

**.SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-102798; File No. SR-ISE-2024-35]**

**Self-Regulatory Organizations; Nasdaq ISE, LLC; 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 the iShares Ethereum Trust**

April 9, 2025.

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade options on shares of the iShares Ethereum Trust (the “Trust” or “ETHA”).<sup>3</sup> The proposed rule change was published for comment in the Federal Register on August 12, 2024.<sup>4</sup> On September 30, 2024, pursuant to Section 19(b)(2) of the Exchange Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to disapprove the proposal.<sup>6</sup> On November 8, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposal.<sup>8</sup>

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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> 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) (order approving File Nos. 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; SR-CboeBZX-2024-018).

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

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 101154 (Sept. 24, 2024), 89 FR 79664 (Sept. 30, 2024).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 101571 (Nov. 8, 2024), 89 FR 90205 (Nov. 14, 2024) (“Order

The Commission received comments regarding the proposed rule change.<sup>9</sup> On March 3, 2025, the Exchange filed Amendment No. 1 to the proposal.<sup>10</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

As described in detail in the Notice and Amendment No. 1, the Exchange proposes to amend its rules to permit the listing and trading of options on the Trust.<sup>11</sup> The Exchange states that options on the Trust will provide investors with an additional, relatively lower cost investing tool to gain exposure to spot ether as well as a hedging vehicle to meet their needs in connection with ether products and positions.<sup>12</sup>

Options on the Trust will be physically settled with American-style exercise and will be subject to the Exchange's initial and continued listing standards.<sup>13</sup> 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>14</sup> The Exchange states that options on the Trust will trade in the same manner as other

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Instituting Proceedings").

<sup>9</sup> Comments on the proposal are available at <https://www.sec.gov/comments/sr-ise-2024-35/srise202435.htm>.

<sup>10</sup> Amendment No. 1 revises the proposal to: establish position and exercise limits of 25,000 contracts on the same side of the market for options on the Trust and provide data and analysis to support the proposed position and exercise limits; provide data demonstrating that shares in ETHA are widely held and actively traded; exclude options on the Trust from FLEX trading; provide additional detail and representations regarding the Exchange's surveillance procedures for options on the Trust; and correct an error in the column title header in Options 9, Section 15, Supplementary Material .01. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-ise-2024-35/srise202435.htm>.

<sup>11</sup> See Notice, 89 FR 65690.

<sup>12</sup> See id. at 65691.

<sup>13</sup> See id. at 65692.

<sup>14</sup> See Notice, 89 FR at 65692 and ISE Options 4, Section 3(a)(2).

exchange-traded fund (“ETF”) options, and that options on the Trust will be subject to the Exchange rules that currently apply to the listing and trading of all ETF options on the Exchange, including, for example, Exchange rules governing expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures.<sup>15</sup>

The Exchange initially proposed to apply its existing position and exercise limit rules to options on the Trust.<sup>16</sup> Amendment No. 1 revises the proposal to establish position and exercise limits of 25,000 contracts on the same side of the market for options on the Trust.<sup>17</sup> The Exchange states that position and exercise limits are designed to limit the number of options contracts traded on the exchange in an underlying security that an investor, acting alone or in concert with others, directly or indirectly, may control.<sup>18</sup> The Exchange states that these limits, which are described in ISE Options 9, Sections 13 and 15, are intended 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.<sup>19</sup> The Exchange further states that position and exercise limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic

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<sup>15</sup> See Notice, 89 FR at 65692.

<sup>16</sup> See id. See also ISE Options 9, Sections 13 and 15. The Exchange states that position and exercise limits for options vary according to the number of outstanding shares and the trading volumes of the underlying security over the past six months, where the largest in capitalization and the most frequently traded securities 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 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. See Notice, 89 FR at 65693.

<sup>17</sup> See Amendment No. 1 at 3. See also proposed Options 9, Section 13, Supplementary Material .01 and proposed Options 9, Section 15, Supplementary Material .01.

<sup>18</sup> See id.

<sup>19</sup> See id.

purposes.<sup>20</sup> To achieve this balance, ISE proposes to set the Trust’s position and exercise limits at 25,000 contracts.<sup>21</sup> The Exchange states that capping the Trust’s position and exercise limit at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative.<sup>22</sup> In considering the appropriate position limit for the Trust, ISE measured the Trust’s market capitalization and average daily volume (“ADV”) against other industry data, as explained further below.<sup>23</sup> The Exchange states that, as of December 19, 2024, the Trust has 93,352 shareholders.<sup>24</sup>

First, ISE considered the Trust’s market capitalization and ADV, and the prospective position and exercise limit in relation to other securities.<sup>25</sup> In measuring the Trust against other securities, ISE aggregated market capitalization and volume data for securities utilizing data from The Options Clearing Corporations (“OCC”).<sup>26</sup> The Exchange states that the below charts display the trading volume for the Trust in terms of daily shares and notional volumes during the period of time the Trust has been trading from July 23, 2024, through December 14, 2024.<sup>27</sup> The Exchange states that ADV for this time period is 5,302,533 shares and the average notional volume for this time period is \$127,825,276.<sup>28</sup> The Exchange states that both the ADV and the

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<sup>20</sup> See id.

