

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102799; File No. SR-NYSEAMER-2024-45]

## **Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Exchange Rule 915 To Permit the Listing and Trading of Options on the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust**

April 9, 2025.

On July 23, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change 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.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on August 13, 2024.<sup>4</sup> The Commission received comments regarding the

---

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

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

<sup>3</sup> On May 23, 2024, the Commission approved proposals by NYSE Arca, Inc. (“NYSE Arca”), The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of the following Ethereum-based exchange-traded products: the Grayscale Ethereum Trust, the Bitwise Ethereum ETF, the iShares Ethereum Trust, the VanEck Ethereum Trust, the ARK 21Shares Ethereum ETF, the Invesco Galaxy Ethereum ETF, the Fidelity Ethereum Fund, and the Franklin Ethereum ETF. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46987 (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). On July 17, 2024, the Commission approved proposals by NYSE Arca to list and trade shares of the Grayscale Ethereum Mini Trust and the ProShares Ethereum ETF. See Securities Exchange Act Release No. 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (order approving File Nos. SR-NYSEARCA-2024-44; SR-NYSEARCA-2024-53).

<sup>4</sup> See Securities Exchange Act Release No. 100666 (Aug. 7, 2024), 89 FR 65957.

proposal.<sup>5</sup> On September 24, 2024, pursuant to Section 19(b)(2) of the Act,<sup>6</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>7</sup> On February 5, 2024, the Exchange filed Amendment No. 1 to the proposal, which replaced and superseded the original filing in its entirety. On March 11, 2025, the Exchange filed Amendment No. 2 to the proposal, which replaces and supersedes Amendment No. 1 in its entirety.<sup>8</sup> The Commission received comments regarding the proposal.<sup>9</sup> The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange proposes to amend Rule 915 regarding the criteria for underlying securities. This Amendment No. 2 supersedes and replaces Amendment No. 1 to the original filing in its entirety. The proposed rule change is available on the Exchange's website at

---

<sup>5</sup> Comments regarding the proposal are available at: <https://www.sec.gov/comments/sr-nyseamer-2024-45/srnyseamer202445.htm>.

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

<sup>7</sup> See Securities Exchange Act Release No. 101157 (Sept. 24, 2024), 89 FR 79678 (Sept. 30, 2024)

<sup>8</sup> Amendment No. 2 modifies the original filing by narrowing the scope of the proposal to provide for the listing of options on Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust (together, the "Ether Funds"), and eliminating the inclusion of options on "any trust that holds ether;" specifying a 25,000-contract position and exercise limit for options on the Ether Funds; excluding the Ether Fund options from being available for flexible ("FLEX") option trading; providing additional information and analysis of trading data for the Ether Funds in support of this proposal; and supplementing information related to the Exchange's surveillance program, including the manner in which it would surveil suspicious trading activity in the underlying Ether Funds. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nyseamer-2024-45/srnyseamer202445-579495-1665762.pdf>.

<sup>9</sup> Comments received regarding the proposal are available at: <https://www.sec.gov/comments/sr-nyseamer-2024-45/srnyseamer202445.htm>.

[www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 915 (Criteria for Underlying Securities). Specifically, the Exchange proposes to amend Rule 915, Commentary .10 to allow the Exchange to list and trade options on the following exchange-traded products: the Grayscale Ethereum Trust ETF (the "Grayscale Fund" or "ETHE"), the Grayscale Ethereum Mini Trust ETF (the "Grayscale Mini Fund" or "ETH"), and the Bitwise Ethereum ETF (the "Bitwise Fund" or "ETHW" and, collectively, the "Ether Funds" or "Funds").<sup>10</sup>

Rule 915 provides that, subject to certain other criteria set forth in the Rule, securities

---

<sup>10</sup> See proposed Rule 915, Commentary .10(a). On July 23, 2024, the Ether Funds began trading on NYSE Arca, Inc. ("NYSE Arca"), the Exchange's affiliated SRO, after the Commission approved rule changes to list and trade shares of "Ether-Based Commodity-Based Trust Shares" pursuant to Rule 8.201-E(c)(1) (Commodity-Based Trust Shares) See Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31) (order approving the listing and trading of, among other Ether-Based Exchange-Traded Products, the Bitwise Ethereum ETF and the Grayscale Ethereum Trust (ETH)); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (SR-NYSEARCA-2024-44) (order approving the listing and trading of, among others, the Grayscale Ethereum Trust Mini).

deemed appropriate for options trading include Exchange-Traded Fund Shares (or ETFs) as defined in Commentary .06, that represent certain types of interests<sup>11</sup> and exchange-traded products (“ETPs”) structured as trusts that hold precious metals (which are deemed commodities).<sup>12</sup> Recently, the Exchange received approval from the Commission to list and trade specific funds that hold bitcoin (also deemed a commodity).<sup>13</sup> Like ETPs backed by precious

---

<sup>11</sup> See Rule 915, Commentary .06, which permits options trading on ETFs that are traded on a national securities exchange and are defined as an “NMS stock” in Rule 600(b)(55) of Regulation NMS, that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (“Currency Trust Shares”); commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool Units”); or represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”); provided that all of the conditions listed in Rules 915 and 916 are met.

<sup>12</sup> See Rule 915, Commentaries .10 (permitting the listing and trading of options on shares of the following trusts: SPDR Gold Trust, the iShares COMEX Gold Trust the iShares Silver Trust, the ETFS Gold Trust, and the ETFS Silver Trust) and .10(a) (permitting the listing and trading of options on shares of the BTC Funds).

<sup>13</sup> On October 19, 2024, the Commission approved the Exchange’s proposal to list and trade options on the Grayscale Bitcoin Trust (BTC), the Grayscale Bitcoin Mini Trust BTC, and the Bitwise Bitcoin ETF. See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEARCA-2024-49) (the “BTC Approval Order”). The Commission has also approved for options trading several other bitcoin-related funds: See, e.g., Securities Exchange Act Release Nos. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (order approving the listing and trading of options on the iShares Bitcoin Trust (IBIT)); and 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-035) (order approving the listing and trading of options on the

metals and bitcoin (i.e., commodities), the Exchange proposes to allow options trading on the Ether Funds that hold ether -- which is also deemed a commodity.<sup>14</sup>

The Ether Funds are structured as trusts that hold ether. Like ETFs and ETPs currently deemed appropriate for options trading, the investment objective of each Ether Fund trust is for its shares to reflect the performance of ether (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to ether without the complexities of ether delivery. Each Ether Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of ether and are designed to track ether or the performance of the price of ether and offer access to the ether market.<sup>15</sup> The Ether Funds provide investors with cost-efficient alternatives that allow a level of participation in the ether market through the securities market.

