

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102675; File No. SR-NYSEAMER-2024-78)

March 14, 2025

Self-Regulatory Organizations; NYSE American LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade FLEX Options on the Grayscale Bitcoin Trust

I. Introduction

On December 13, 2024, NYSE American LLC (“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 trading of Flexible Exchange (“FLEX”) options on the Grayscale Bitcoin Trust (BTC) (“GBTC”). The proposed rule change was published for comment in the Federal Register on December 27, 2024.³ The Commission has received no comments regarding the proposal.

On February 7, 2025, 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 102014 (Dec. 20, 2024), 89 FR 105669 (Dec. 27, 2024) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 102376 (Feb. 7, 2025) 90 FR 9570 (Feb. 13, 2025) (designating March 27, 2025, 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).

II. Description of the Proposed Rule Change

As described more fully in the Notice,⁷ the Exchange states that FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options.⁸ The Exchange states that the Commission approved options on GBTC, an exchange-traded fund (“ETF”) that holds bitcoin and is traded on NYSE Arca, Inc., the Exchange’s affiliated equities exchange.⁹ The Exchange states that options on GBTC are subject to position and exercise limits of 25,000 contracts, and that GBTC options are not currently approved for FLEX trading.¹⁰ The Exchange proposes to amend its rules to permit FLEX Options on GBTC. Under the proposal, FLEX GBTC options would have the same 25,000-contract position limit as Non-FLEX Options on GBTC, and positions in FLEX GBTC options will be aggregated with positions in Non-FLEX GBTC options.¹¹ Accordingly, the Exchange states that the position and exercise limits for all GBTC options—both FLEX GBTC and non-FLEX GBTC—will be 25,000 contracts.¹² The Exchange states that the proposed aggregated limit effectively restricts a market participant from holding positions that could result in the receipt of more than 2,500,000 shares, aggregated for FLEX GBTC and non-FLEX GBTC (if that market participant exercised all its GBTC options).¹³ The Exchange states that capping the aggregated position limit at 25,000 contracts would be sufficient to address concerns related

⁷ See supra note 3.

⁸ See Notice, 89 FR at 15669.

⁹ See Notice, 89 FR at 15669 and Securities Exchange Act Release No. 101386 (Oct. 18, 2024), 89 FR 84960 (Oct. 24, 2024) (order approving File No. SR-NYSEAMER-2024-49). The Exchange states that GBTC options began trading on the Exchange on November 22, 2024. See Notice, 89 FR at 15669.

¹⁰ See id. at 105669-70.

¹¹ See id. at 105670.

¹² See id.

¹³ See id.

to manipulation and the protection of investors.¹⁴ The Exchange further states that this number is conservative for GBTC and therefore appropriate given its liquidity.¹⁵

The Exchange states that FLEX Options on ETFs are currently traded in the over-the-counter (“OTC”) market by a variety of market participants, e.g., hedge funds, proprietary trading firms, and pension funds.¹⁶ The Exchange expects that users of these OTC products would be among the primary users of FLEX GBTC options, and that the trading of FLEX GBTC options would allow these market participants to better manage the risk associated with the volatility of GBTC positions given the enhanced liquidity that an exchange-traded product would bring.¹⁷ In addition, the Exchange states that FLEX GBTC options traded on the Exchange would have important advantages over the contracts that are traded in the OTC market, including potentially greater liquidity, The Options Clearing Corporation’s guarantee of the options, and the price discovery and dissemination provided by the Exchange and its members.¹⁸ The Exchange states that its ability to offer FLEX GBTC options could provide a useful risk management and trading vehicle for market participants and their customers.¹⁹

The Exchange states that the same surveillance procedures applicable to other options products listed and traded on the Exchange, including non-FLEX GBTC options, will apply to FLEX GBTC options.²⁰ The Exchange further states that FLEX options products (and their respective symbols) are integrated into the Exchange’s existing surveillance system architecture

¹⁴ See id.

¹⁵ See id.

¹⁶ See id.

¹⁷ See id.

¹⁸ See id. at 105670-1.

¹⁹ See id. 105671.

²⁰ See id.

and are thus subject to the relevant surveillance processes.²¹ The Exchange states that its market surveillance staff (including staff of the Financial Industry Regulatory Authority (“FINRA”) who perform surveillance and investigative work on behalf of the Exchange pursuant a regulatory services agreement) conducts surveillances with respect to GBTC (the underlying ETF) and, as appropriate, would review activity in GBTC when conducting surveillances for market abuse or manipulation in the FLEX GBTC options.²² The Exchange does not believe that allowing FLEX GBTC options would render the marketplace for non-FLEX GBTC options, or equity options in general, more susceptible to manipulative practices.²³ The Exchange states that its existing trading surveillances are adequate to monitor the trading in GBTC and subsequent trading of FLEX GBTC options on the Exchange.²⁴ Additionally, the Exchange states that it is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement. The Exchange states that ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.²⁵ The Exchange states that, for surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities. In addition, and as referenced above, the Exchange has a regulatory services agreement with FINRA, pursuant to which FINRA conducts certain surveillances on behalf of the Exchange.²⁶ Further, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to

²¹ See id.

²² See id.

²³ See id.

²⁴ See id.

²⁵ See id.

²⁶ See id.

conduct certain options-related market surveillances.²⁷ The Exchange states that it will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of GBTC options.²⁸

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEAMER-2024-78 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁹ 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,³⁰ 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,³¹ 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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

²⁷ See id.

²⁸ See id.

²⁹ 15 U.S.C. 78s(b)(2)(B).

³⁰ Id.

³¹ 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.”³² 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,³³ 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.³⁴ 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 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

³² 17 CFR 201.700(b)(3).

³³ See id.

³⁴ 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.³⁵

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-2024-78 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-2024-78. 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

³⁵ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2024-78 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Vanessa A. Countryman,
Secretary.

³⁶ 17 CFR 200.30-3(a)(57).