<sup>21</sup> See id.

<sup>22</sup> See id.

<sup>23</sup> See id. at 3-4. The Exchange states that the data provided represents the initial 3 months trading in the Trust. See id. at footnote 1.

<sup>24</sup> See Amendment No. 1 at 4. The Exchange states that this number was obtained from Broadridge Financial Solutions, Inc. See id. at footnote 2.

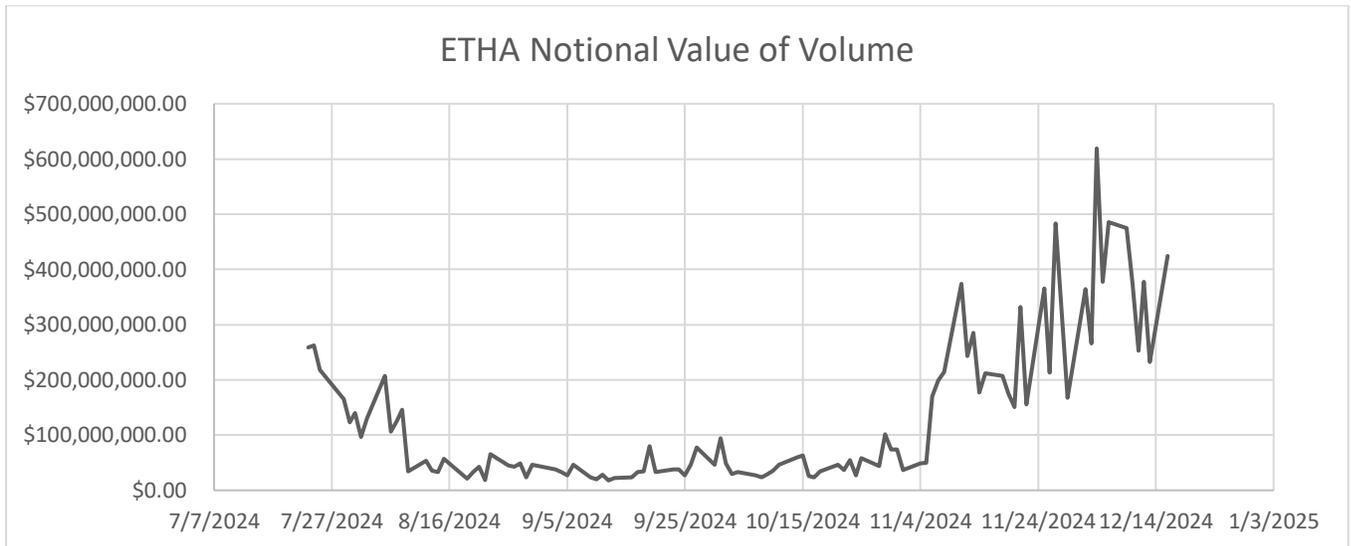
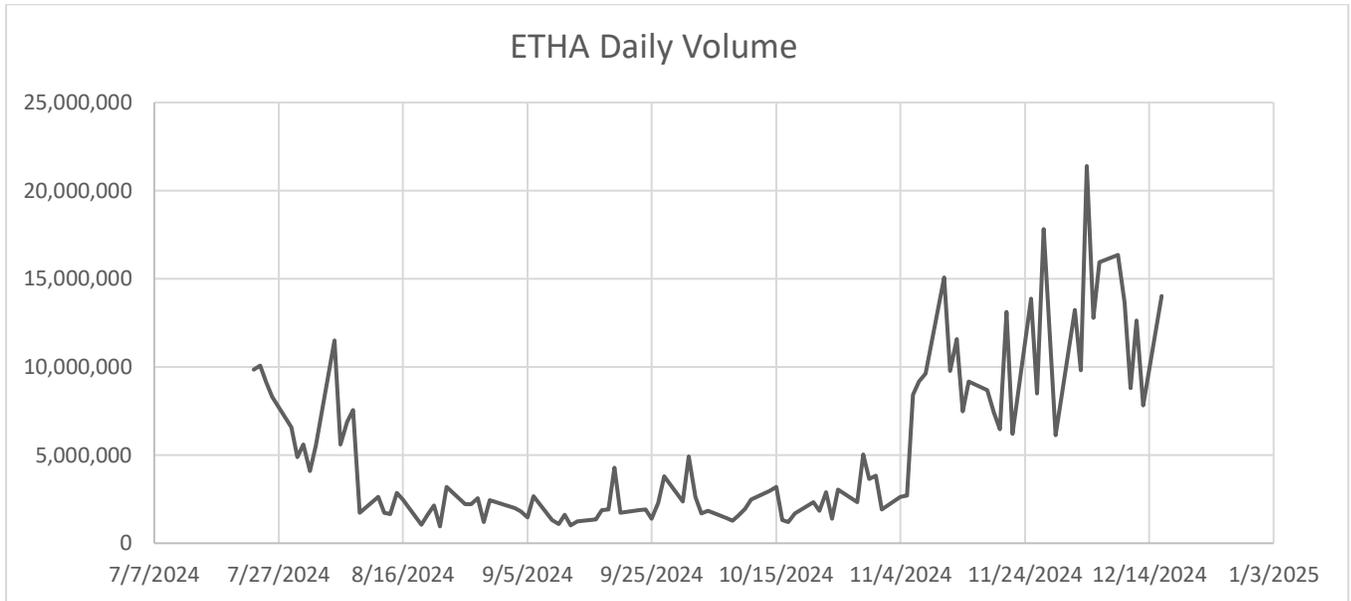
<sup>25</sup> See Amendment No. 1 at 4.