The Exchange believes each Ether Fund satisfies the Exchange's initial listing standards set forth in Commentary .01 to Rule 915.<sup>16</sup> The Exchange notes that the Ether Funds also satisfy the listing standard applied to ETFs traded on the Exchange that they be available for creation and redemption each business day as set forth in Commentary .06(a)(ii).<sup>17</sup>

First, each of the Ether Funds satisfy the criteria and guidelines set forth in Rule 915(a).

---

Fidelity Wise Origin Bitcoin Fund and the ARK 21Shares Bitcoin ETF).

<sup>14</sup> See proposed Rule 915, Commentary .10(a) (expanded to include the listing and trading of options on shares of ETHE, ETH, AND ETHW, pursuant to Rule 915 and 916).

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

<sup>16</sup> Commentary .01 to Rule 915 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

<sup>17</sup> Commentary .06(a)(ii) requires that ETFs must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

Pursuant to Rule 915(a), a security on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>18</sup> Each of the Ether Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.<sup>19</sup> The Exchange believes each Ether Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of November 29, 2024, the Ether Funds had the following number of shares outstanding (and corresponding market capitalization):

<b>Ether Fund</b>	<b>Shares Outstanding</b>	<b>Market Capitalization (11/29/24)</b>
<b>ETHE</b>	177,838,500	\$5,425,852,635
<b>ETH</b>	45,220,787	\$1,547,003,157
<b>ETHW</b>	16,600,000	\$430,886,200

As shown above, each of the Ether Funds had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Commentary .01(1) to Rule 915.<sup>20</sup> The Exchange believes this demonstrates that each Ether Fund is characterized by a substantial number

<sup>18</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Commentary .01 to Rule 915, subject to exceptions.

<sup>19</sup> An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

<sup>20</sup> The Exchange notes that on November 19, 2024, ETH underwent a reverse stock split, reducing the number of shares outstanding -- and increasing the share price -- tenfold.

of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of the Ether Funds as of December 31, 2024.

<b>Ether Fund</b>	<b>Beneficial Holders (as of 12/31/24)</b>
<b>ETHE</b>	112,320
<b>ETH</b>	17,396
<b>ETHW</b>	5,992

As this table shows, each Ether Fund has significantly more than 2,000 beneficial holders (approximately 56, 9, and 3 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Commentary .01(2) to Rule 915.<sup>21</sup> Therefore, the Exchange believes the shares of each Ether Fund are widely held.

The Exchange also believes that, based on trading volume since the Funds began trading on July 23, 2024, shares of the Ether Funds are actively traded. In particular, the table below sets forth the total trading volume (by shares and notional) from the inception of trading through either November 29, 2024 (for ETHE and ETH) or December 31, 2024 (for ETHW). In addition, the below table illustrates the average daily volume (“ADV”) over the 30-day period of either October 29, 2024 - through November 29, 2024 (for ETHE and ETH) or November 29, 2024 - through December 31, 2024 (for ETHW).<sup>22</sup>

---

<sup>21</sup> The number of beneficial holders of ETH may have been impacted by the 10:1 reverse stock split, as investors with fewer than 10 shares would have received a cash payout. See id.

<sup>22</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>.

<b>Ether Fund</b>	<b>Trading Volume (Shares)</b>	<b>Trading Volume (Notional \$)</b>	<b>ADV (Shares)</b>
<b>ETHE</b>	427,312,540	\$10,289,781,199	4,237,811
<b>ETH</b>	172,400,020	\$4,614,428,230	3,065,796
<b>ETHW</b>	44,477,060	\$959,491,343	291,627

As demonstrated above, even though the Ether Funds have been trading for less than one year, the trading volume for each Ether Fund is substantially higher than 2,400,000 shares (roughly 178, 72, and 16 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Commentary .01 to Rule 915. The Exchange believes this data demonstrates each Ether Fund is characterized by a substantial number of outstanding shares that are actively traded.

In addition to satisfying the Exchange’s initial listing standards, options on Ether Funds will be subject to the Exchange’s continued listing standards as set forth in Commentary .07 to Rule 916.<sup>23</sup> Pursuant to Commentary .07 to Rule 916, the Exchange will not open for trading any additional series of option contracts covering a fund traded on the Exchange if such fund ceases to be an “NMS stock” as provided for Commentary .01(5) to Rule 915 or the fund is halted from trading on its primary market.<sup>24</sup> Additionally, options on funds traded on the Exchange may be subject to the suspension of opening transactions as follows: (1) the fund no longer meets the terms

<sup>23</sup> The Exchange proposes to amend Commentary .11 to Rule 916 to include the Ether Funds in the list of ETPs deemed “Exchange-Traded Fund Shares” (or ETFs) for purposes of the continued listing standards set forth in Commentary .07 to Rule 916. See proposed Commentary .11 to Rule 916. For avoidance of doubt, the Exchange refers “funds” rather than “ETFs” to make clear that the Ether Funds are subject to these continued listing standards.

<sup>24</sup> See Commentary .07 to Rule 916.



of Commentary .01 to Rule 916; (2) following the initial twelve-month period beginning upon the commencement of trading of the fund, there are fewer than 50 record and/or beneficial holders of the fund for 30 or more consecutive trading days; (3) the value of the 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.

Options on each Ether Fund will be physically settled contracts with American-style exercise.<sup>25</sup> Consistent with Rule 903, which governs the opening of options series on a specific underlying security (including ETFs and ETPs), the Exchange will open at least one expiration month for options on each Ether Fund<sup>26</sup> at the commencement of trading on the Exchange and may also list series of options on Ether Funds for trading on a weekly,<sup>27</sup> monthly,<sup>28</sup> or quarterly<sup>29</sup> basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from

---

<sup>25</sup> See Rule 902 (Rights and Obligations of Holders and Writers), which provides that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation. See also OCC Rules, Chapter VIII, which governs exercise and assignment, and Chapter IX, which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts. OCC Rules can be located at: [https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ\\_rules.pdf](https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf).

