

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103240; File Nos. SR-NYSEAMER-2025-07, NYSEARCA-2025-16]

Self-Regulatory Organizations; NYSE American LLC, NYSE Arca Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Amend Rules to Permit Options on Commodity-Based Trust Shares

June 12, 2025.

I. Introduction

On February 24, 2025, NYSE American LLC (“NYSE American”) and NYSE Arca Inc. (“NYSE Arca”) (each an “Exchange”; collectively, the “Exchanges”) 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 proposed rule changes to amend their respective rules to allow the Exchanges to list and trade options on Commodity-Based Trust Shares.³ The proposed rule changes were published for comment in the Federal Register on March 17, 2025.⁴ The Commission has not received any comments on the proposed rule changes.

On April 25, 2025, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule changes, disapprove the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See, infra, note 10 and accompanying text.

⁴ See Securities Exchange Act Release No. 102555 (Mar. 10, 2025), 90 FR 12189 (“NYSE American Notice”); Securities Exchange Act Release No. 102577 (Mar. 11, 2025), 90 FR 12377 (“NYSE Arca Notice”) (collectively, “Notices”).

⁵ 15 U.S.C. 78s(b)(2).

changes, or institute proceedings to determine whether to disapprove the proposed rule changes.⁶ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule changes.

II. Description of the Proposed Rule Changes

As described more fully in the Notices, the Exchanges propose to amend their listing rules 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 Exchanges propose, in their rules relating to the criteria for underlying securities, to remove references to the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Silver Trust, ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum, 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.⁹ In addition, the Exchanges propose to state that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that represent interests in “a security (a) 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

⁶ See Securities Exchange Act Release No. 102931 (Apr. 25, 2025), 90 FR 18717 (May 1, 2025) and Securities Exchange Act Release No. 102930 (Apr. 25, 2025), 90 FR 18718 (May 1, 2025) (each designating June 15, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Notices, supra note 4. See also proposed NYSE American Rule 915, Commentary .10 and Rule 916, Commentary .11; proposed NYSE Arca Rule 5.3-O(g), Commentary .10 and Rule 5.4-O, Commentary .02

⁹ See Notices, supra note 4. See also proposed NYSE American Rule 915, Commentary .10 and Rule 916, Commentary .11; proposed NYSE Arca Rule 5.3-O(g), Commentary .10 and Rule 5.4-O, Commentary .02.

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')."¹⁰

As a result of these proposed rule changes, the Exchanges' listing criteria would allow any exchange traded fund ("ETF") approved to list on the primary market as a Commodity-Based Trust Share to qualify as an underlying for options traded on the Exchanges, provided other listing criteria have been met, without requiring additional approvals from the Commission.¹¹ The Exchanges state that offering options on Commodity-Based Trust Shares provides investors with the ability to hedge exposure to the underlying security.¹² Additionally, the Exchanges state that options on a Commodity-Based Trust Share provide investors with the ability to transact in such options in a listed market environment, which would increase market transparency and enhance the process of price discovery conducted on the Exchanges through increased order flow to the benefit of all investors.¹³

The Exchanges state that options on a Commodity-Based Trust Share will trade in the same manner as options on other ETFs on the Exchanges.¹⁴ The Exchanges' rules that currently apply to the listing and trading of all options on ETFs on each Exchange, including, for example,

¹⁰ See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12378. See also proposed NYSE American Rule 915, Commentary .10; proposed NYSE Arca Rule 5.3-O(g), Commentary .10.

¹¹ See NYSE American Notice, supra note 4, at 12192; NYSE Arca Notice, supra note 4, at 12380.

¹² See id.

¹³ See id.

¹⁴ See id.

rules that govern listing criteria,¹⁵ including continued listing standards,¹⁶ expirations,¹⁷ exercise/strike prices,¹⁸ minimum increments,¹⁹ position and exercise limits,²⁰ margin requirements,²¹ customer accounts,²² and trading halt procedures²³ would apply to the listing and trading of options on a Commodity-Based Trust Share on the Exchanges in the same manner as they apply to other options on all other ETFs that are listed and traded on the Exchanges.