<sup>26</sup> See id. at 4. The Exchange states that the computations are based on OCC data from October 22, 2024. Data displaying zero values in market capitalization or ADV were removed. See id. at footnote 3.

<sup>27</sup> See Amendment No. 1 at 4.

<sup>28</sup> See id.

average notional volume experienced an uptick at launch (which can be typical for anticipated product launches) then levelled off for several months.<sup>29</sup> The Exchange states that renewed growth in the cryptocurrency market caused increased growth beginning in early November 2024.<sup>30</sup>



<sup>29</sup> See Amendment No. 1 at 4.

<sup>30</sup> See *id.*

The Exchange reviewed the market capitalization and ADV of 3,930 options on single stock securities, excluding ETFs.<sup>31</sup> Next, the Exchange aggregated this data based on market capitalization and ADV and grouped option symbols by position limit utilizing statistical thresholds for ADV and market capitalization for each position limit category (i.e., 25,000, 50,000 to 65,000, 75,000, 100,000 to less than 250,000, 250,000 to less than 500,000, 500,000 to 1,000,000 and greater than 1,000,000).<sup>32</sup> The Exchange states that this exercise was performed to demonstrate the Trust's position limit relative to other options symbols in terms of market capitalization and ADV.<sup>33</sup> The Exchange states that, for reference, as of October 22, 2024, the market capitalization for the Trust was 1.16 billion<sup>34</sup> with an ADV, for the preceding three months prior to October 22, 2024, of greater than 2.99 million shares.<sup>35</sup> The Exchange further states that, today, by comparison, other options symbols with similar market capitalization and ADV have a position limit of 50,000 contracts or 75,000 contracts.<sup>36</sup> The Exchange states that, from a 90-day ADV perspective the statistics indicate that the Trust has a 90 day ADV greater than all stocks in the 100,000 contracts to 249,000 position limit range.<sup>37</sup> Therefore, the

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<sup>31</sup> See Amendment No. 1 at 5. The Exchange states that the Trust has one asset and therefore is not comparable to a broad based ETF where there are typically multiple components. See id. at footnote 5.

<sup>32</sup> See Amendment No. 1 at 5. ISE Options 9, Section 13(d) sets out position limits for various contracts. For example, a 25,000-contract limit applies to those options having an underlying security that does not meet the requirements for a higher options contract limit. See id.

<sup>33</sup> See id.

<sup>34</sup> See Amendment No. 1 at 5 (citing <https://www.ishares.com/us/products/337614/ishares-ethereum-trust-etf>). The Exchange states that the global supply of ether grows each day ether are minted. See id. at footnote 6.

<sup>35</sup> See Amendment No. 1 at 5.

<sup>36</sup> See id. The Exchange states that the median market capitalization for options subject to the 50,000 contracts position limit is 788,000,000 million and the median market capitalization for options subject to the 75,000 contracts position limit is 1,037,000 billion. The Exchange further states that placing the Trust at the 50,000 contracts position limit would rank it in the 59<sup>th</sup> percentile in market capitalization and placing the Trust at 75,000 contracts position limit would rank it in the 46<sup>th</sup> percentile in market capitalization. See id. at footnote 7.

