

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102797; File No. SR-CBOE-2024-036]

## **Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Permit the Listing and Trading of Options on Shares of the Fidelity Ethereum Fund**

April 9, 2025

On August 19, 2024, Cboe Exchange, Inc. (“Cboe Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to allow the listing and trading of options on Units<sup>3</sup> that represent interests in the Fidelity Ethereum Fund (the “Fidelity Fund”), the 21Shares Core Ethereum ETF, the Invesco Galaxy Ethereum ETF, the Franklin Ethereum ETF, the VanEck Ethereum Trust, the Grayscale Ethereum Trust, the Grayscale Mini Ethereum Trust, the Bitwise Ethereum ETF, and the iShares Ethereum Trust ETF.<sup>4</sup> The proposed rule change was published for comment in the

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

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

<sup>3</sup> Cboe Rule 1.1 defines a “Unit” (which may also be referred to as an exchange-traded fund (“ETF”)) as a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3.

<sup>4</sup> The Commission approved proposals by several exchanges to list and trade shares of trusts that hold ether, including the Fidelity Fund. See Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (“Ether ETP Order”); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024). Ether is a digital asset that is native to, and minted and transferred via, a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as “Ethereum.” The Ethereum protocol governs the creation of new ether and the cryptographic system that secures and verifies transactions on Ethereum. See Ether ETP Order, 89 FR at footnote 13. Item II of this order, which provides notice of Amendment No. 1, uses the terms “ether” and “Ethereum” as they are used in Amendment No. 1.

Federal Register on September 4, 2024.<sup>5</sup> On October 11, 2024, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> 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.<sup>7</sup> On November 14, 2024, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>8</sup> to determine whether to approve or disapprove the proposed rule change.<sup>9</sup> The Commission received comments regarding the proposal.<sup>10</sup> On January 21, 2025, the Exchange filed Amendment No. 1 to the proposal, which supersedes and replaces the original proposal in its entirety.<sup>11</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange filed with the Commission a proposed rule change, as modified by Amendment No. 1, to list and trade options on shares of the Fidelity Fund. The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also available on the Exchange’s website [https://www.cboe.com/us/options/regulation/rule\\_filings/](https://www.cboe.com/us/options/regulation/rule_filings/), at

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<sup>5</sup> See Securities Exchange Act Release No. 100862 (Aug. 28, 2024), 89 FR 72146.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 101321 (Oct. 11, 2024), 89 FR 83723 (Oct. 17, 2024).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> See Securities Exchange Act Release No. 101631, 89 FR 91811 (Nov. 20, 2024) (“Order Instituting Proceedings”).

<sup>10</sup> Comments on the proposal are available at: <https://www.sec.gov/comments/sr-cboe-2024-036/srcboe2024036.htm>.

<sup>11</sup> Amendment No. 1 narrows the scope of the proposal to provide for the listing and trading of options on the shares of a single fund, the Fidelity Fund; establishes position and exercise limits of 25,000 contracts for options on shares of the Fidelity Fund; provides that the Exchange will not authorize the trading of FLEX Options on shares of the Fidelity Fund; and provides data and analysis designed to support the proposed position and exercise limits and to demonstrate that shares of the Fidelity Fund are widely held and actively traded. Amendment No. 1 to the proposal is available at: <https://www.sec.gov/comments/sr-cboe-2024-036/srcboe2024036.htm>.

the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. The Exchange’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 Rule 4.3 regarding the criteria for underlying securities. Specifically, the Exchange proposes to amend Rule 4.3, Interpretation and Policy .06(a)(4) to allow the Exchange to list and trade options on Units<sup>12</sup> that represent interests in the Fidelity Ethereum Fund (the “Fidelity Fund”)<sup>13</sup>, designating them as “Units” deemed appropriate for options trading on the Exchange. Current Rule 4.3, Interpretation and Policy .06 provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Units that represent certain types of interests,<sup>14</sup> including interests in

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<sup>12</sup> Rule 1.1 defines a “Unit” (which may also be referred to as an ETF) as a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3.

<sup>13</sup> See Securities Exchange Act Release No. 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) (“Ethereum ETP Approval Order”).

<sup>14</sup> See Rule 4.3, Interpretation and Policy .06(a), which permits options trading on Units that 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 including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase

certain specific trusts that hold financial instruments, money market instruments, precious metals (which are deemed commodities), or Bitcoin (which is also deemed a commodity).

The Fidelity Fund is an Ethereum-backed commodity ETF structured as a trust. Similar to any Unit currently deemed appropriate for options trading under Rule 4.3, Interpretation and Policy .06, the investment objective of the Fidelity Fund is for its shares to reflect the performance of Ethereum (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Ethereum without the complexities of Ethereum delivery. As is the case for Units currently deemed appropriate for options trading, the Fidelity Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Ethereum and are designed to track Ethereum or the performance of the price of

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agreements and reverse purchase 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 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); interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust ("Currency Trust Shares"); 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 Units"); interests in the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the Aberdeen Standard Physical Silver Trust, the Aberdeen Standard Physical Gold Trust, the Aberdeen Standard Physical Palladium Trust, the Aberdeen Standard Physical Platinum Trust, the Sprott Physical Gold Trust, the Goldman Sachs Physical Gold ETF, the Fidelity Wise Origin Bitcoin Fund, the ARK 21Shares Bitcoin ETF, the iShares Bitcoin Trust, the Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust, or the Bitwise Bitcoin ETF; or an interest in a registered investment company ("Investment Company") organized as an open-end management investment 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 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").

Ethereum and offer access to the Ethereum market.<sup>15</sup> The Fidelity Fund provides investors with cost-efficient alternatives that allow a level of participation in the Ethereum market through the securities market. The primary substantive difference between the Fidelity Fund and Units currently deemed appropriate for options trading are that Units may hold securities, certain financial instruments, specified precious metals (which are deemed commodities), and Bitcoin (which is also deemed a commodity), while the Fidelity Fund holds Ethereum (which is also deemed a commodity).

