

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103116; File No. SR-ISE-2025-08]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Options 4, Section 3, Criteria for Underlying Securities

May 23, 2025

I. Introduction

On February 7, 2025, Nasdaq ISE, LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its listing rules at ISE Options 4, Section 3, Criteria for Underlying Securities to allow the listing and trading of options on units that represent interests in a trust that is a Commodity-Based Trust.³ The proposed rule change was published for comment in the Federal Register on February 26, 2025.⁴

On March 12, 2025, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See, infra, note 9 and accompanying text.

⁴ See Securities Exchange Act Release No. 102465 (Feb. 20, 2025), 90 FR 10740 (“Notice”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 102628 (Mar. 12, 2025), 90 FR 12587 (Mar. 18, 2025) (designating May 27, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

As described more fully in the Notice, the Exchange proposes to amend Options 4, Section 3, Criteria for Underlying Securities to allow the listing and trading of options on units that represent interests in a trust that is a Commodity-Based Trust.⁸

Specifically, the Exchange proposes to remove references in Options 4, Section 3(h) to the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the Aberdeen Standard Physical Gold Trust, the iShares Bitcoin Trust, the Fidelity Wise Origin Bitcoin Fund, the ARK21Shares Bitcoin ETF, the Grayscale Bitcoin Trust (BTC), the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF, which are all Commodity-Based Trust Shares, and update the provision to state that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that “represent interests in (a) a security issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash (‘Commodity-Based Trust Share’).”⁹

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Notice, supra note 4.

⁹ See Notice, supra note 4, at 10740.

As a result of this amendment, the listing criteria would permit any Exchange-Traded Fund Shares (“ETFs”) that are approved to list on the primary market as a Commodity-Based Trust Share to qualify for the listing of options on that Commodity-Based Trust Share, provided other listing criteria have been met, without any additional approvals from the Commission. The Exchange states that offering options on Commodity-Based Trust Shares provides investors with the ability to hedge exposure to the underlying security similar to options on any other securities. Additionally, the Exchange states that options on a Commodity-Based Trust Share provide investors with the ability to transact in such options in a listed market environment, which increases market transparency and enhances the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors.¹⁰

The Exchange states that options on a Commodity-Based Trust Share will trade in the same manner as options on other ETFs on the Exchange.¹¹ The Exchange rules that currently apply to the listing and trading of all options on ETFs on the Exchange, including, for example, rules that govern listing criteria,¹² including continued listing standards,¹³ expirations,¹⁴

¹⁰ Id. at 10742.

¹¹ Id. See also ISE Rule Options 4, Section 3(h)(1) (regarding certain criteria and guidelines for ETFs).

¹² See Notice, supra note 4, at 10741-42. See also ISE Rule Options 4, Section 3(a), (h).

¹³ See Notice, supra note 4, at 10741, 10743. The Exchange states that the options approved for trading pursuant to Options 4, Section 3(h) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such ETFs, if the ETFs are delisted from trading as provided in subparagraph (b)(5) of Options 4, Section 4 or the ETFs are halted or suspended from trading on their primary market. Id. Additionally, options on ETFs may be subject to the suspension of opening transactions in any series of options of the class covering ETFs in certain other circumstances pursuant to Exchange rules. Id. at 10741.

¹⁴ See Notice, supra note 4, at 10741. The Exchange states that the Exchange would open at least one expiration month for options on a Commodity-Based Trust Share and may also list series of options on a Commodity-Based Trust Share for trading on a weekly or quarterly basis. Id. The Exchange states that it may also list long-term equity option series (“LEAPS”) that expire from twelve to thirty-nine months from the time they are listed. Id.

exercise/strike prices,¹⁵ minimum increments,¹⁶ position and exercise limits,¹⁷ margin requirements,¹⁸ customer accounts,¹⁹ and trading halt procedures²⁰ would apply to the listing and trading of options on a Commodity-Based Trust Share on the Exchange in the same manner as they apply to other options on all other ETFs that are listed and traded on the Exchange.

In addition, the Exchange states that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on a Commodity-Based Trust Share, and that it and the Options Price Reporting Authority or “OPRA” has the necessary systems capacity to support the new option series.²¹ Also, the Exchange states that it may obtain information from CME Group Inc.’s designated contract markets that are members of the Intermarket Surveillance Group related to a financial instrument that is based, in whole or in part, upon an interest in or performance of a commodity, as applicable.²² The Exchange states that it has not identified any issues with the continued listing and trading of any ETF options, including ETFs that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange.²³

¹⁵ See Notice, supra note 4, at 10741-42. See also ISE Rule Options 4, Section 5(b) (relating to exercise price of options upon commencement of trading of a particular class of options on the Exchange); ISE Rule Options 4, Section 5(d) (relating to strike prices of series of options on ETFs).

¹⁶ See Notice, supra note 4, at 10741-42. See also ISE Rule Options 4, Section 5 and Options 3, Section 3.

¹⁷ See Notice, supra note 4, at 10742. The Exchange states that position and exercise limits for options on a Commodity-Based Trust Share would be determined pursuant to ISE Rule Options 9, Sections 13 and 15, respectively, and that position and exercise limits for ETFs options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months. Id.

¹⁸ See Notice, supra note 4, at 10742. See also ISE Rule Options 6C, Section 3.

¹⁹ See Notice, supra note 4, at 10742.

²⁰ See Notice, supra note 4, at 10741-42.

²¹ See Notice, supra note 4, at 10742.

²² Id.

²³ Id.

III. Proceedings to Determine Whether to Approve or Disapprove SR-ISE-2025-08 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁴ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,²⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and protect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."²⁷ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ See id.

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 17 CFR 201.700(b)(3).

applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²⁸ and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.²⁹ The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act. In particular, the Commission asks commenters to address the potential market impacts of allowing the listing and trading of options on Commodity-Based Trust Shares.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,³⁰ any request for an opportunity to make an oral presentation.³¹

²⁸ See id.

²⁹ See id.

³⁰ 17 CFR 240.19b-4.

³¹ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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-2025-08 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-2025-08. 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-ISE-2025-08 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

³² 17 CFR 200.30-3(a)(57).