<sup>37</sup> See id. at 5.

Exchange states that the proposed 25,000 same side position and exercise limits for options on the Trust are conservative.<sup>38</sup>

Second, ISE reviewed the Trust's data relative to the market capitalization of the entire ether market in terms of exercise risk and availability of deliverables.<sup>39</sup> The Exchange states that, utilizing data as of October 22, 2024, there were 120,392,960 ether in circulation.<sup>40</sup> The Exchange states that the price of ether on October 22, 2024, was \$2,620 per coin which equates to a market capitalization of greater than \$315 billion.<sup>41</sup> The Exchange states that if a position limit of 25,000 options were considered, the exercisable risk would represent less than 4.3524% of the outstanding shares of the Trust.<sup>42</sup> The Exchange states that since the Trust has a creation and redemption process managed through the issuer, it is also possible to compare the position limit sought to the total market capitalization of the entire ether market.<sup>43</sup> In this case, the exercisable risk represented by 25,000 options on the Trust would be less than 0.03% of the market capitalization of all outstanding ether.<sup>44</sup> The Exchange states that, assuming a scenario where all 25,000 options on the Trust shares were exercised given the proposed 25,000 per same side position limit, this would have a virtually unnoticed impact on the entire ether market.<sup>45</sup>

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<sup>38</sup> See id. at 5-6.

<sup>39</sup> See id. at 6.

<sup>40</sup> See id.

<sup>41</sup> See id.

<sup>42</sup> See id. The Exchange states that the 4.4% was calculated as follows: 2,500,000 (exercisable stock from position limit) / 57,440,000 (shares outstanding on October 22, 2024) = 4.35237%. See id. at footnote 8.

<sup>43</sup> See id. at 6.

<sup>44</sup> See id.

<sup>45</sup> See id.

The Exchange further states that this analysis demonstrates that the proposed 25,000 per same side position limit (and exercise limit) is conservative and appropriate for options on the Trust.<sup>46</sup>

Third, the Exchange reviewed the proposed position limit by comparing it to position limits for derivative products regulated by the Commodity Futures Trading Commission (“CFTC”).<sup>47</sup> The Exchange states that while the CFTC, through the relevant Designated Contract Markets, only regulates options positions based upon delta equivalents (creating a less stringent standard), the Exchange examined equivalent ether futures position limits.<sup>48</sup> In particular, the Exchange looked at the Chicago Mercantile Exchange (“CME”) ether futures contract<sup>49</sup> that has a position limit of 8,000 futures.<sup>50</sup> On October 22, 2024, CME ether futures settled at \$2,629.<sup>51</sup> The Exchange states that, using a contract multiplier of \$50, a position limit of 8,000 futures would have a notional value \$1.0516 billion (8,000 x \$50 x \$2,629).<sup>52</sup> The Exchange states that, using an October 22, 2024, share price of \$19.91 for shares of the Trust, a futures position of 8,000 contracts, with a notional value of \$1.0516 billion dollars would equate to an options position of 528,176 contracts ( $\$1.0516 \text{ billion (notional value of 8,000 ether futures contracts)} / \$19.91 \text{ (price of the Trust shares)} = 52,817,679 \text{ (Trust shares)} / 100 \text{ (the number of shares represented by one options contract)} = 528,176 \text{ options contracts}$ ).<sup>53</sup> The Exchange states

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<sup>46</sup> See id.

<sup>47</sup> See id.

<sup>48</sup> See id.

<sup>49</sup> CME Ether Futures are described in Chapter 350 of CME’s Rulebook. See Amendment No. 1 at footnote 9.

<sup>50</sup> See the Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5 of CME’s Rulebook. See Amendment No. 1 at footnote 10.

<sup>51</sup> Amendment No. 1 at 6.

<sup>52</sup> See id.

<sup>53</sup> See id.

that because substantial sums of any distributed options portfolio are likely to be out of the money on expiration, an options position limit equivalent to the CME position limit for ether futures (considering that all options deltas are  $\leq 1.00$ ) should be a bit higher than the CME implied 528,176 contract limit.<sup>54</sup>

The Exchange states that, 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>55</sup> Therefore, the Exchange states that 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>56</sup> The Exchange states that 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.<sup>57</sup> Additionally, the Exchange states that 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.<sup>58</sup> Considering CME's position limits on

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<sup>54</sup> See id. at 6-7.

<sup>55</sup> See Amendment No. 1 at 7 (citing <https://www.cmegroup.com/education/courses/market-regulation/position-limits/position-limits-aggregation-of-contracts-and-table.htm>). .