The Exchange believes the Fidelity Fund satisfies the Exchange's initial listing standards for Units on which the Exchange may list options. Specifically, the Fidelity Fund satisfies the initial listing standards set forth in Rule 4.3, Interpretation and Policy .06(b), as is the case for other Units on which the Exchange lists options (including trusts that hold commodities). Rule 4.3, Interpretation and Policy .06 requires that Units must either (1) meet the criteria and standards set forth in Rule 4.3, Interpretation and Policy .01(a),<sup>16</sup> or (2) 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 Units 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 prospectus. The Fidelity Fund satisfies Rule 4.3, Interpretation and Policy .06(b)(2), as it is subject to this creation and redemption process.

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<sup>15</sup> The trust may include minimal cash.

<sup>16</sup> Rule 4.3, Interpretation and Policy .01 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

While not required by the Rules for purposes of options listings, the Exchange believes the Fidelity Fund satisfies the criteria and guidelines set forth in Rule 4.3, Interpretation and Policy .01. Pursuant to Rule 4.3(a), a security (which includes a Unit) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, as amended (the “Act”)), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>17</sup> The Fidelity Fund is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.<sup>18</sup> The Exchange believes the Fidelity Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of December 23, 2024, the Fidelity Fund had 41,700,000 shares outstanding, which is nearly six times more than the minimum number of shares of a corporate stock (i.e., 7,000,000 shares) that the Exchange generally requires to list options on that stock pursuant to Rule 4.3, Interpretation and Policy .01(a)(1). The Exchange believes this demonstrates that the Fidelity Fund is characterized by a substantial number of outstanding shares.

Further, as of November 26, 2024, there were 38,170 beneficial holders of shares of the Fidelity Fund, which is significantly more than 2,000 beneficial holders (approximately 19 times more), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 4.3, Interpretation and Policy

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<sup>17</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 4.3, Interpretation and Policy .01, subject to exceptions.

<sup>18</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”).

.01(a)(2). Therefore, the Exchange believes the shares of the Fidelity Fund are widely held.<sup>19</sup>

The Exchange also believes the shares of the Fidelity Fund are actively traded. As of December 23, 2024, the total trading volume (by shares) and the approximate average daily volume (“ADV”) (in shares and notional) from July 23, 2024 (the date on which shares of the Fidelity Fund began trading) to December 23, 2024 for the Fidelity Fund was as follows:

<u>Trading Volume (Shares)</u>	<u>ADV (Shares)</u>	<u>ADV (Notional \$)</u>
115,589,047	1,070,269	33,864,193

As demonstrated above, despite the fact that the Fidelity Fund has been trading for approximately five months as of December 23, 2024, its total trading volume as of that date was substantially higher than 2,400,000 shares (more than 48 times that amount), which is the minimum 12-month volume the Exchange generally requires for a corporate stock in order to list options on that security as set forth in Rule 4.3, Interpretation and Policy .01. Additionally, as of December 23, 2024, the trading volume for the Fidelity Fund was in the top 5% of all ETFs that are currently trading. The Exchange believes this data demonstrates the Fidelity Fund is characterized as having shares that are actively traded.

Options on the Fidelity Fund will be subject to the Exchange’s continued listing standards set forth in Rule 4.4, Interpretation and Policy .06 for Units deemed appropriate for options trading pursuant to Rule 4.3, Interpretation and Policy .06. Specifically, Rule 4.4, Interpretation and Policy .06 provides that Units that were initially approved for options trading

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<sup>19</sup> The Exchange continues to believe assets under management (“AUM”), rather than shares outstanding and number of holders, is a better measure of investable capacity of ETFs and a more appropriate figure for determining position and exercise limits of ETFs and looks forward to further discussions with the Commission staff on this topic.

pursuant to Rule 4.3, Interpretation and Policy .06 shall be deemed not 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 that such Units, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market. Additionally, options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Units approved for trading under Rule 4.3, Interpretation and Policy .06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Rule 4.4, Interpretation and Policy .01; (2) in the case of options covering Units approved for trading under Rule 4.3 Interpretation and Policy .06(b)(2) (as is the case for the Fidelity Fund), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange and are defined as an NMS stock, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Units are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on the Fidelity Fund will be physically settled contracts with American-style exercise.<sup>20</sup> Consistent with current Rule 4.5, which governs the opening of options series on a

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<sup>20</sup> See Rule 4.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (“OCC”); and Equity Options Product Specifications January 3, 2024), available at [Equity Options Specifications \(cboe.com\)](https://www.cboe.com/equity/options/specifications); see also OCC Rules, Chapters 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).

specific underlying security (including Units), the Exchange will open at least one expiration month for options on the Fidelity Fund<sup>21</sup> at the commencement of trading on the Exchange and may also list series of options on the Fidelity Fund for trading on a weekly,<sup>22</sup> monthly,<sup>23</sup> or quarterly<sup>24</sup> basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from 12 to 180 months from the time they are listed.

Pursuant to Rule 4.5, Interpretation and Policy .07, which governs strike prices of series of options on Units, the interval of strikes prices for series of options on the Fidelity Fund 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>25</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>26</sup> the \$0.50 Strike Program,<sup>27</sup> the \$2.50 Strike Price Program,<sup>28</sup> and the \$5

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<sup>21</sup> See Rule 4.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 4.3. 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 Rule 4.5(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. 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>22</sup> See Rule 4.5(d).

<sup>23</sup> See Rule 4.5(g).

<sup>24</sup> See Rule 4.5(e).

<sup>25</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, Rules 4.5(d), (e), and (g) specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

<sup>26</sup> See Rule 4.5, Interpretation and Policy .01(a).

<sup>27</sup> See Rule 4.5, Interpretation and Policy .01(b).

<sup>28</sup> See Rule 4.5, Interpretation and Policy .04.

Strike Program.<sup>29</sup> Pursuant to Rule 5.4, where the price of a series of a Fidelity 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 increment will be \$0.10.<sup>30</sup> Any and all new series of Fidelity Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 4.5 and 5.4, as applicable.