<sup>26</sup> See Rule 903(c), Commentary .03. The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 915. Monthly listings expire the third Friday of the month. The term “expiration date” (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. See OCC By-Laws Article I, Section 1. Pursuant to Rule 903(d), additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

<sup>27</sup> See Rule 903(h).

<sup>28</sup> See Rule 903, Commentary .11.

<sup>29</sup> See Rule 903, Commentary .09.

twelve to thirty-nine months from the time they are listed.<sup>30</sup>

Pursuant to Rule 903, Commentary .05(a), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Ether Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.<sup>31</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>32</sup> the \$0.50 Strike Program,<sup>33</sup> the \$2.50 Strike Price Program,<sup>34</sup> and the \$5 Strike Program.<sup>35</sup> Pursuant to Rule 960NY, where the price of a series of a Ether Fund option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.<sup>36</sup> Any and all new series of Ether Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 903 and 960NY, as applicable. Further, the Exchange notes that Rule 462, which governs margin requirements applicable to the trading of all options on the Exchange, including options on ETFs and ETPs, will also apply to the trading of Ether Fund options.

Rule 903G(a)(1) permits the Exchange to authorize for trading a FLEX option class on any equity security if it may authorize for trading a non-FLEX option class on that equity

---

<sup>30</sup> See Rule 903, Commentary .03.

<sup>31</sup> The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rules 903(h) and Commentaries .09 and .03 to Rule 903, specifically set forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

<sup>32</sup> See Rule 903, Commentary .06.

<sup>33</sup> See Rule 903, Commentary .13.

<sup>34</sup> See Rule 903, Commentary .07(a).

<sup>35</sup> See Rule 903, Commentary .12.

<sup>36</sup> If options on an Ether Fund are eligible to participate in the Penny Interval Program, the minimum increment of \$0.01 below \$3.00 and \$0.50 above \$3.00 would apply. See Rule 960NY(a)(3). See also Rule 960.1NY (which describes the requirements for the Penny Interval Program).

security pursuant to Rule 915, subject to specified exceptions.<sup>37</sup> At this time, the Exchange is not proposing to permit Ether Fund options to trade as FLEX options.<sup>38</sup>

### Position and Exercise Limits

Position and exercise limits for options, including options on Ether Funds, are determined pursuant to Rules 904 and 905, respectively. 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 funds 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 funds 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.<sup>39</sup>

Position 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

---

<sup>37</sup> See Rule 903G(a)(1). See generally Section 15 (Flexible Exchange (“FLEX”) Options).

<sup>38</sup> The Ether Funds will be excluded from FLEX trading pursuant to Rule 903G(a)(1), which provides that the Exchange may authorize FLEX trading of on any equity security that is eligible for non-FLEX trading under Rule 915 “except those set forth in Commentary .10(a) to Rule 915,” i.e., the Ether Funds. The Exchange may submit a subsequent rule filing that would permit the Exchange to authorize FLEX trading of Ether Fund options, which filing may propose changes to existing FLEX option position limits for such options as appropriate.

<sup>39</sup> See Commentary .07(a)-(d) to Rule 904. For an option to be eligible for the 50,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 20,000,000 shares, or most recent six-month trading volume of at least 15,000,000 shares and at least 40,000,000 shares currently outstanding. For an option to be eligible for the 75,000-contract limit, the underlying security must have most recent six-month trading volume of at least 40,000,000 shares, or most recent six-month trading volume of at least 30,000,000 shares and at least 120,000,000 shares currently outstanding. For an option to be eligible for the 200,000-contract limit, the underlying security must have most recent six-month trading volume of at least 80,000,000 shares, or most recent six-month trading volume of at least 60,000,000 shares and at least 240,000,000 shares currently outstanding. For an option to be eligible for the 250,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 100,000,000 shares, or most recent six-month trading volume of at least 75,000,000 shares and at least 300,000,000 shares currently outstanding. The 25,000-contract limit applies to options on underlying securities that do not qualify for a higher contract limit. See Commentary .07(e) to Rule 904. In addition, Commentary .07(f) to Rule 904 establishes higher position limits for options on certain ETFs.

directly or indirectly, may control. The purpose of position limits, which are set forth in Rule 904, is 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. As such, position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that investors may use for legitimate economic purposes. To achieve this balance, the Exchange proposes to set the position and exercise limits for the options on the Ether Funds at 25,000 contracts, a limit which has already been approved for options on ETPs that hold bitcoin.<sup>40</sup> Capping the position 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 for the Ether Funds and therefore appropriate given their liquidity. While the Exchange believes that the proposed 25,000-contract position limit is conservative for options on the Ether Funds, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.<sup>41</sup>

As noted above, Exchange Rules set forth position (and exercise) limits for options, which vary according to the number of shares outstanding and the amount of trading in underlying during the most recent six-month period.<sup>42</sup> The Exchange believes that the trading volume in each Fund is sufficient to qualify the Funds for position limits in excess of the proposed 25,000-contract limit, as shown below.<sup>43</sup>

---

<sup>40</sup> See BTC Approval Order. See also Rule 904, Commentary .07(f).

<sup>41</sup> The Exchange may file a subsequent rule change to amend the position and exercise limit for options on any or all the Ether Funds based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position limit would allow institutional investors to utilize options on the Ether Funds for prudent risk management purposes.

<sup>42</sup> See Commentary 07(a)-(d) to Rule 904.

<sup>43</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>. The Exchange notes that the Commission approved a 25,000-contract position limit for options trading on the Grayscale Bitcoin Mini Trust BTC which traded 335,492,9030 shares during its first two months of trading -- well over the

<b>Ether Fund</b>	<b>Total volume</b>
<b>ETHE</b>	<b>427,312,540</b> (7/23/24 - 11/29/24)
<b>ETH</b>	<b>172,400,020</b> (7/23/24 - 11/29/24)
<b>ETHW</b>	<b>44,477,060</b> (7/23/24 - 12/31/24)

Specifically, the most-recent trading volume in ETHE and ETH well exceeds the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits.<sup>44</sup> By comparison, other options symbols with less trading volume for the most-recent six months than ETHE and ETH are eligible for position and exercise limits of at least 250,000.<sup>45</sup> Further, the most-recent trading volume for ETHW well exceeded the requisite minimum of 40,000,000 shares necessary to qualify for the 75,000-contract position (and exercise) limit, which is three times the proposed 25,000-contract limit.<sup>46</sup> Finally, the proposed

---

minimum requisite of 100,000,000 shares as required by Commentary .07(a) to Rule 904. See BTC Approval Order.