<sup>56</sup> See Amendment No. 1 at 7.

<sup>57</sup> See id.

<sup>58</sup> See id.

futures for ether, the Exchange believes that that the proposed 25,000 per same side position and exercise limit is conservative and appropriate for options on the Trust.<sup>59</sup>

In analyzing the proposed position limit for options on the Trust, the Exchange also considered the supply of ether.<sup>60</sup> Specifically, the Exchange examined the number of market participants with a position limit of 25,000 contracts that would need to exercise in unison to put the underlying asset under stress.<sup>61</sup> In the case of options on the Trust, the proposed 25,000 same side position and exercise limit effectively restricts a market participant from holding positions that could be exercised in excess of 2,500,000 shares of the Trust.<sup>62</sup> Utilizing data from October 22, 2024, the Exchange states that the Trust had 57,440,000 shares outstanding, therefore 22.976 participants would have to simultaneously exercise their position limits in order to create a scenario that may put the underlying asset (shares of the Trust) under stress.<sup>63</sup> The Exchange states that, historically, from observation only, it appears that no more than five market participants holding options positions in any single security have exercised in unison in any option.<sup>64</sup> The Exchange states that, as unlikely an occurrence as all market participants exercising their positions in unison would be, if it were to occur, it should be noted that even such an occurrence would not likely put the Trust under stress as economic incentives would induce the creation of more shares through the ETF creation and redemption process.<sup>65</sup>

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<sup>59</sup> [See id.](#)

<sup>60</sup> [See id.](#)

<sup>61</sup> [See id.](#)

<sup>62</sup> [See id.](#)

<sup>63</sup> [See id.](#)

<sup>64</sup> [See id.](#)

<sup>65</sup> [See id.](#)

The Exchange further states that, given that the current global supply of ether, the underlying asset of the Trust, as of October 22, 2024, is 120,392,960<sup>66</sup> coins and each ether coin can currently be exchanged (ether to USD and then USD to Trust shares) for 131.6 shares of the Trust, another 15,843, 979.598 shares of the Trust could be created.<sup>67</sup> In addition, the Exchange states that, as of October 22, 2024, a 25,000 contract position limit for options on the Trust would represent less than 4.3524% of the outstanding shares of the Trust (2,500,000 (position limit exercise)/ 57,440,000 (shares outstanding of the Trust)) =less than 4.3524%.<sup>68</sup> Also, the Exchange states that, as of October 22, 2024, a 25,000 contract position limit for options on the Trust would represent less than .01578% of the global supply of ether (2,500,000 (position limit exercise)/120,392,960 (number of ether) x 131.6 (Trust shares per ether)) = < .01578%.<sup>69</sup> The Exchange states that the proposed position and exercise limits are consistent with the Act as they address concerns related to manipulation and protection of investors, are the lowest position and exercise limits available in the options industry, and are conservative and appropriate given the Trust’s market capitalization, ADV, and number of outstanding shares.<sup>70</sup>

In addition, Amendment No. 1 revises Supplementary Material .01 to Option 9, Section 15, related to exercise limits, to change the column header in that rule from “Position Limit” to “Exercise Limit” to describe the limit represented in that column.<sup>71</sup> The Exchange states that this

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<sup>66</sup> See Amendment No. 1 at 8 (citing <https://www.ishares.com/us/products/337614/ishares-ethereum-trust-etf>).

<sup>67</sup> See Amendment No. 1 at 8.

<sup>68</sup> See Amendment No. 1 at 8 and <https://coinmarketcap.com/currencies/ethereum/>.

<sup>69</sup> See Amendment No. 1 at 8.

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

<sup>71</sup> See *id.* at 8-9.

change will bring greater clarity to the limit represented in that column.<sup>72</sup>

The Exchange states that Options 3A, Section 3(a) permits the Exchange to authorize trading a FLEX option class on any equity security if it may authorize for trading a non-FLEX option class on that equity security pursuant to Options 4, Section 3.<sup>73</sup> At this time, the Exchange is not proposing to permit the Trust to trade as a FLEX Option.<sup>74</sup> The Exchange proposes to modify Options 3A, Section 3(a) to specify this exception.<sup>75</sup>

The Exchange states that it has an adequate surveillance program in place for options and that it intends to apply the same program procedures to options on the Trust that it applies to the Exchange's other options products.<sup>76</sup> The Exchange believes 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.<sup>77</sup> The Exchange states that it would implement any new surveillance procedures it deemed necessary to effectively monitor the trading of options on the Trust.<sup>78</sup> The Exchange further states that its market surveillance staff would have access to the surveillances conducted by Nasdaq<sup>79</sup> with respect to the Trust and would review activity in the underlying Trust when

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<sup>72</sup> See id. at 9.

