

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101571; File No. SR-ISE-2024-35)

November 8, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Options on the iShares Ethereum Trust

I. Introduction

On July 22, 2024, Nasdaq ISE, LLC (“ISE” 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to allow the listing and trading of options on iShares Ethereum Trust (“Trust”).³ The proposed rule change was published for comment in the Federal Register on August 12, 2024.⁴ The Commission has received no comments regarding the proposal.

On September 30, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved proposals by several exchanges to list and trade shares of trusts that hold Ether, including the Trust. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024).

⁴ See Securities Exchange Act Release No. 100661 (Aug. 6, 2024), 89 FR 65690 (“Notice”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 1001154 (Sept. 24, 2024) 89 FR 79664 (designating November 10, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁷ 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change

As described more fully in the Notice,⁸ the Exchange proposes to amend Options 4, Section 3(h)(iv), to add the Trust to the list of Exchange-Traded Fund Shares (“Exchange-Traded Funds Shares” or “ETFs”) that are appropriate for options trading.⁹ The Exchange states that the investment objective of the Trust is to reflect generally the performance of the price of ether before payment of the Trust’s expenses and liabilities. The Exchange states that shares of the Trust are intended to constitute a simple means of making an investment similar to an investment in ether through the public securities market rather than by acquiring, holding, and trading ether directly on a peer-to-peer or other basis or via a digital asset platform.¹⁰ The Exchange further states that shares of the Trust have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in ether, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the ether owned by the Trust at such time, less the Trust’s expenses and liabilities.¹¹ The Exchange states that although shares in the Trust are not the exact equivalent of a direct investment in ether, they provide investors with an alternative method of achieving investment exposure to ether through the public securities market, which may be more familiar to them.¹² The Exchange states that offering options on the Trust will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to spot ether as well as a hedging

⁸ See supra note 4.

⁹ See Notice, 89 FR at 65691. The Exchange states that the Trust is not an investment company registered under the Investment Company Act of 1940, as amended. See id.

¹⁰ See id.

¹¹ See id.

¹² See id.

vehicle to meet their investment needs in connection with ether products and positions.¹³ In addition, the Exchange states that, similar to other commodity ETFs in which options may be listed on ISE (e.g. SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, or the ETFS Gold Trust), the proposed ETF is a trust that essentially offers the same objectives and benefits to investors.¹⁴

The Exchange states that options on the Trust will trade in the same manner as options on other ETFs on the Exchange, and that Exchange rules that currently apply to the listing and trading of all options on ETFs on the Exchange, including, for example, rules that govern listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures, will apply to the listing and trading of options on the Trust.¹⁵ The Exchange states that these rules apply to options on the various commodities ETFs deemed appropriate for options trading on the Exchange pursuant to Options 4, Section 3(h)(iv).¹⁶ In addition, the Exchange states that its initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to the Trust.¹⁷ The Exchange states that the initial listing standard set forth in Options 4, Section 3(a) provides that an underlying security must meet the following criteria: (1) the security must be registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act; and (2) the security must be characterized by a substantial number of outstanding shares that are widely held and actively traded.¹⁸ The Exchange further states that, pursuant to ISE Options 4, Section

¹³ See id.

¹⁴ See id. at 65691-2 and ISE Options 4, Section 3(h)(iv).

¹⁵ See Notice at 65692.

¹⁶ See id.

¹⁷ See id.

¹⁸ See id.

3, ETFs on which options may be listed and traded must satisfy the listing standards set forth in Options 4, Section 3(h).¹⁹

The Exchange states that options on the Trust will also be subject to the Exchange's continued listing standards for options on in Options 4, Section 4(g).²⁰ The Exchange states that options approved for trading pursuant to Options 4, Section 3(h) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such ETFs, if the ETFs are delisted from trading as provided Options 4, Section 4(b)(5), or the ETFs are halted or suspended from trading on their primary market.²¹ In addition, the Exchange states that it will consider the suspension of opening transactions in any series of options of the class covering ETFs in any of the following circumstances:

(1) in the case of options covering Exchange-Traded Fund Shares approved pursuant to Options 4, Section 3(h)(A)(i), in accordance with the terms of subparagraphs (b)(1), (2), (3) and (4) of Options 4, Section 4;

(2) in the case of options covering Fund Shares approved pursuant to Options 4, Section 3(h)(A)(ii), following the initial twelve-month period beginning upon the commencement of

¹⁹ Specifically, the Trust must meet either: (1) the criteria and guidelines for underlying securities set forth in Options 4, Section 3(h), or (2) it must be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them 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 of the Exchange-Traded Fund Shares, all as described in the Exchange-Traded Fund Shares' prospectus, or the Exchange-Traded Fund Shares must be based on international or global indexes, or portfolios that include non-U.S. securities, and meet other criteria See id.