<sup>44</sup> Per Commentary .07(a) to Rule 904, to qualify for the 250,000-contract position limit for options, the underlying security must (i) have trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) have trading volume of at least 75,000,000 shares during the most recent six-month trading period *and* have at least 300,000,000 shares currently outstanding.

<sup>45</sup> See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/Series-Search> (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

<sup>46</sup> Per Commentary .07(c) to Rule 904, to qualify for the 75,000-contract position limit for options, the underlying security must have trading volume of at least 40,000,000 shares during the most recent six-month trading period; or have trading volume of at least 30,000,000 shares during the most recent six-

25,000-contract position limit is the default for options that do not otherwise qualify for a higher limit and is therefore an adequate limit for each Ether Fund.<sup>47</sup>

With respect to the outstanding shares of each Ether Fund, if a market participant held the maximum number of contracts possible pursuant to the proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position/exercise limit (2,500,000 shares) would represent the following approximate percentage of current outstanding shares:

<b>Ether Fund</b>	<b>Proposed Position/Exercise Limits in Equivalent Shares</b>	<b>Outstanding Shares (11/29/24)</b>	<b>Percentage of Outstanding Shares</b>
<b>ETHE</b>	2,500,000	177,838,500	1.4%
<b>ETH</b>	2,500,000	45,220,787	5.5%
<b>ETHW</b>	2,500,000	16,600,000	15.1%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Ether Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Ether Fund. For example, as noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Ether Fund (if that market participant exercised all its options). Based on the number of shares outstanding for each Ether Fund as of November 29, 2024, the table below sets forth the approximate number of market participants that could hold

---

month trading period *and* have at least 120,000,000 shares currently outstanding.

<sup>47</sup> Per Commentary .07(e) to Rule 904, “[t]he position limit shall be 25,000 for all other options” that do not satisfy the criteria for the higher position limits set forth in paragraphs (a)-(d) of Rule 904.

the maximum of 25,000 same side positions in each Ether Fund that would equate to the number of shares outstanding of that Ether Fund:

<b>Ether Fund</b>	<b>Shares Outstanding</b>	<b>Number of Market Participants with 25,000 Same Side Positions</b>
<b>ETHE</b>	177,838,500	71
<b>ETH</b>	45,220,787	18
<b>ETHW</b>	16,600,000	7

This means if 71 market participants had 25,000 same side positions in options on ETHE, each of them would have to simultaneously exercise all those options to create a scenario that may put the underlying security under stress. Similarly, this means if 18 market participants had 25,000 same side positions in options on ETH, each of them would have to simultaneously exercise all those options to create a scenario that may put the underlying security under stress. Finally, this means if 7 market participants had 25,000 same side positions in options on ETHW, each of them would have to simultaneously exercise all those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for any of these scenarios to occur; however, even if such event did occur, the Exchange would not expect any of the Ether Funds to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

Further, given that the issuer of each Ether Fund may create and redeem shares that represent an interest in ether, the Exchange believes it is relevant to compare the size of a

position limit to the market capitalization of the ether market. As of November 29, 2024, the global supply of ether was approximately 120.44 million, and the price of one ether was approximately \$3,593.49,<sup>48</sup> which equates to a market capitalization of approximately \$439.78 billion. Consider the proposed position and exercise limit of 25,000 option contracts for each Ether Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of ETHE, ETH, and ETHW, as applicable (if that market participant exercised all its options). The following table shows the share price of each Ether Fund on November 29, 2024, the value of 2,500,000 shares of the Ether Fund at that price, and the approximate percentage of that value of the size of the ether market:

<b>Ether Fund</b>	<b>Nov. 29th Share Price (\$)</b>	<b>Value of 2,500,000 Shares of Ether Fund (\$)</b>	<b>Percentage of Ether Market</b>
<b>ETHE</b>	\$30.15	\$75,250,000	0.017%
<b>ETH</b>	\$33.84	\$84,600,000	0.020%
<b>ETHW</b>	\$25.80	\$64,500,000	0.015%

Therefore, if a market participant with the maximum 25,000 same side contracts in options on any of ETHE, ETH, or ETHW exercised all positions at one time, such an event would have no practical impact on the ether.

The Exchange also reviewed the market capitalization of each Ether Fund relative to the market capitalization of the entire ether market, as of November 29, 2024.

<b>Ether/Shares Outstanding</b>	<b>Market Capitalization (11/29/2024)</b>	<b>% of Total Ether Market</b>
---------------------------------	---	--------------------------------

<sup>48</sup> See <https://finance.yahoo.com/quote/ETH-USD/history/>.



<b>Total Ether Market</b>	120,440,000	\$432,799,935,600	100.00%
<b>ETHE</b>	177,838,500	\$5,425,852,635	1.25%
<b>ETH</b>	45,220,787	\$1,547,003,157	0.36%
<b>ETHW</b>	16,600,000	\$430,886,200	0.10%

As shown above, the Ether Funds collectively represent approximately 1.71% of the global supply of ether (120,440,000).<sup>49</sup> Based on the \$30.15 price of a ETHE share on November 29, 2024, a market participant could have redeemed one ether for approximately 119 ETHE shares. Another 14,354,890,070 ETHE shares could be created before the supply of ether was exhausted. As a result, 5,742 market participants would have to simultaneously exercise 25,000 same side positions in ETHE options to receive shares of the ETHE holding the entire global supply of ether. Similarly, based on the \$33.84 price of an ETH share on November 29, 2024, a market participant could have redeemed one ether for approximately 106 ETH shares. Another 12,789,596,206 ETH shares could be created before the supply of ether was exhausted. As a result, 5,116 market participants would have to simultaneously exercise 25,000 same side positions in ETH options to receive shares of ETH holding the entire global supply of ether. Similarly, based on the \$25.80 price of a ETHW share on November 29, 2024, a market participant could have redeemed one ether for approximately 139 ETHW shares. Another 16,775,191,302 ETHW shares could be created before the supply of ether was exhausted. As a result, 6,710 market participants would have to simultaneously exercise 25,000 same side positions in ETHW options to receive shares of ETHW holding the entire global supply of ether.