The Exchange also proposes to amend Rule 8.30. Specifically, the Exchange proposes to adopt Rule 8.30, Interpretation and Policy .10 to provide a position limit of 25,000 same side option contracts for the Fidelity Fund option. Additionally, pursuant to Rule 8.42, Interpretation and Policy .02, the exercise limits for options on the Fidelity Fund will be equivalent to this proposed position limit.

The Exchange determined these proposed position and exercise limits considering, among other things, the ADV (since trading of the Fidelity Fund began on July 23, 2024) and outstanding shares of the Fidelity Fund (which as discussed above demonstrate that the Fidelity Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of December 23, 2024):

<b>ADV (shares)</b>	<b>Outstanding Shares</b>	<b>Market Capitalization (\$)</b>
1,070,269	41,700,000	1,433,229,000

The Exchange then compared the number of outstanding shares of the Fidelity Fund to

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<sup>29</sup> See Rule 4.5, Interpretation and Policy .01(f).

<sup>30</sup> If options on the Fidelity Fund are eligible to participate in the Penny Interval Program, the minimum increment will be \$0.01 for series with a price below \$3.00 and \$0.05 for series with a price at or above \$3.00. See 5.4(d) (which describes the requirements for the Penny Interval Program).

those of other ETFs. The approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of December 31, 2024) was approximately 102,703 contracts, which is significantly higher (approximately 4 times) than the proposed position and exercise limit of 25,000 contracts for Fidelity Fund options.<sup>31</sup> As discussed above, shares of the Fidelity Fund are actively held and widely traded: (1) the Fidelity Fund (as of December 23, 2024) 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 Rule 4.3, Interpretation and Policy .01(a)(1); (2) the Fidelity Fund (as of November 26, 2024) had significantly more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 4.3, Interpretation and Policy .01(a)(2); and (3) the Fidelity Fund had a trading volume in the approximately five-month time period since it began trading substantially higher than 2,400,000 shares, 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 Rule 4.3, Interpretation and Policy .01.

With respect to outstanding shares, if a market participant held the maximum number of positions possible pursuant to the proposed position and exercise limits, the equivalent shares represented by the proposed position/exercise limit would represent approximately 6.0% of the 41,700,000 current outstanding shares of the Fidelity Fund. Therefore, if a market participant held the maximum permissible options positions in Fidelity Fund options and exercised all of them at the same time, that market participant would control a small percentage of the

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<sup>31</sup> The position limits for those ETF options for which the underlying ETFs had similar outstanding shares were all 50,000 or above, and nearly half of them had position limits of 200,000 or 250,000 contracts.

outstanding shares of the Fidelity Fund.

Cboe Options Rule 8.30, Interpretation and Policy .02, provides two methods of qualifying for a position limit tier above 25,000 option contracts. The first method is based on six-month trading volume in the underlying security, and the second method is based on slightly lower six-month trading volume *and* number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on trading volume and number of shares outstanding would be required to have the minimum number of outstanding shares as shown in middle column of the table below.

The table, which provides the equivalent shares of the position limits applicable to equity options, including ETFs, further represents the percentages of the minimum number of outstanding shares that an underlying stock or ETF must have to qualify for that position limit (under the second method described above).

<b>Position/Exercise Limit (in equivalent shares)</b>	<b>Minimum Outstanding Shares</b>	<b>Percentage of Outstanding Shares</b>
2,500,000	6,300,000	40.0%
5,000,000	40,000,000	12.5%
7,500,000	120,000,000	6.3%
20,000,000	240,000,000	8.3%
25,000,000	300,000,000	8.3%

The equivalent shares represented by the proposed position and exercise limits for the Fidelity Fund as a percentage of outstanding shares of the Fidelity Fund is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000, which is the

position limit the Exchange is proposing for Fidelity Fund options.<sup>32</sup>

Further, the proposed position and exercise limit for Fidelity Fund options is equal to the lowest position and exercise limits available in the options industry for equity options, are extremely conservative and more than appropriate given the market capitalization, average daily volume, and high number of outstanding shares of the Fidelity Fund. The proposed position and exercise limit for the Fidelity Fund is also equal to the position and exercise limits for ETFs that hold Bitcoin, as recently approved by the Commission.<sup>33</sup>

All of the above information demonstrates that the proposed position and exercise limits for Fidelity Fund options are more than reasonable and appropriate. The trading volume, ADV, and outstanding shares of the Fidelity Fund demonstrate that its shares are actively traded and widely held, and proposed position and exercise limit is well below those of options on other ETFs with similar market characteristics. The proposed position and exercise limit would be the lowest position and exercise limit available for equity options in the industry, are extremely conservative, and are more than appropriate given the Fidelity Fund's market capitalization, ADV, and high number of outstanding shares.

Rule 4.20 currently permits the Exchange to authorize for trading a FLEX option class on any equity security if it may authorize for a trading a non-FLEX option class on that equity

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<sup>32</sup> As these percentages are based on the minimum number of outstanding shares an underlying security must have to qualify for the applicable position limit, these are the highest possible percentages that would apply to any option subject to that position and exercise limit. 6,300,000 is the minimum number of outstanding shares an underlying security must have for the Exchange to continue to list options on that security, so this would be the smallest number of outstanding shares permissible for any corporate option that would have a position limit of 25,000 contract. See Rule 4.5, Interpretation and Policy .01. This rule applies to corporate stock options but not ETF options, which currently have no requirement regarding outstanding shares of the underlying ETF for the Exchange to continue listing options on that ETF. Therefore, there may be ETF options trading for which the 25,000 contract position limit represents an even larger percentage of outstanding shares of the underlying ETF than set forth above.

<sup>33</sup> See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-035) (“Bitcoin ETF Option Approval”); see also Rule 8.30, Interpretation and Policy .10.

security pursuant to Rule 4.3. The proposed rule change amends Rule 4.20 to exclude the Fidelity Fund from this provision.