<sup>73</sup> See id.

<sup>74</sup> See id.

<sup>75</sup> See id. The Exchange states that it will continue ongoing discussions with the Commission regarding appropriate position limits for the Trust and plans to submit a separate rule filing that would permit the Exchange to authorize for trading FLEX options on the Trust (which filing may propose changes to existing FLEX option position limits for such options if appropriate). See id. at 10.

<sup>76</sup> See id. at 11. The Exchange states that the surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, ping-pong, phishing). See id. at footnote 15.

<sup>77</sup> See Notice, 89 FR at 65693.

<sup>78</sup> See Notice, 89 FR at 65693.

<sup>79</sup> The Exchange states that the Nasdaq Stock Market LLC is an affiliated market of the Exchange. See id. at

conducting surveillances for market abuse or manipulation in the options on the Trust.<sup>80</sup>

Additionally, the Exchange states that it is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement.<sup>81</sup> The Exchange states that ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.<sup>82</sup> In addition to obtaining information from Nasdaq, the Exchange states that it would be able to obtain information regarding trading of shares of the Trust on other exchanges through ISG.<sup>83</sup> In addition, the Exchange states that it has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) and that, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillance that are common to rules of all options exchanges.<sup>84</sup>

The Exchange states that underlying shares of spot ether-based exchange-traded products (“ETPs”), including the Trust, are also subject to safeguards related to addressing market abuse

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footnote 16.

<sup>80</sup> See id. at 11.

<sup>81</sup> See id.

<sup>82</sup> See id.

<sup>83</sup> See id.

<sup>84</sup> The Exchange states that 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 Amendment No. 1 at footnote 17 and 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. The Exchange further states that 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. See Amendment No. 1 at footnote 17.

and manipulation.<sup>85</sup> The Exchange states that, as the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot ether-based ETPs, including the Trust (“Ether ETP Order”):<sup>86</sup>

Each 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 ether futures market.<sup>87</sup>

The Exchange states that in the Ether ETP Order, given the consistently high correlation between the CME ether futures market and the spot ether 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 acts and practices in the specific context of the [Ether ETPs].”<sup>88</sup>

In light of surveillance measures related to both options and futures as well as the underlying Trust,<sup>89</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 Trust.<sup>90</sup>

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<sup>85</sup> See Amendment No. 1 at 11.

<sup>86</sup> See *id.* and Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937, 46941 (May 23, 2024) (File Nos. 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; SR-CboeBZX-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).

<sup>87</sup> Ethereum ETP Order, 89 FR at 46941.

<sup>88</sup> Amendment No. 1 at 12 and Ethereum ETP Order, 89 FR at 46938.

<sup>89</sup> See Amendment No. 1 at 12 and Securities Exchange Act Release No. 100016 (April 23, 2024), 89 FR 33414, 33425-33426 (April 29, 2024) (SR-NASDAQ-2023-045) (Notice of Filing of Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the iShares Ethereum Trust Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)).

<sup>90</sup> See Amendment No. 1 at 12.

The Exchange states that both the Exchange and the Options Price Reporting Authority, LLC 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.<sup>91</sup>

## II. 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>92</sup> and, in particular, the requirements of Section 6 of the Act.<sup>93</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>94</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, 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>95</sup>

### A. Widely Held and Actively Traded

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<sup>91</sup> See Notice, 89 FR at 65693.

<sup>92</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>93</sup> 15 U.S.C. 78f.

<sup>94</sup> 15 U.S.C. 78f(b)(5).

<sup>95</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").

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>96</sup> As described above, the Exchange states that the Trust had 57,440,000 shares outstanding as of October 22, 2024, and 93,352 shareholders, as of December 19, 2024.<sup>97</sup> The Exchange states that from July 23, 2024, through December 14, 2024, the ADV for shares of the Trust was 5,302,533 shares and the average notional volume was \$127,825,276.<sup>98</sup> The Exchange states that, as of October 22, 2024, the market capitalization of the Trust was \$1.16 billion.<sup>99</sup>

The Commission has reviewed the Exchange’s analysis and publicly available data regarding the Trust. Based on this review of information provided by the Exchange and publicly available information—including information regarding the number of shares outstanding and the number of shareholders of the Trust, the ADV of shares of the Trust, and the market capitalization of the Trust—the Commission concludes that it is reasonable for the Exchange to determine that the Trust satisfies the requirement of ISE Options 4, Section 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>100</sup> Two commenters stated that ether’s Proof-of-Stake protocol presents a higher risk of runs because it requires more capital.<sup>101</sup> One commenter

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<sup>96</sup> See ISE Options 4, Section 3(a)(2).