---

<sup>49</sup> See id.

Unlike the Ether Funds, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Ether Funds may create, redeem, or split shares in response to demand. The supply of ether is larger than the available supply of most securities.<sup>50</sup> Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Ether Funds should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity options in the industry) to protect the supply of ether.

The Exchange also believes the proposed limits are appropriate given position limits for ether futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 8,000 futures (for the initial spot month) on its ether futures contract.<sup>51</sup> On November 29, 2024, CME Jan 25 ether futures settled at \$3,629.69. A position of 8,000 CME ether futures, therefore, would have a notional value of \$1,451,876,000. The following table shows the share price of each Ether Fund on November 29, 2024, and the approximate number of option contracts that equates to that notional value:

<b>Ether Fund</b>	<b>Nov. 29th Share Price</b>	<b>Number of Option Contracts</b>
<b>ETHE</b>	\$30.15	481,551
<b>ETH</b>	\$33.84	429,041
<b>ETHW</b>	\$25.80	562,743

The approximate number of option contracts for each Ether Fund that would equate to the

<sup>50</sup> The market capitalization of ether would rank in the top 20 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

<sup>51</sup> See CME Rulebook Chapter 349 (description of CME ether futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME ether futures contract is valued at fifty ethers as defined by the CME CF Ether Reference Rate (“ERR”). See CME Rulebook Chapter 349.

notional value of CME ether futures is significantly higher than the proposed limit of 25,000 options contract for each Ether Fund option. The fact that many options ultimately expire out-of-the-money and thus are not exercised for shares of the underlying, while the delta of an ether future is 1, further demonstrates how conservative the proposed limits of 25,000 options contracts are for the Ether Fund options.

The Exchange notes, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).<sup>52</sup> Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.<sup>53</sup> If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. Considering CME's position limits on futures for ether, the Exchange believes that the proposed same side position limits are more than appropriate for the Ether Fund options.

Consistent with its position regarding the irrelevance of bitcoin supply to position limits

---

<sup>52</sup> See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

<sup>53</sup> Id.

for options on bitcoin ETPs, the Exchange likewise believes the available supply of ether is not relevant to the determination of position and exercise limits for Ether Fund options.<sup>54</sup> Position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. Position and exercise limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.<sup>55</sup> “Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.”<sup>56</sup> Position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the

---

<sup>54</sup> See BTC Approval Order, 89 FR at 84965, n. 48 (asserting that, outside of the bitcoin context, the Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits). See, e.g., Securities Exchange Act Release No. 57894 May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the “listing and trading of Gold Trust Options will be subject to the exchanges’ rules pertaining to position and exercise limits and margin”). The Exchange notes when the Commission approved this filing, the position limits in Rule 904 were the same as they are today. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF (“GLD”) and options on iShares Silver Trust (“SLV”) are 250,000 contracts, or 10 times that proposed position and exercise limit for the Bitcoin Fund options.

<sup>55</sup> For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

<sup>56</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

possibility for disruption of the options market itself, especially in illiquid options classes.”<sup>57</sup>

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each Ether Fund, each of which described the supply of ether as being unlimited.<sup>58</sup> Each Registration Statement permits an unlimited number of shares of the applicable Ether Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Ether Fund, which approval did not comment on the sufficient supply of ether or address whether there was a risk that permitting an unlimited number of shares for a Ether Fund would impact the supply of ether.<sup>59</sup> Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of ether was sufficient to permit the creation of unlimited Ether Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, given the significant size of the ether supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the foregoing, the Exchange believes the proposal to list options on the Ether Funds with positions and exercise limits of 25,000 on the same side, the lowest position limit available in the options industry, is conservative and appropriate given the market capitalization, average daily volume, and high number of outstanding shares for each of the Ether Funds. The

---

<sup>57</sup> Id.

<sup>58</sup> See, e.g., ETHE Form S-1 Registration Statement, at p. 77, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524106957/d756153ds1.htm>; ETH Amendment No. 5 to Form S-1 Registration Statement, at p. 79, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524181081/d756153ds1a.htm>; and ETHW Form S-1 Registration Statement 1, at p. 17, [https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a\\_061824.htm](https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a_061824.htm) (“Ether Funds Reg. Stmts.”).

<sup>59</sup> See BTC Approval Order.

proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying Ether Funds as well as the ether market.<sup>60</sup>

As described herein, options on the Ether Funds will trade in the same manner as any other ETF or ETP options on the Exchange, except that the Ether Funds will not be eligible for FLEX option trading. The Exchange Rules that currently apply to the listing and trading of options on the Exchange, including, for example, Rules that govern listing criteria, expiration and exercise prices, minimum increments, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Ether Funds on the Exchange in the same manner as they apply to all other ETFs and ETPs that are listed and traded on the Exchange, including the precious metal-backed commodity ETPs already deemed appropriate for options trading on the Exchange pursuant to Commentary .10 to Rule 915. Further, as described above, Exchange Rules regarding position and exercise limits will likewise apply to options on the Ether Funds except the that, as proposed, the position and exercise limits will be set at 25,000 on the same side.

\*\*\*\*\*

The Exchange notes that options on Ether Funds 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. The Exchange has also analyzed its capacity and represents that it

---

<sup>60</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11). See also BTC Order.

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 Funds. The Exchange believes any additional traffic that would be generated from the trading of options on Ether Funds would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange represents that the same surveillance procedures applicable to all other options currently listed and traded on the Exchange will apply to options on Ether Funds, and that it has the necessary systems capacity to support the new option series. The Exchange’s existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious metal-commodity backed ETP options as well as the proposed options on Ether Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Ether Funds in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange’s market surveillance staff will have access to surveillances that it conducts, and that FINRA conducts on its behalf, with respect to the Ether Funds and, as appropriate, would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on the Ether Funds. Additionally, the Exchange is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to the surveillance that is conducted by the Exchange’s market surveillance staff, the Exchange would be able to obtain information regarding trading in shares of the Ether Funds on other exchanges through ISG. Further, the Exchange has a Regulatory Services Agreement with

the Financial Industry Regulatory Authority (“FINRA”). Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.<sup>61</sup> The Exchange notes that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ether Funds.