In addition, the Exchanges state the surveillance procedures applicable to all other options on ETFs will apply to options on Commodity-Based Trust Shares.²⁴ The Exchanges also state that they have analyzed their capacity and state that the Exchanges and the Options Price

¹⁵ See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12378. See also NYSE American Rule 915; NYSE Arca Rule 5.3-O.

¹⁶ See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12378. See also NYSE American Rule 916, Commentary .07; NYSE Arca Rule 5.4-O(k). The Exchanges state Commodity-Based Trust Shares will not be deemed to meet the requirements for continued approval, and the Exchanges shall not open for trading any additional series of option contracts covering Commodity-Based Trust Shares if such security ceases to be an “NMS stock” as provided for in NYSE American Rule 916 or NYSE Arca Rule 5.4-O(b)(5) or if the Commodity-Based Trust Share is halted from trading on its primary market. See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12378.

¹⁷ See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12379. The Exchanges state that the Exchanges 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, monthly, or quarterly basis. Id. The Exchanges state that they may also list long-term equity option series (“LEAPS”) that expire from twelve to thirty-nine months from the time they are listed. Id.

¹⁸ See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12379.

¹⁹ See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12379. See also NYSE American Rules 903 and 960NY; NYSE Arca Rules 6.4-O and 6.72-O.

²⁰ See NYSE American Notice, supra note 4, at 12191; NYSE Arca Notice, supra note 4, at 12379. The Exchanges state that position and exercise limits for options on ETFs 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. Id.

²¹ See NYSE American Notice, supra note 4, at 12191; NYSE Arca Notice, supra note 4, at 12379. See also NYSE American Rule 462; NYSE Arca Rule 4.16-O.

²² See NYSE American Notice, supra note 4, at 12191; NYSE Arca Notice, supra note 4, at 12379.

²³ See id.

²⁴ See NYSE American Notice, supra note 4, at 12190; NYSE Arca Notice, supra note 4, at 12379.

Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of new series of ETFs, including options on a Commodity-Based Trust Share, up to the number of expirations currently permissible under the Exchange Rules.²⁵ The Exchanges state that they may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members of the ISG and that the Exchanges have a Regulatory Services Agreement with the Financial Industry Regulatory Authority.²⁶ The Exchanges state that they have not identified any issues with the continued listing and trading of any ETF options, including ETFs that hold commodities (*i.e.*, precious metals) that they currently list and trade.²⁷

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEAMER-2025-07 and NYSEARCA-2025-16 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁸ to determine whether the proposed rule changes 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 changes. 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 changes.

Pursuant to Section 19(b)(2)(B) of the Act,²⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow

²⁵ See NYSE American Notice, supra note 4, at 12191; NYSE Arca Notice, supra note 4, at 12379.

²⁶ See NYSE American Notice, supra note 4, at 12191; NYSE Arca Notice, supra note 4, at 12379.

²⁷ See NYSE American Notice, supra note 4, at 12192; NYSE Arca Notice, supra note 4, at 12380.

²⁸ 15 U.S.C. 78s(b)(2)(B).

²⁹ See id.

for additional analysis of the proposed rule changes' consistency with Section 6(b)(5) of the Act,³⁰ 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."³¹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,³² 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.³³ The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposals are 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

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 17 CFR 201.700(b)(3).

³² See id.

³³ See id.

concerns they may have with the proposals. In particular, the Commission invites the written views of interested persons concerning whether the proposals are 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,³⁴ any request for an opportunity to make an oral presentation.³⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes 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 numbers SR-NYSEAMER-2025-07 and NYSEARCA-2025-16 on the subject line.

³⁴ 17 CFR 240.19b-4.

³⁵ 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).

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 numbers SR-NYSEAMER-2025-07 and NYSEARCA-2025-16. These file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings 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 numbers SR-NYSEAMER-2025-07 and NYSEARCA-2025-16 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.³⁶

Vanessa A. Countryman,

Secretary.

³⁶ 17 CFR 200.30-3(a)(57).