<sup>97</sup> See Amendment No. 1 at 4 and 7.

<sup>98</sup> See Amendment No. 1 at 4.

<sup>99</sup> See Amendment No. 1 at 5.

<sup>100</sup> See Better Markets Letter at 3-4; and Rutkowski Letter at 1.

<sup>101</sup> See Better Markets Letter at 3 and Rutkowski Letter at 1.

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>102</sup> Another commenter stated that a run on ether could have harmful consequences for investors.<sup>103</sup>

The Commission acknowledges the comments regarding the potential impact of ether-based ETP 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>104</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 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

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<sup>102</sup> Better Markets Letter at 4. See also Rutkowski Letter at 1.

<sup>103</sup> See Rutkowski Letter at 1.

<sup>104</sup> See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

position.<sup>105</sup> In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid classes.<sup>106</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>107</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>108</sup> At the same time, the Commission has recognized 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>109</sup>

In Amendment No. 1, the Exchange proposes to amend Options 9, Section 13, Supplementary Material .01 and Options 9, Section 15, Supplementary Material .01 to adopt position and exercise limits of 25,000 contracts on the same side of the market for options on the Trust.<sup>110</sup> In proposing these position and exercise limits, the Exchange considered, among other

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<sup>105</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).

<sup>106</sup> Id.

<sup>107</sup> Id.

<sup>108</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).

<sup>109</sup> See id.

<sup>110</sup> See Amendment No. 1 at 3.

things, the ADV, market capitalization, and outstanding shares of the Trust.<sup>111</sup> The Exchange states that, from July 23, 2024, through December 14, 2024, the ADV for shares of the Trust was 5,302,533 shares and the average notional volume was \$127,825,276.<sup>112</sup> In addition, the Exchange states that the proposed position and exercise limits represented less than 4.3524% of the 57,440,000 shares of the Trust outstanding as of October 22, 2024.<sup>113</sup> The Exchange further states that, as of October 22, 2024, the market capitalization of the Trust was \$1.16 billion.<sup>114</sup> The Exchange states that other options symbols with similar market capitalization and ADV have a position limit of 50,000 contracts or 75,000 contracts, and that the proposed position and exercise limits are conservative.<sup>115</sup>

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 greater than \$315 billion as of October 22, 2024.<sup>116</sup> Accordingly, the Exchange states that a position limit of 25,000 contracts would represent an exercisable risk of less than 0.03% of the market capitalization of all outstanding ether and that the exercise of 25,000 options on the Trust “would have a virtually unnoticed impact on the entire ether market.”<sup>117</sup>

The Exchange also compared to the proposed position and exercise limits to the CME’s position limit of 8,000 futures for ether futures.<sup>118</sup> According to the Exchange, as of October 22,

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<sup>111</sup> See Amendment No. 1 at 4-8.

<sup>112</sup> See Amendment No. 1 at 4.

<sup>113</sup> See Amendment No. 1 at 6.

<sup>114</sup> See Amendment No. 1 at 5.

<sup>115</sup> See Amendment No. 1 at 5-6.

<sup>116</sup> See Amendment No. 1 at 6.

<sup>117</sup> Amendment No. 1 at 6.

<sup>118</sup> See Amendment No. 1 at 6.

2024, a position of 8,000 futures had a notional value of \$1.0516 billion, which would equate to a position limit of 528,176 contracts for options on the Trust.<sup>119</sup> The Exchange states that, considering CME’s position limits for ether futures, the proposed position and exercise limits are “conservative and appropriate for options on the Trust.”<sup>120</sup>

In addition, the Exchange states that, as of October 22, 2024, with 57,440,000 Trust shares outstanding, 22,976 market participants would have to simultaneously exercise their positions to create a scenario that would place the shares of the Trust under stress.<sup>121</sup> The Exchange states that the proposed position and exercise limits are conservative and appropriate given the Trust’s market capitalization, average daily volume, and number of outstanding shares.<sup>122</sup> The Exchange further states that the proposed position and exercise limits for options on the Trust will address manipulation and investor protection concerns.<sup>123</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

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<sup>119</sup> See Amendment No. 1 at 6.

<sup>120</sup> Amendment No. 1 at 7.

<sup>121</sup> See Amendment No. 1 at 7.

<sup>122</sup> See Amendment No. 1 at 8.