The underlying shares of spot ether ETPs, including the Ether Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot ether-based exchange-traded products:

Each Exchange has a comprehensive surveillance-sharing agreement with the [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>62</sup>

The Exchange states that, 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

---

<sup>61</sup> Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: receive regulatory reports from such members; examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or carry out other specified regulatory responsibilities with respect to such members.

<sup>62</sup> See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937, 46938 (May 30, 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 Ether-Based Commodity-Based Trust Shares and Trust Units) (“Ether ETP Approval Order”).



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>63</sup>

In light of surveillance measures related to both options and futures as well as the underlying Ether Funds,<sup>64</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 Ether Funds.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association (“CTA”) high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on Ether Funds will be available via OPRA and major market data vendors.

The Exchange believes that offering options on Ether Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of ether and hedging vehicle to meet their investment needs in connection with Ether-related products and positions. The Exchange expects investors will transact in options on Ether Funds in the unregulated over-the-counter (“OTC”) options market,<sup>65</sup> but may prefer to trade

---

<sup>63</sup> See Ether ETP Approval Order, 89 FR, at 46941.

<sup>64</sup> See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-70), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370-475871-1363474.pdf>; Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Bitwise Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-31), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-31/srnysearca202431-475891-1363514.pdf>; and Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum Mini ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-44), filed May 22, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-44/srnysearca202444-476231-1364174.pdf>.

<sup>65</sup> The Exchange understands from customers that investors have historically transacted in options on ETFs in the OTC options market if such options were not available for trading in a listed environment.

such options in a listed environment to receive the benefits of trading listed options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Ether Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange notes that the ETPs that hold precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Ether Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of options on any ETFs or ETPs that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange.

Finally, the Exchange notes that applicable Exchange rules will require that customers receive appropriate disclosure before trading options in Ether Funds.<sup>66</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>67</sup>

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>68</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>69</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to

---

<sup>66</sup> See Rules 921(c) and (f), and Commentary .01 to Rule 921 and 481.

<sup>67</sup> See Rule 923.

<sup>68</sup> 15 U.S.C. 78f(b).

<sup>69</sup> 15 U.S.C. 78f(b)(5).

and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposal to list and trade options on Ether Funds 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 Funds will provide investors with an opportunity to realize the benefits of utilizing options on an Ether Fund, including cost efficiencies and increased hedging strategies.

The Exchange believes that offering Ether Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of ether and with ether-related products and positions. Additionally, the Exchange's offering of Ether Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based ETPs,<sup>70</sup> which, as described above, are trusts structured in substantially the same manner as Ether Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Ether rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed ETP options it currently lists for trading.

---

<sup>70</sup> See Rule 915, Commentaries .10 and .10(a).

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on Ether Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all ETFs and ETPs, including ETPs that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Ether Fund is characterized by a substantial number of shares that are widely held and actively traded. Ether Fund options will trade in the same manner as any other ETF or ETP options — the same Exchange Rules that currently govern the listing and trading of options, including permissible expirations, strike prices, minimum increments, and margin requirements, will govern the listing and trading of options on Ether Funds in the same manner.

The Exchange believes the proposed rule change to exclude the Ether Funds from being eligible for trading as FLEX options is consistent with the Act, because it will permit the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position limits for options on these Funds.<sup>71</sup>

The proposed position and exercise limit for options on the Ether Funds is 25,000 contracts, which proposed limits were recently approved for certain ETPs that hold bitcoin.<sup>72</sup> These position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than appropriate given the Ether Funds' market capitalization, average daily volume, number of beneficial holders, and high number of

---

<sup>71</sup> The Exchange may submit a subsequent rule filing that would permit the Exchange to authorize for trading FLEX options on the Ether Funds (which filing may propose changes to existing FLEX option position limits for such options if appropriate).

<sup>72</sup> See BTC Approval Order. See also Rule 904, Commentary .07(f).

outstanding shares.<sup>73</sup> The proposed position and exercise limits are consistent with the Act as they address concerns related to manipulation and protection of investors because the position and exercise limits are extremely conservative and more than appropriate given the Ether Funds are actively traded.

The Exchange also believes the proposal to exclude from FLEX trading options on the Ether Funds (i.e., per Rule 903G(a)) at this time will remove impediments to and perfect the mechanism of a free and open market and a national market system because it adds clarity and transparency to Exchange Rules making them easier to navigate and understand to the benefit of investors and the public interest.

The Exchange represents that it has the necessary systems capacity to support the new Ether Fund options. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options, including Ether Fund options. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious metal-commodity backed ETP options as well as the proposed options on Ether Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Ether Funds in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange's market surveillance staff will have access to surveillances that it conducts, and that FINRA conducts on its behalf, with respect to the Ether Funds and, as appropriate, would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on the Ether Funds.

---

<sup>73</sup> As noted herein, the Ether Funds collectively represent approximately 1.71% of the ether market.

Additionally, the Exchange is a member of the ISG under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to the surveillance that is conducted by the Exchange's market surveillance staff, the Exchange would also be able to obtain information regarding trading in shares of the Ether Funds on other exchanges through ISG. Further, the Exchange has a Regulatory Services Agreement with the FINRA and as noted herein, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ether Funds.

The underlying shares of spot ether ETPs, including the Ether Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot ether-based ETPs, “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the 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>74</sup> The Exchange states that, 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>75</sup>

---

<sup>74</sup> See Ether ETP Approval Order, 89 FR, at 46938.

<sup>75</sup> See Ether ETP Approval Order, 89 FR at 46941.

In light of surveillance measures related to both options and futures as well as the underlying Ether Funds,<sup>76</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 Ether Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Ether ETPs.

Finally, the Exchange notes that this 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 applicable Exchange rules will require that customers receive appropriate disclosure before trading options in Ether Funds<sup>77</sup> and will require that brokers opening accounts and recommending options transactions comply with relevant customer suitability standards.<sup>78</sup>

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*Intramarket Competition:* The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in

---

<sup>76</sup> See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-70), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370-475871-1363474.pdf>; Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Bitwise Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-31), filed May 21, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-31/srnysearca202431-475891-1363514.pdf>; and Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum Mini ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-44), filed May 22, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2024-44/srnysearca202444-476231-1364174.pdf>.

