

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101573; File No. SR-NYSEAMER-2024-45)

November 8, 2024

Self-Regulatory Organizations; NYSE American LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Exchange Rule 915 to Permit the Listing and Trading of Options on the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, the Grayscale Ethereum Mini Trust, and Any Trust That Holds Ether

I. Introduction

On July 23, 2024, NYSE American LLC (“NYSE American” 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 amend Exchange Rule 915 to permit the listing and trading of options on the Bitwise Ethereum ETF, the Grayscale Ethereum Trust (ETH), the Grayscale Ethereum Mini Trust, and any trust that holds ether. The proposed rule change was published for comment in the Federal Register on August 13, 2024.³ The Commission has received no comments regarding the proposal.

On September 24, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100666 (Aug. 7, 2024), 89 FR 65957 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

the proposed rule change.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

As described more fully in the Notice,⁷ the Exchange proposes to amend Exchange Rule 915, Commentary .10, to allow the Exchange to list and trade options on the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, the Grayscale Ethereum Mini Trust, and any trust that holds ether (collectively, the “Ether ETPs”).⁸ The Exchange states that Ether ETPs are ether-backed commodity ETPs structured as trusts, and that, similar to exchange-traded funds (“ETFs”) currently deemed appropriate for options trading under Exchange Rule 915, the investment objective of an Ether ETP trust is for its shares to reflect the performance of ether (less the expenses of the trust’s operations), thereby offering investors an opportunity to gain exposure to ether without the complexities of ether delivery.⁹ The Exchange states that an Ether ETP’s shares represent units of fractional undivided beneficial interest in the trust, and that Ether ETPs provide investors with cost efficient alternatives that allow a level of participation in the ether market through the securities market.¹⁰

⁵ See Securities Exchange Act Release No. 101157 (Sept. 24, 2024), 89 FR 79678 (Sept. 30, 2024) (designating November 11, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See supra note 3.

⁸ The Exchange states that the Commission approved rule changes to list and trade shares of Ether-based exchange-traded products (“ETPs”), including, among others, the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust. See Notice, 89 FR at 65958, note 4, and Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 3008 (May 30, 2024); and 100541 (July 17, 2024) 89 FR 59786 (July 23, 2024).

⁹ See Notice, 89 FR at 65958.

¹⁰ See id.

The Exchange states that Ether ETPs will trade in the same manner as options on other ETFs and will be subject to the same rules as options on other ETFs, 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.¹¹ 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 Ether ETPs, and that the Exchange expects the Ether ETPs to satisfy the initial listing standards in Exchange Rule 915(a) and in Commentary .06 to Exchange Rule 915.¹² The Exchange states that, pursuant to Exchange Rule 915(a), a security on which options may be listed and traded on the Exchange must be registered with the Commission and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held and actively traded.¹³ In addition, the Exchange states that Commentary .06 requires that ETFs must either (1) meet the criteria and standards set forth in Commentary .01 to Rule 915; or (2) be available for creation and redemption each business day as set forth in Commentary .06(a)(ii).¹⁴ The Exchange states that options on Ether ETPs will also be subject to the Exchange's continued listing standards set forth in Exchange Rule 916, Commentary .07, which provides that options on ETFs may be subject to the suspension of opening transactions if: (1) the ETF no longer meets the terms of Commentary .01 to Rule 916; (2) following the initial twelve-month period beginning upon the commencement of trading of the ETF, there are fewer than 50 record and/or beneficial holders of the ETF for 30 or more consecutive trading days; (3) the value of the

¹¹ See id.

¹² See Notice, 89 FR at 65958-9.

¹³ See Notice, 89 FR at 65959.

¹⁴ See id.

underlying commodity 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 on the Exchange inadvisable.¹⁵ In addition, the Exchange states that ETFs will be deemed to not meet the requirements for continued approval, and the Exchange states that it will not open for trading any additional series of option contracts covering the ETF if such security ceases to be an “NMS stock,” as provided in Exchange Rule 915, Commentary .01(5), or the ETF is halted from trading on its primary market.¹⁶

The Exchange states that options on Ether ETPs listed pursuant to proposed Exchange Rule 915, Commentary .10 would be physically settled contracts with American-style exercise and would be subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange, including Exchange rules governing the trading of equity options.¹⁷ The Exchange further states that its rules pertaining to position and exercise limits or margin will apply to options on Ether ETPs.¹⁸ As described more fully in the Notice,¹⁸ the Exchange’s rules governing the opening of options series and the strike prices for ETP options also would apply to the proposed Ether ETP options.¹⁹

The Exchange states that position and exercise limits for options on the proposed Ether ETP options will be determined pursuant to Exchange Rules 904 and 905, respectively.²⁰ The Exchange further states that position and exercise limits for ETF options vary according to the

¹⁵ See id.

¹⁶ See id. For avoidance of doubt, the Exchange proposes to amend Exchange Rule 916 to include the Ether ETPs in the list of ETFs subject to the continued listing standards. See id. at note 11.

¹⁷ See Notice, 89 FR at 65959.

¹⁸ See id.

¹⁹ See id.

²⁰ See id.

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, recapitalizations, 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, recapitalizations, etc.) on the same side of the market.²¹

The Exchange states that options on Ether ETPs would not be available for trading until The Options Clearing Corporation (“OCC”) represents to the Exchange that it is fully able to clear and settle such options.²² In addition, the Exchange states that it has analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of options on Ether ETPs.²³ In addition, the Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on Ether ETPs.²⁴ Further, as described in the Notice, the Exchange states that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Ether ETPs.²⁵ Finally, the Exchange states that the quotation and last sale information for ETFs is available via the Consolidated Tape Association high speed line, and that quotation and last sale information for such securities is also available from the exchange on which such

²¹ See id.

²² See id. at 65960.

²³ See id.

²⁴ See id.

²⁵ See id.

securities are listed.²⁶ The Exchange states that quotation and last sale information for options on Ether ETPs will be available via OPRA and major market data vendors.²⁷

The Exchange states that the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposal to list and trade options on Ether ETPs 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 Ether ETPs 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.²⁸ 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 that will allow them to more easily manage their positions, and the associated risks, in their portfolios in connection with exposure to spot ether.²⁹ The Exchange states that it currently lists options on other commodity ETFs structured as a trust and that it has not identified any issues with the continued listing and trading of options on those ETFs.³⁰ In addition, the Exchange states that the proposal to permit options on Ether ETPs will remove impediments to and perfect the mechanism of a free and open market and a national market system because options on Ether ETPs will comply with current Exchange

²⁶ See id.

²⁷ See id.

²⁸ See id.

²⁹ See id.

³⁰ See id.

rules, as discussed above.³¹ The Exchange states that the Commission has previously approved the listing and trading of options on other commodity-based ETFs structured as a trust, including options on the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust, and the ETFS Silver Trust.³²

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEAMER-2024-45 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³³ to determine whether the proposed rule change should be approved or disapproved. Institution of 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,³⁴ 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,³⁵ 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.

³¹ See id.

³² See id.

³³ 15 U.S.C. 78s(b)(2)(B).

³⁴ Id.

³⁵ 15 U.S.C. 78f(b)(5).

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 . . . is on the self-regulatory organization that proposed the rule change.”³⁶ 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,³⁷ 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.³⁸ 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

³⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³⁷ See id.

³⁸ 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.³⁹

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-NYSEAMER-2024-45 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-NYSEAMER-2024-45. 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>).

³⁹ 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).

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-NYSEAMER-2024-45 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.⁴⁰

Sherry R. Haywood,
Assistant Secretary.

⁴⁰ 17 CFR 200.30-3(a)(57).