<sup>123</sup> See Amendment No. 1 at 3.

security.<sup>124</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 might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.<sup>125</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 October 22, 2024, the proposed position and exercise limits of 25,000 contracts represented less than 4.3524% of the outstanding shares of the Trust.<sup>126</sup> The Commission also has considered and reviewed the Exchange's statement that with a position limit of 25,000 contracts and 57,440,000 shares of the Trust outstanding, approximately 22 market participants would have to simultaneously exercise their positions to place shares of the Trust under stress.<sup>127</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 security 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 options on the Trust from FLEX trading.<sup>128</sup> Excluding options on

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<sup>124</sup> See supra note 108 and accompanying text.

<sup>125</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>126</sup> See Amendment No. 1 at 6.

<sup>127</sup> See Amendment No. 1 at 7.

<sup>128</sup> See Amendment No. 1 at 9-10 and proposed Options 3A, Section 3(a).

the Trust from FLEX trading will allow the Commission to consider the listing of FLEX options on the Trust in the context of any separate proposal the Exchange files to list such options.

C. Surveillance

The Exchange states that it will apply its existing options surveillance program procedures to options on the Trust,<sup>129</sup> and that it would implement any new surveillance procedures it deemed necessary to effectively monitor the trading of options on the Trust.<sup>130</sup> The Exchange states that its market surveillance staff will have access to the surveillances conducted by Nasdaq with respect to the Trust and that it would review activity in the underlying Trust when conducting surveillances for market abuse or manipulation in the options on the Trust.<sup>131</sup> In addition, the Exchange states that it is a member of ISG and that the Exchange would be able to obtain information regarding trading in shares of the Trust on other exchanges through ISG.<sup>132</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>133</sup>

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

D. Retail Customers

Commenters expressed concern that the listing of options on spot ether-based ETPs would harm retail investors because of the volatility of ether.<sup>134</sup> One commenter, who stated that

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<sup>129</sup> See Amendment No. 1 at 11.

<sup>130</sup> See Notice, 89 FR at 65693.

<sup>131</sup> See Amendment No. 1 at 11.

<sup>132</sup> See Amendment No. 1 at 11.

<sup>133</sup> See Amendment No. 1 at 11.

<sup>134</sup> See Better Markets Letter at 3; and Rutkowski Letter at 1.

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>135</sup> Another commenter stated that retail investors “could suffer immense harm” from trading options on ether-based ETPs.<sup>136</sup>

Existing rules governing broker-dealer conduct when dealing with retail customers will apply to the proposed Trust 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>137</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>138</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>139</sup>

#### E. Additional Change

The proposal to revise the column title header in Options 9, Section 15, Supplementary Material .01 from “Position Limit” to “Exercise Limit” is consistent with the protection of

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<sup>135</sup> Better Markets Letter at 3.

<sup>136</sup> Rutkowski Letter at 1.

<sup>137</sup> See ISE Options 10, Section 6(b).

<sup>138</sup> See id.

<sup>139</sup> See FINRA Rule 2360(b)(19).

investors because it corrects an error in the rule text and helps to ensure the accuracy of the Exchange's rules.

### III. Solicitation of Comments on Amendment No. 1 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 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-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 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*].

IV. 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 proposes position and exercise limits for options on the Trust and provides justification and analysis for the proposed position and exercise limits; provides data designed to show that shares of the Trust are widely held and actively traded; excludes options on the Trust from FLEX trading; provides additional discussion of the surveillance procedures that will apply to the proposed options; and corrects a typographical error in the column title header of Options 9, Section 15, Supplementary Material .01. 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 less than 4.3524% of the outstanding shares of the Trust.<sup>140</sup> The Commission concludes that the proposed position and exercise limits are designed to minimize the potential

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<sup>140</sup> See Amendment No. 1 at 6.

for manipulations or disruptions of the underlying market.<sup>141</sup> Amendment No. 1 also provides data and analysis designed to demonstrate that shares of the Trust are widely held and actively traded and describes in greater detail the surveillance procedures that will apply to the proposed options on the Trust. 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 options on the Trust from FLEX trading. Excluding options on the Trust from FLEX trading will allow the Commission to consider the listing of FLEX options on the Trust in the context of any separate proposal the Exchange files to list such options. In addition, Amendment No. 1 corrects a typographical error in Options 9, Section 15, Supplementary Material .01, which will help to ensure the accuracy of the Exchange's rules. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>142</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## V. 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

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<sup>141</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.

<sup>142</sup> 15 U.S.C. 78s(b)(2).

regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>143</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>144</sup> that the proposed rule change (SR-ISE-2024-35), as modified by Amendment No. 1, is approved.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>143</sup> 15 U.S.C. 78f(b)(5).

<sup>144</sup> 15 U.S.C. 78s(b)(2).