Fidelity Fund options will trade in the same manner as any other Unit options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Fidelity Fund options on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange, including the precious-metal backed commodity Units already deemed appropriate for options trading on the Exchange pursuant to current Rule 4.3, Interpretation and Policy .06(a)(4).

Today, the Exchange has an adequate surveillance program in place for options. Cboe intends to apply those same program procedures to options on the Fidelity Fund that it applies to the Exchange's other options products.<sup>34</sup> Cboe's market surveillance staff would have access to the surveillances conducted by Cboe BZX Exchange, Inc. ("BZX")<sup>35</sup> with respect to the Fidelity Fund and would review activity in the Fidelity Fund when conducting surveillances for market abuse or manipulation in the options on the Fidelity Fund. 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 obtaining information from BZX, the Exchange would be able to obtain information regarding trading of shares of the Fidelity Fund through ISG.

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<sup>34</sup> The surveillance program includes surveillance patterns for price and volume movements as well as patterns for potential manipulation (e.g., spoofing and marking the close).

<sup>35</sup> Cboe BZX Exchange, Inc. is an affiliated market of the Exchange.

In addition, Cboe has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) for certain market surveillance, investigation and examinations functions. Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.<sup>36</sup> The underlying shares of spot Ethereum exchange-traded products (“ETPs”), including the Fidelity Fund, 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 Ethereum-based ETPs, “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the [Chicago Mercantile Exchange (“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 bitcoin futures market.”<sup>37</sup> The Exchange states that, given the consistently high correlation between the CME 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

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<sup>36</sup> Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (“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 (“common members”). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: receive regulatory reports from such members; examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or carry out other specified regulatory responsibilities with respect to such members.

<sup>37</sup> See Ethereum ETP Approval Order, 89 FR at 46938.

acts and practices in the specific context of the [Ethereum ETPs].”<sup>38</sup> In light of surveillance measures related to both options and futures as well as the Fidelity Fund,<sup>39</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 Fidelity Fund. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Fidelity Fund.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on the Fidelity Fund up to the number of expirations currently permissible under the Rules. Because the proposal is limited to one class, the Exchange believes any additional traffic that may be generated from the introduction of Fidelity Fund options will be manageable.

The Exchange believes that offering options on the Fidelity Fund will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Ethereum and hedging vehicle to meet their investment needs in connection with Ethereum-related products and positions. The Exchange expects investors will transact in options on the Fidelity Fund in the unregulated over-the-counter (“OTC”) options market,<sup>40</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 positions; (2) increased

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<sup>38</sup> See Ethereum ETP Approval Order, 89 FR at 46939.

<sup>39</sup> See Amendment No. 2 to SR-CboeBZX-2023-095, Proposed Rule Change To List and Trade Shares of the Fidelity Ethereum Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (filed May 21, 2024); see also Ethereum ETP Approval Order.

<sup>40</sup> The Exchange understands from customers that investors have historically transacted in options on Units in the OTC options market if such options were not available for trading in a listed environment.

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 Fidelity Fund 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 Units that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as the Fidelity Fund 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 any Unit options, including Units that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange. The Exchange notes that quotation and last sale information for shares of the Fidelity Fund are available from the CTA high-speed lines, as well as from BZX (on which the shares are primarily listed). Quotation and last sale information for options on the Fidelity Fund will be available from OPRA and market data vendors.

## 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>41</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>42</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,

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<sup>41</sup> 15 U.S.C. 78f(b).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

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>43</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 Fidelity Fund 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 the Fidelity Fund will provide investors with an opportunity to realize the benefits of utilizing options on the Fidelity Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Fidelity 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 Ethereum and with Ethereum-related products and positions. Additionally, the Exchange's offering of Fidelity 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 (or has the authority to list) options on other commodity-based Units,<sup>44</sup> which, as described above, are trusts structured in substantially the same manner

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<sup>43</sup> Id.

<sup>44</sup> See Rule 4.3, Interpretation and Policy .06(a)(4).

as the Fidelity Fund and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Ethereum rather than Bitcoin or precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Unit 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 the Fidelity Fund satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Units, including Units that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, the Fidelity Fund is characterized by a substantial number of shares that are widely held and actively traded. Fidelity Fund options will trade in the same manner as any other Unit options — the same Exchange Rules that currently govern the listing and trading of all Unit options, including permissible expirations, strike prices and minimum increments, and applicable margin requirements, will govern the listing and trading of options on the Fidelity Fund in the same manner.

The Exchange believes the proposed position and exercise limits are designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as they are designed 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 proposed position and exercise limits in this Amendment No. 1 for Fidelity Fund options are 25,000 contracts, which is currently the lowest limit applicable to any equity options (including ETF options) and the position and exercise limits that apply to comparable ETFs that

hold Bitcoin.<sup>45</sup> The Exchange believes the proposed position and exercise limits are extremely conservative for Fidelity Fund options given the trading volume and outstanding shares for the Fidelity Fund. The information above demonstrates that the average position and exercise limits of options on ETFs with comparable outstanding shares and trading volume to those of the Fidelity Fund are significantly higher than the proposed position and exercise limits for Fidelity Fund options. Therefore, the proposed position and exercise limits for Fidelity Fund options are conservative relative to options on ETFs with comparable market characteristics.

Further, given that the issuer of the Fidelity Fund may create and redeem shares that represent an interest in Ethereum, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the Ethereum market. As of December 23, 2024, the global supply of Ethereum was approximately 120,000,000 coins, and the price of one Ethereum coin was approximately \$3,494.25,<sup>46</sup> which equates to a market capitalization of approximately \$419.31 billion. Consider the proposed position and exercise limit of 25,000 option contracts for the Fidelity 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 of Fidelity Fund shares (if that market participant exercised all its options). Using a share price of \$34.37 on December 23, 2024, the value of 2,500,000 shares of the Fidelity Fund at that price is \$85,925,000, and the approximate percentage of that value of the size of the Ethereum market is 0.02%. Therefore, if a market participant with the maximum

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<sup>45</sup> See Rule 8.30. The Exchange notes in the initial Rule Filing, the position and exercise limit for the Fidelity Fund option would have been 25,000 contracts once the options began trading (pursuant to Rule 8.30, the Fidelity Fund option would have a higher position and exercise limit until the next time the Exchange conducted the review of limits). Therefore, this Amendment No. 1 is proposing to adopt a lower position and exercise limit as were practically proposed in the initial Rule Filing.