<sup>77</sup> See Rule 921(f). See also Rule 921(c), Commentary .01 to Rule 921, and Rule 481.

<sup>78</sup> See Rule 923.

furtherance of the purposes of the Act as options on Ether Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them. Additionally, Ether Fund options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on ETFs on the Exchange will apply in the same manner to the listing and trading of all options on Ether Funds. Also, and as stated above, the Exchange already lists options on other commodity-based ETPs.<sup>79</sup>

*Intermarket Competition:* The Exchange does not believe that the proposal to list and trade options on Ether Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Ether Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Ether Funds. The Exchange notes that listing and trading Ether Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer

---

<sup>79</sup> See Rule 915, Commentary .10.



similar products. Ultimately, the Exchange believes that offering Ether Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with ether prices and ether-related products and positions on a listed options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>80</sup> and, in particular, the requirements of Section 6 of the Act.<sup>81</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>82</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

---

<sup>80</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>81</sup> 15 U.S.C. 78f.

<sup>82</sup> 15 U.S.C. 78f(b)(5).

individual investors and the financial system.<sup>83</sup>

A. Widely Held and Actively Traded

The Exchange’s initial listing standards require, among other things, that the security underlying a listed option be “characterized by a substantial number of outstanding shares that are widely held and actively traded.”<sup>84</sup> As described above, the Exchange states that, as of November 29, 2024, ETHE had 177,838,500 shares outstanding, ETH had 45,220,787 shares outstanding, and

ETHW had 16,600,000 shares outstanding.<sup>85</sup> The Exchange states that, as of December 31, 2024,

ETHE had 112,320 beneficial holders, ETH had 17,396 beneficial holders, and ETHW had 5,992 beneficial holders.<sup>86</sup> In addition, the Exchange states that, from July 23, 2024, through November 29, 2024, ETHE had trading volume of 427,312,540 shares (\$10,289,781,199 notional) and ETH had trading volume of 172,400,020 shares (\$4,614,428,230 notional), and that, from July 23, 2024, through December 31, 2024, ETHW had trading volume of 44,477,060 shares (\$959,491,343 notional).<sup>87</sup> The Exchange further states that for a 30-day period from October 29, 2024, through November 29, 2024, ETHE had 30-day ADV of 4,237,811 shares and ETH had 30-day ADV of 3,065,796 shares.<sup>88</sup> The Exchange states that for a 30-day period from

---

<sup>83</sup> See letters from Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated Dec. 5, 2024 (“Better Markets Letter”); and Robert Rutkowski, dated Dec. 6, 2024 (“Rutkowski Letter”).

<sup>84</sup> See Exchange Rule 915(a)(2).

<sup>85</sup> See Amendment No. 2 at 6.

<sup>86</sup> See Amendment No. 2 at 7.

<sup>87</sup> See Amendment No. 2 at 7.

<sup>88</sup> See Amendment No. 2 at 7.

November 29, 2024, through December 31, 2024, ETHW had 30-day ADV of 291,627 shares.<sup>89</sup>

In addition, the Exchange states that, as of November 29, 2024, ETHE had market capitalization of \$5,425,852,635, ETH had market capitalization of \$1,547,003,157, and ETHW had market capitalization of \$430,886,200.<sup>90</sup>

The Commission has reviewed the Exchange’s analysis and publicly available data regarding the Ether Funds. 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 beneficial holders for each Ether Fund, the ADV of each Ether Fund, and the market capitalization of each Ether Fund—the Commission concludes that it is reasonable for the Exchange to determine that the Ether Funds satisfy the requirement of Exchange Rule 915(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>91</sup> Two commenters stated that ether’s Proof-of-Stake protocol presents a higher risk of runs because it requires more capital.<sup>92</sup> The commenter stated that options on spot ether-based ETPs “would threaten financial stability by further entangling traditional finance with a volatile asset that would be susceptible to runs.”<sup>93</sup> Another commenter stated that a run on ether could have harmful consequences for investors.<sup>94</sup>

---

<sup>89</sup> See Amendment No. 2 at 7.

<sup>90</sup> See Amendment No. 2 at 13.

<sup>91</sup> See Better Markets Letter at 3-4; and Rutkowski Letter at 1.

<sup>92</sup> See Better Markets Letter at 3 and Rutkowski Letter at 1.

<sup>93</sup> Better Markets Letter, at 4. See also Rutkowski Letter at 1.

<sup>94</sup> See Rutkowski Letter at 1.

The Commission acknowledges the comments regarding the potential impact of ether-based ETP options, including the proposed Ether Fund options, on the traditional financial system. Pursuant to Section 19(b)(2) of the Exchange Act, however, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act.<sup>95</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 position.<sup>96</sup> In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid classes.<sup>97</sup> As the Commission has previously recognized, markets with active and deep trading interest, as well as with broad public ownership, are more

---

<sup>95</sup> See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

<sup>96</sup> See Securities Exchange Act Release No. 39489 (Dec. 24, 1997), 63 FR 276, 279 (Jan 5, 1998) (order approving File No. SR-Cboe-97-11) (“Position Limit Order”).

<sup>97</sup> Id.

difficult to manipulate or disrupt than less active and deep markets with smaller public floats.<sup>98</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>99</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>100</sup>

The Exchange proposes a position limit of 25,000 contracts on the same side of the market for options on each Ether Fund and an equivalent exercise limit.<sup>101</sup> In proposing these position and exercise limits, the Exchange considered, among other things, the ADV, outstanding shares, and market capitalization of each Ether Fund.<sup>102</sup> The Exchange states that Exchange Rule 904, Commentary .07(a)(i) establishes a position limit of 250,000 contracts for options on an underlying security with six-month trading volume of 100,000,000 shares.<sup>103</sup> The Exchange states that, for the period from July 23, 2024, through November 29, 2024, ETHE and ETH had

---

<sup>98</sup> Id.

<sup>99</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>100</sup> See id.

<sup>101</sup> See Amendment No. 2 and proposed Exchange Rule 904, Commentary .07(f) and Exchange Rule 905(a)(i).

<sup>102</sup> See Amendment No. 2 at 17.