²⁰ See Notice at 65692.

²¹ See id.

trading, there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days;

(3) the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or

(4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.²²

The Exchange states that options on the Trust will be physically settled contracts with American-style exercise.²³ As described more fully in the Notice, the Exchange's rules governing the opening of options series and the strike prices for ETF options will apply to the proposed Trust options.²⁴

The Exchange states that position and exercise limits for options on ETFs, including options on the Trust, will be determined pursuant to Options 9, Sections 13 and 15, respectively.²⁵ Position and exercise limits for ETF options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs 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 ETFs have position and exercise limits of

²² See id.

²³ See id.

²⁴ See id. at 65692-3.

²⁵ See id. at 65693.

200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.²⁶ The Exchange states that margin requirements in Options 6C, Section 3 will apply to the trading of the Trust options.²⁷

The Exchange represents that the same surveillance procedures applicable to other options on other ETFs currently listed and traded on the Exchange will apply to options on the Trust.²⁸ In addition, the Exchange represents that it has the necessary systems capacity to support the new option series.²⁹ The Exchange states that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including the proposed Trust options.³⁰ The Exchange states that it would implement any new surveillance procedures it deemed necessary to effectively monitor the trading of options on the Trust. In addition, the Exchange states that it may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG.³¹

The Exchange states that it has analyzed its capacity and represents that it believes that the Exchange and the Options Price Reporting Authority 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 Trust up to the number of expirations currently permissible under the Exchange’s rules.³² Because the proposal is limited to one class, the Exchange states that any

²⁶ See id.

²⁷ See id.

²⁸ See id.

²⁹ See id.

³⁰ See id.

³¹ See id.

³² See id.

additional traffic that may be generated from the introduction of the Trust options will be manageable.³³

The Exchange states that the proposal is consistent with Section 6(b) of the Act, in general,³⁴ and furthers the objectives of Section 6(b)(5) of the Act,³⁵ in particular.³⁶ The Exchange states that the proposal 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 Trust will provide investors with a greater opportunity to realize the benefits of utilizing options on an ETF based on spot ether, including cost efficiencies and increased hedging strategies.³⁷ The Exchange states that offering options on a competitively priced ETF based on spot ether will benefit investors by providing them with an additional, relatively lower cost risk management tool allowing them to manage, more easily, their positions, and associated risks, in their portfolios in connection with exposure to spot ether.³⁸ The Exchange states that it currently lists options on other commodity ETFs structured as a trust, which essentially offer the same objectives and benefits to investors, and for which the Exchange has not identified any issues with the continued listing and trading of options on those ETFs.³⁹ In addition, the Exchange states that the proposed options on the Trust will comply with current Exchange rules, as described above.⁴⁰ The Exchange states that the Commission has previously

³³ See id.

³⁴ 15 U.S.C. 78f(b).

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ See Notice, 89 FR at 65693.

³⁷ See id.

³⁸ See id.

³⁹ See id.

⁴⁰ See id.

approved the listing and trading of options on other commodity ETFs structured as a trust, such as the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust, and the ETFS Silver Trust.⁴¹

III. Proceedings to Determine Whether to Approve or Disapprove SR-ISE-2024-35 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁴² to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁴³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act,⁴⁴ 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 Exchange Act and the rules and regulations issued thereunder

⁴¹ See id. at 65694.

⁴² 15 U.S.C. 78s(b)(2)(B).

⁴³ Id.

⁴⁴ 15 U.S.C. 78f(b)(5).

. . . is on the self-regulatory organization that proposed the rule change.”⁴⁵ 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,⁴⁶ 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.⁴⁷ The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act. In particular, the Commission asks commenters to address whether the proposal includes sufficient data and analysis to support a conclusion that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

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

⁴⁵ 17 CFR 201.700(b)(3).

⁴⁶ See id.

⁴⁷ See id.

presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁴⁸

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR- ISE-2024-35 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-ISE-2024-35. 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

⁴⁸ 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).

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-35 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.⁴⁹

Sherry R. Haywood,

Assistant Secretary.

⁴⁹ 17 CFR 200.30-3(a)(57).