<sup>46</sup> See [Ethereum Price \(ETH\), Market Cap, Price Today & Chart History - Blockworks](#).

25,000 same side contracts in Fidelity Fund options exercised all positions at one time, such an event would have no practical impact on the Ethereum market.

The Exchange believes the proposed rule change to exclude the Fidelity Fund from being eligible for trading as FLEX options is consistent with the Act, because it will permit the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position limits for ETF options.<sup>47</sup>

The Exchange also believes the proposed position and exercise limits are appropriate given position limits for Ethereum futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 8,000 futures (for the initial spot month) on its Ethereum futures contract.<sup>48</sup> On December 23, 2024, CME Dec 24 Ethereum Futures settled at approximately \$3,418.00. A position of 8,000 CME Ethereum futures, therefore, would have a notional value of \$1,367,200,000. A position of approximately 397,789 option contracts would equate to that notional value.<sup>49</sup> This approximate number of option contracts for the Fidelity Fund that equate to the notional value of CME Ethereum futures is significantly higher than the proposed limit of 25,000 options contract for the Fidelity Fund option. The fact that many options ultimately expire out-of-the-money and thus are not exercised for shares of the

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<sup>47</sup> The Exchange may submit a separate rule filing that would permit the Exchange to authorize for trading FLEX options on the Fidelity (which filing may propose changes to existing FLEX option position limits for such options if appropriate).

<sup>48</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 Ethereum futures contract is valued at 50 Ethereum as defined by the CME CF Ether Reference Rate (“BRR”). See CME Rule 35001.

<sup>49</sup> The notional value of the futures is calculated as follows: 8,000 futures x 50 (the futures multiplier) x \$3,418 (the price of one future) = \$1,367,200,000. The number of option contracts that equates to that notional value is calculated as follows: \$1,367,200,000 / notional value of one option contract (\$34.37 (share price of Fidelity Fund) x 100 (option multiplier)) = 397,789 option contracts.

underlying, while the delta of a Ethereum Future is 1, further demonstrates how conservative the proposed limit of 25,000 options contracts are for the Fidelity 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>50</sup> Therefore, if a portfolio includes positions 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>51</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 Ethereum, the Exchange believes that that the proposed same side position limits are more than appropriate for Fidelity Fund options.

The Exchange believes the proposed position and exercise limits in this Amendment No. 1 will have no material impact to the supply of Ethereum. For example, consider again the proposed position limit of 25,000 option contracts for the Fidelity Fund option. 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 Fidelity Fund (if that market

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<sup>50</sup> See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

<sup>51</sup> Id.

participant exercised all its options). As of December 23, 2024, the Fidelity Fund had 41,700,000 shares outstanding. This means that the approximate number of market participants that could hold the maximum of 25,000 same side positions in the Fidelity Fund that would equate to the number of shares outstanding of that Fund is 16.

This means if 16 market participants had 25,000 same side positions in Fidelity Fund options, 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 such an event to occur; however, even if either such event did occur, the Exchange would not expect the Fidelity Fund to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

As of December 23, 2024, the global supply of Ethereum was approximately 120,000,000, and the price of one Ethereum coin was approximately \$3,418.00,<sup>52</sup> which equates to a market capitalization of approximately \$419.31 billion. Based on the \$34.37 price of a Fidelity Fund share on December 23, 2024, a market participant could have redeemed one Ethereum for approximately 99 Fidelity Fund shares. Another 11,880,000,000 Fidelity Fund shares could be created before the then-circulating global supply of Ethereum was exhausted. As a result, 4,752 market participants would have to simultaneously exercise 25,000 same side positions in Fidelity Fund options to receive shares of the Fidelity Fund holding the entire global supply of Ethereum. Unlike the Fidelity Fund, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Fidelity Fund may create, redeem, or split shares in response to demand.

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<sup>52</sup> See [Ethereum Price \(ETH\), Market Cap, Price Today & Chart History - Blockworks](#).

Additionally, the supply of Ethereum is unlimited.<sup>53</sup> The current supply of Ethereum is larger than the available supply of most securities.<sup>54</sup> Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Fidelity Fund 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 Ethereum.

The Exchange believes the available supply of Ethereum is not relevant to the determination of position and exercise limits for options overlying the Fidelity Fund.<sup>55</sup> Position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of the instrument underlying the option (in this case, the Ethereum being held within the Fidelity Fund). Position and exercise limits do not limit the total number of options that may be held, but rather 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

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<sup>53</sup> See [Ethereum Price \(ETH\), Market Cap, Price Today & Chart History - Blockworks](#); see also Amendment No. 5 to Form S-1 Registration Statement No. 333-278249, Fidelity Fund, filed July 17, 2024, at 17 (noting that approximately 1,700 Ethereum are issued per day, subject to various factors); and Amendment No. 3 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed May 10, 2024, at 15 – 16 (noting that approximately 1,700 Ethereum are issued per day, subject to various factors).

<sup>54</sup> The market capitalization of Ethereum would rank in the top 25 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

<sup>55</sup> 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, other than recently with respect to ETFs that hold Bitcoin. 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”); compare to Bitcoin ETF Option Approval. The Exchange notes when the Commission approved the filing to list options on an ETF holding gold, filing, the position limits in Rule 8.30 were the same as they are today. 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 Fidelity Fund options.

