX and non-FLEX) 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 GBTC and therefore appropriate given its liquidity.

The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to member's evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX GBTC options. The Exchange does not believe that allowing FLEX GBTC options would render the marketplace for equity options more susceptible to manipulative practices.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in FLEX GBTC options. Regarding the proposed FLEX GBTC options, the Exchange would use the same surveillance procedures currently utilized for FLEX Options listed on the Exchange (as well as for non-FLEX GBTC options). For surveillance purposes, the Exchange would have access to information regarding trading activity in GBTC (the underlying ETF).²¹ In light of surveillance measures related to both options and GBTC (the underlying ETF), 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 FLEX GBTC options.

²¹ See *supra* note 6, GBTC Options Approval Order, 89 FR at 84966-68 (regarding surveillance procedures applicable to GBTC and other funds that hold bitcoin).

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.

Intra-market competition. The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as all market participants would have the option of utilizing the FLEX GBTC options. The proposed rule change is designed to allow investors seeking option exposure to bitcoin to trade FLEX GBTC options. Moreover, the Exchange believes that the proposal to permit FLEX GBTC options would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options.

Inter-market competition. The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition as all market participants would have the option of utilizing the FLEX GBTC options. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues. The proposed rule change would support that intermarket competition by allowing the Exchange to offer additional functionality to ATP Holders. The Exchange believes that the proposed FLEX GBTC options will increase the variety of options products available for trading in general and bitcoin-related products in particular and, as such, will provide a valuable tool for investors to manage risk.

As such, the Exchange believes that this proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets. The Exchange notes that, upon approval of this proposal, competing options exchanges will be free to offer

products like the proposed FLEX GBTC options.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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. Please include file number SR-NYSEAMER-2024-78 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-NYSEAMER-2024-78. 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-NYSEAMER-2024-78 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.²²

J. Matthew DeLesDernier,

Deputy Secretary.

²² 17 CFR 200.30-3(a)(12).