<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

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 the Fidelity Fund, which described the supply of Ethereum and the potential limits to that supply.<sup>59</sup> The Registration Statement permits an unlimited number of shares of the Fidelity Fund to be created. Further, the Commission approved the listing and trading of shares of the Fidelity Fund, which approval did not comment on the sufficient supply of Ethereum or address whether there was a risk that permitting an unlimited number of shares for the Fidelity Fund would impact the supply of Ethereum.<sup>60</sup> Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Ethereum was sufficient to permit the creation of unlimited Fidelity 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

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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> See id.

<sup>59</sup> See Amendment No. 5 to Form S-1 Registration Statement No. 333-278249, Fidelity Fund, filed July 17, 2024, at 17.

<sup>60</sup> See Ethereum ETP Approval Order.

size of the Ethereum supply, the proposed positions limit is more than sufficient to protect investors and the market.

Based on the above information demonstrating, among other things, that the Fidelity Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, the Exchange believes the proposed position and exercise limits are extremely conservative compared to those of ETF options with similar market characteristics. 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 as well as the Ethereum market.<sup>61</sup>

The Exchange represents that it has the necessary systems capacity to support the new Fidelity Fund options. As discussed above, 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 Unit options, including Fidelity Fund options.

**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. 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 Fidelity Fund will be equally available to all market participants who wish to trade

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

such options and will trade generally in the same manner as other options. The Exchange Rules that currently apply to the listing and trading of all Unit options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Fidelity Fund options on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange. Also, and as stated above, the Commission has approved the trading of options on other commodity-based Units.<sup>62</sup> Further, the Fidelity Fund would need to satisfy the maintenance listing standards set forth in the Exchange Rules in the same manner as any other Unit for the Exchange to continue listing options on them.

The Exchange does not believe that the proposal to list and trade options on the Fidelity Fund 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 Fidelity Fund 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 Fidelity Fund. The Exchange notes that listing and trading Fidelity Fund 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

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<sup>62</sup> See Rule 4.3, Interpretation and Policy .06(a)(4).

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 Fidelity Fund 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 Ethereum prices and Ethereum-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

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>63</sup> and, in particular, the requirements of Section 6 of the Act.<sup>64</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>65</sup> which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Order Instituting Proceedings sought comment on issues raised by the proposal,

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<sup>63</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>64</sup> 15 U.S.C. 78f.

<sup>65</sup> 15 U.S.C. 78f(b)(5).

including whether the proposal included sufficient data and analysis to support a conclusion that the proposal is consistent with the requirements of Section 6(b)(5) of the Act. As discussed more fully below, commenters raised concerns regarding the potential risks of the proposed options to individual investors and the financial system.<sup>66</sup>

A. Widely Held and Actively Traded

The Exchange’s initial listing standards require, among other things, that the security underlying a listed option be “characterized by a substantial number of outstanding shares that are widely held and actively traded.”<sup>67</sup> As described above, the Exchange states that, as of December 23, 2024, the Fidelity Fund had 41,700,000 shares outstanding and that, as of November 26, 2024, the Fidelity Fund had 38,170 beneficial holders.<sup>68</sup> In addition, the Exchange states that, from July 23, 2024, until December 23, 2024, the Fidelity Fund had five-month total trading volume of 115,589,047 shares, average daily volume of 1,070,269 shares, and average notional daily volume of \$33,864,193.<sup>69</sup> The Exchange further states that, as of December 23, 2024, the trading volume for the Fidelity Fund was in the top 5% of all ETFs that are currently trading.<sup>70</sup> In addition, the Exchange states that, as of December 23, 2024, the Fidelity Fund had a market capitalization of \$1,433,229,000.<sup>71</sup>

The Commission has reviewed the Exchange’s analysis and publicly available data regarding the Fidelity Fund. Based on this review of information provided by the Exchange and

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<sup>66</sup> See letters from Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated Dec. 5, 2024 (“Better Markets Letter”); and Robert Rutkowski, dated Dec. 6, 2024 (“Rutkowski Letter”).

<sup>67</sup> See Exchange Rule 4.3(a)(2).

<sup>68</sup> See Amendment No. 1 at 7.

<sup>69</sup> See *id.* at 7-8.

<sup>70</sup> See *id.* at 8.

<sup>71</sup> See *id.* at 11.

publicly available information—including information regarding the number of shares outstanding and the number of beneficial holders for the Fidelity Fund, the ADV of the Fidelity Fund, and the market capitalization of the Fidelity Fund—the Commission concludes that it is reasonable for the Exchange to determine that the Fidelity Fund satisfies the requirement of Exchange Rule 4.3(a)(2) that the security underlying a listed option be widely held and actively traded.

Commenters expressed concerns regarding the potential impact of spot ether based-ETP options on the traditional financial system.<sup>72</sup> One commenter stated that ether’s Proof-of-Stake protocol presents a higher risk of runs because it requires more capital.<sup>73</sup> The commenter stated that options on spot ether-based ETPs “would threaten financial stability by further entangling traditional finance with a volatile asset that would be susceptible to runs.”<sup>74</sup> Another commenter stated that a run on ether could have harmful consequences for investors.<sup>75</sup>

The Commission acknowledges the comments regarding the potential impact of ether-based ETP options, including the proposed Fidelity Fund options, on the traditional financial system. Pursuant to Section 19(b)(2) of the Exchange Act, however, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act.<sup>76</sup> For the reasons discussed herein, the Commission finds that the proposed rule change satisfies the requirements of the Exchange Act, including the requirements in Section 6(b)(5) that the rules of

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<sup>72</sup> See Better Markets Letter at 3-4; and Rutkowski Letter at 1.

<sup>73</sup> See Better Markets Letter at 3.

<sup>74</sup> Id. at 4.

<sup>75</sup> See Rutkowski Letter at 1.

<sup>76</sup> See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Position and Exercise Limits

Position and exercise limits serve as a regulatory tool designed to deter manipulative schemes and adverse market impacts surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise. Options 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 to benefit the options position.<sup>77</sup> In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid classes.<sup>78</sup> As the Commission has previously recognized, markets with active and deep trading interest, as well as with broad public ownership, are more difficult to manipulate or disrupt than less active and deep markets with smaller public floats.<sup>79</sup> The Commission also has recognized 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.<sup>80</sup> At the same time, the Commission has recognized

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<sup>77</sup> See Securities Exchange Act Release No. 39489 (Dec. 24, 1997), 63 FR 276, 279 (Jan 5, 1998) (order approving File No. SR-Cboe-97-11) (“Position Limit Order”).

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> See, e.g., Securities Exchange Act Release Nos. 21907 (Mar. 29, 1985), 50 FR 13440, 13441 (Apr. 4, 1985) (order approving File Nos. SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1); and 40875 (Dec. 31, 1998), 64 FR 1842, 1843 (Jan. 12, 1999) (order approving File Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and Phlx-98-36).

that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.<sup>81</sup>

The Exchange proposes a position limit of 25,000 contracts on the same side of the market for options on the Fidelity Fund and an equivalent exercise limit.<sup>82</sup> In proposing these position and exercise limits, the Exchange considered, among other things, the approximate five-month ADV, outstanding shares, and market capitalization of the Fidelity Fund.<sup>83</sup> The Exchange states that the proposed position and exercise limits of 25,000 contracts are significantly lower than the position and exercise limits of options on other ETFs with a similar number of outstanding shares.<sup>84</sup> In addition, the Exchange states that the number of shares represented by the proposed position and exercise limits were equal to approximately 6% of the 41,700,000 shares of the Fidelity Fund outstanding as of December 23, 2024.<sup>85</sup> The Exchange further states that “[t]he proposed position and exercise limit for Fidelity Fund options is equal to the lowest position and exercise limits available in the options industry for equity options, are extremely conservative and are more than appropriate given the market capitalization, ADV, and high number of outstanding shares of the Fidelity Fund.”<sup>86</sup>

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<sup>81</sup> See id.

<sup>82</sup> See Amendment No. 1 and proposed Exchange Rule 8.30, Interpretation and Policy .10, and Exchange Rule 8.42, Interpretation and Policy .02.

<sup>83</sup> See Amendment No. 1 at 11.

<sup>84</sup> The Exchange states that the position and exercise limits for ETF options with outstanding shares similar to the Fidelity Fund were all 50,000 or above, and nearly half of them had position limits of 200,000 or 250,000 contracts. See Amendment No. 1 at footnote 20.

<sup>85</sup> See Amendment No. 1 at 12.

<sup>86</sup> Id. at 13-14.

The Exchange also compared the size of the position and exercise limits to the market capitalization of the ether market, which, according to the Exchange, had a market capitalization of \$419.31 billion as of December 23, 2024.<sup>87</sup> The Exchange calculated that with a position limit of 25,000 contracts (2,500,000 shares of the Fidelity Fund), as of December 23, 2024, a market participant could hold a position in shares of the Fidelity Fund that represented 0.02% of the ether market, a position that the Exchange states “would have no practical impact on the Ethereum market.”<sup>88</sup>

The Exchange states that the proposed position and exercise limits also are appropriate given position limits for ether futures.<sup>89</sup> The Exchange states that the Chicago Mercantile Exchange (“CME”) imposes a position limit of 8,000 ether futures for the initial spot month and that, as of December 23, 2024, such a position would have had a notional value of \$1,367,200,000.<sup>90</sup> The Exchange states that, as of that date, 397,789 options on the Fidelity Fund would be the equivalent of the \$1,367,200,000 CME ether futures notional value.<sup>91</sup> The Exchange states that the option contract equivalent number is significantly higher than the proposed limit of 25,000 contracts for the Fidelity Fund.<sup>92</sup>

In addition, the Exchange states that with a position limit of 25,000 contracts, 16 market participants, each with a same-side position of 25,000 contracts, would have to exercise all of their Fidelity Fund options to create a scenario that may put the Fidelity Fund shares under

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<sup>87</sup> See id. at 21.

<sup>88</sup> Id. at 22.

<sup>89</sup> See id.

<sup>90</sup> See id.

<sup>91</sup> See id.

<sup>92</sup> See id. at 22-23.

stress.<sup>93</sup> Based on the information provided, demonstrating, among other things, that the Fidelity Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, the Exchange believes the proposed position and exercise limits are extremely conservative compared to those of ETF options with similar market characteristics.<sup>94</sup> The Exchange states that the proposed position and exercise limits reasonably and appropriately balance liquidity provisioning in the market against the prevention of manipulation.<sup>95</sup> The Exchange further states that the 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 as well as the ether market.<sup>96</sup>

The Commission finds that the proposed position and exercise limits are consistent with the Act and, in particular, with the requirements in Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As discussed above, the Commission has recognized 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.<sup>97</sup> In addition, the Commission has stated previously that rules regarding position and exercise limits are intended to prevent the establishment of options positions that can be used or

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<sup>93</sup> The Exchange based this calculation on the number of Fidelity Fund shares outstanding as of December 23, 2024. See Amendment No. 1 at 24.

<sup>94</sup> See id. at 27.

<sup>95</sup> See id.

<sup>96</sup> See id. at 27 (citing the Position Limit Order, supra note 77).

<sup>97</sup> See supra note 80 and accompanying text.

might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.<sup>98</sup> Based on its review of the data and analysis provided by the Exchange, the Commission concludes that the proposed position and exercise limits satisfy these objectives. Specifically, the Commission has considered and reviewed the Exchange's analysis that, as of December 23, 2024, the proposed position and exercise limits of 25,000 contracts represented 6.0% of the outstanding shares of the Fidelity Fund.<sup>99</sup> The Commission also has considered and reviewed the Exchange's statement that with a position limit of 25,000 contracts, 16 market participants, each with a same side position of 25,000 contracts, would have to exercise all of their Fidelity Fund options to create a scenario that may place the Fidelity Fund shares under stress.<sup>100</sup> Based on the Commission's review of this information and analysis, the Commission concludes that the proposed position and exercise limits are designed to prevent investors from disrupting the market for the underlying securities by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security, and 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.

The proposal excludes the Fidelity Fund options from FLEX trading.<sup>101</sup> Excluding Fidelity Fund options from FLEX trading will allow the Commission to consider the listing of FLEX options on the Fidelity Fund in the context of any separate proposal the Exchange files to

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<sup>98</sup> See Securities Exchange Act Release No. 57352 (Feb.19, 2008), 73 FR 10076, 10080 (Feb. 25, 2008) (order approving File No. SR-Cboe-2008-07).

<sup>99</sup> See Amendment No. 1 at 12.

<sup>100</sup> See Amendment No. 1 at 24.

<sup>101</sup> See proposed Exchange Rule 4.20. The Exchange states that excluding Fidelity Fund options from FLEX trading will allow the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position limits for ETF options. See Amendment No. 1 at 22.

list such options.

C. Surveillance

As described more fully above, the Exchange states that it will apply its existing options surveillance program procedures to options on the Fidelity Fund, and that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Fidelity Fund.<sup>102</sup> The Exchange states that its market surveillance staff would have access to the surveillances conducted by Cboe BZX Exchange, Inc. with respect to the Fidelity Fund and would review activity in the underlying Fidelity Fund when conducting surveillances for market abuse or manipulation in options on the Fidelity Fund.<sup>103</sup> In addition, the Exchange states that it is a member of ISG and that it would be able to obtain information regarding trading in Fidelity Fund shares through ISG.<sup>104</sup> The Exchange further states that ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.<sup>105</sup>

Together, these surveillance procedures should allow the Exchange to investigate suspected manipulations or other trading abuses in options on the Fidelity Fund.

D. Retail Customers

Commenters expressed concern that the listing of options on spot ether-based exchange-traded products (“ETPs”) would harm retail investors because of the volatility of ether.<sup>106</sup> One

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<sup>102</sup> See Amendment No. 1 at 15 and 16-17. The Exchange states that its surveillance program includes surveillance patterns for price and volume movements as well as patterns for potential manipulation (e.g., spoofing and marking the close). See *id.* at footnote 23.

<sup>103</sup> See Amendment No.1 at 15. Cboe BZX Exchange, Inc. is an affiliated market of the Exchange. See Amendment No. 1 at footnote 24.

<sup>104</sup> See *id.* at 15.

<sup>105</sup> See *id.* at 15.

<sup>106</sup> See Better Markets Letter at 3; and Rutkowski Letter at 1.

commenter, who stated that ether dropped 22% over a 24-hour period in August of 2024, further stated that “[a]pproving options trading on an ETP with such a volatile underlying asset would inevitably harm retail investors.”<sup>107</sup> Another commenter stated that retail investors “could suffer immense harm” from trading options on ether-based ETPs.<sup>108</sup>

Existing rules governing broker-dealer conduct when dealing with retail customers will apply to the proposed Fidelity Fund options. For example, the Exchange’s rules require its members to “exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation.”<sup>109</sup> In fulfilling this obligation, the member must consider, among other things, a customer’s investment objectives; employment status; estimated annual income; estimated net worth; and investment experience and knowledge.<sup>110</sup> Further, FINRA’s heightened suitability requirements for options trading accounts require that a person recommending an opening position in any option contract have “a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract.”<sup>111</sup>

#### IV. Solicitation of Comments on Amendment No1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of

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<sup>107</sup> Better Markets Letter at 3.

<sup>108</sup> Rutkowski Letter at 1.

<sup>109</sup> See Exchange Rule 9.1(b).

<sup>110</sup> See id.

<sup>111</sup> See FINRA Rule 2360(b)(19).

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-CBOE-2024-036 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-CBOE-2024-036. 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-CBOE-2024-036 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 1 prior to the 30<sup>th</sup> day after the date of publication of notice of Amendment No. 1 in the Federal Register. Amendment No. 1 narrows the scope of the proposal to the Fidelity Fund; proposes position and exercise limits for options on the Fidelity Fund and provides justification and analysis for the proposed position and exercise limits; provides data designed to show that shares of the Fidelity Fund are widely held and actively traded; and provides additional discussion of surveillance procedures that will apply to the proposed options. In Amendment No. 1 the Exchange provided data and analysis supporting the proposed position and exercise limits and stated, among other things, that the proposed position and exercise limits would represent 6.0% of the outstanding shares of the Fidelity Fund.<sup>112</sup> The Commission concludes that the proposed position and exercise limits are designed to minimize the potential for manipulations or disruptions of the underlying market.<sup>113</sup> Amendment No. 1 also provides data and analysis designed to demonstrate that shares of the Fidelity Fund are widely held and actively traded and describes in greater detail the surveillance procedures that will apply to the

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<sup>112</sup> See Amendment No. 1 at 13.

<sup>113</sup> The Commission recognizes that position limits should not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market. See, e.g., Securities Exchange Act Release Nos. 21907 (Mar. 29, 1985), 50 FR 13440 (Apr. 4, 1985) (order approving File Nos. SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1); 40875 (Dec. 31, 1998), 64 FR 1842, 1843 (Jan. 12, 1999) (order approving File Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and Phlx-98-36). The Commission finds that the proposed position and exercise limits are consistent with these objectives.

proposed Fidelity Fund options. This additional information assists the Commission in evaluating the proposal and determining that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, as discussed above. Amendment No. 1 also revises the proposal to exclude Fidelity Fund options from FLEX trading. Excluding Fidelity Fund options from FLEX trading will allow the Commission to consider the listing of FLEX options on the Fidelity Fund in the context of any separate proposal the Exchange files to list such options. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>114</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>115</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>116</sup> that the proposed rule change (SR-CBOE-2024-036), as modified by Amendment No. 1, is approved.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>114</sup> 15 U.S.C. 78s(b)(2).

<sup>115</sup> 15 U.S.C. 78f(b)(5).

<sup>116</sup> 15 U.S.C. 78s(b)(2)