<sup>103</sup> See Amendment No. 2 at 11.

trading volumes of 427,312,540 shares and 172,400,020 shares, respectively.<sup>104</sup> The Exchange states that other options symbols, including commodity-based ETP options, with lower six-month trading volume than ETHE and ETH are eligible for position and exercise limits of at least 250,000 contracts.<sup>105</sup> The Exchange states that, for the period from July 23, 2024, through December 31, 2024, ETHW had trading volume of 44,477,060 shares, which exceeds the 40,000,000 share trading volume necessary to qualify for a position limit of 75,000 contracts.<sup>106</sup> The Exchange further states that, as of November 29, 2024, the number of shares represented by the proposed position and exercise limits were equal to approximately 1.4% of the outstanding shares of ETHE, 5.5% of the outstanding shares of ETH, and 15.1% of the outstanding shares of ETHW.<sup>107</sup> The Exchange states that the proposed “position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than appropriate given the Ether Funds’ market capitalization, average daily volume, number of beneficial holders, and high number of outstanding shares.”<sup>108</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 of approximately \$439.78 billion as of November 29, 2024.<sup>109</sup> The Exchange calculated that with a position limit of 25,000 contracts (2,500,000 shares of the underlying Ether Fund), as of November 29, 2024, a market participant could hold a position in shares of ETHE that

---

<sup>104</sup> See Amendment No. 2 at 11.

<sup>105</sup> See Amendment No. 2 at 11.

<sup>106</sup> See Amendment No. 2 at 11 and Exchange Rule 904, Supplementary Material .07(c).

<sup>107</sup> See Amendment No. 2 at 12.

<sup>108</sup> Amendment No. 2 at 21.

<sup>109</sup> See Amendment No. 2 at 13.

represented 0.017% of the ether market, a position in ETH that represented 0.020% of the ether market, and a position in ETHW that represented 0.015% of the ether market, positions that the Exchange states “would have no practical impact on the ether market.”<sup>110</sup>

The Exchange states that the proposed position and exercise limits also are appropriate given position limits for ether futures.<sup>111</sup> The Exchange states that the CME establishes a position limit of 8,000 ether futures for the spot month and that, as of November 29, 2024, such a position would have had a notional value of \$1,451,876,000.<sup>112</sup> The Exchange states that, as of that date, 481,551 ETHE options, 429,041 ETH options, and 562,743 ETHW options would be the equivalent of the \$1,451,876,000 CME ether futures notional value.<sup>113</sup> The Exchange states that the option contract equivalent numbers are significantly higher than the proposed position and exercise limit of 25,000 contracts.<sup>114</sup>

In addition, the Exchange states that, based on the number of shares outstanding for each Ether Fund as of November 29, 2024, and with a position limit of 25,000 option contracts, 71 market participants, each with a same side position of 25,000 contracts, would have to exercise all of their ETHE options to place the ETHE shares under stress; 18 market participants, each with a same side position of 25,000 contracts, would have to exercise all of their ETH options to place the ETH shares under stress; and seven market participants, each with a same side position of 25,000 contracts, would have to exercise all of their ETHW options to place the ETHW shares

---

<sup>110</sup> Amendment No. 2 at 13.

<sup>111</sup> See Amendment No. 2 at 14-15.

<sup>112</sup> See No. 2 at 14.

<sup>113</sup> See Amendment No. 2 at 14-15.

<sup>114</sup> See Amendment No. 2 at 15.

under stress.<sup>115</sup> The Exchange states that the proposed position and exercise limits “are extremely conservative and more than appropriate given the Ether Funds’ market capitalization, average daily volume, number of beneficial holders, and high number of outstanding shares.”<sup>116</sup> The Exchange states that the proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation.<sup>117</sup> The Exchange further states that the proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying Ether Funds as well as the ether market.<sup>118</sup>

The Commission finds that the proposed position and exercise limits are consistent with the Act and, in particular, with the requirements in Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As discussed above, the Commission has recognized that position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security.<sup>119</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

---

<sup>115</sup> See Amendment No. 2 at 12.

<sup>116</sup> Amendment No. 2 at 21.

<sup>117</sup> See Amendment No. 2 at 17.

<sup>118</sup> See *id.* at 17 (citing the Position Limit Order *supra* note 96).

<sup>119</sup> See *supra* note 99 and accompanying text.



options position.<sup>120</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 November 29, 2024, the proposed position and exercise limits of 25,000 contracts represented approximately 1.4% of the outstanding shares of ETHE, 5.5% of the outstanding shares of ETH, and 15.1% of the outstanding shares of ETHW.<sup>121</sup> The Commission also has considered and reviewed the Exchange's statement that, as of November 29, 2024, with a position limit of 25,000 contracts, 71 market participants, each with a same side position of 25,000 contracts, would have to exercise all of their ETHE options to place the ETHE shares under stress; 18 market participants, each with a same side position of 25,000 contracts, would have to exercise all of their ETH options to place the ETH shares under stress; and seven market participants, each with a same side position of 25,000 contracts, would have to exercise all of their ETHW options to place the ETHW shares under stress.<sup>122</sup> Based on the Commission's review of this information and analysis, the Commission concludes that the proposed position and exercise limits are designed to prevent investors from disrupting the market for the underlying securities by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security, and to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.

---

<sup>120</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>121</sup> See Amendment No. 2 at 12.

<sup>122</sup> See id.

The proposal excludes the Ether Fund options from FLEX trading.<sup>123</sup> Excluding Ether Fund options from FLEX trading will allow the Commission to consider the listing of FLEX options on the Ether Funds in the context of any separate proposal the Exchange files to list such options.

C. Surveillance

As described more fully above, the Exchange states that the same surveillance procedures applicable to all other options currently listed and traded on the Exchange will apply to options on the Ether Funds, and that the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ether Funds.<sup>124</sup> The Exchange states that its market surveillance staff will have access to surveillances that it conducts, and that FINRA conducts on its behalf, with respect to the Ether Funds and, as appropriate, would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on the Ether Funds.<sup>125</sup> Additionally, the Exchange states that it is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement, and that ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.<sup>126</sup> The Exchange states that, in addition to the surveillance conducted by the Exchange’s market surveillance staff, the Exchange

---

<sup>123</sup> See Exchange Rule 903G(a)(1) and proposed Exchange Rule 915, Commentary .10(a). The Exchange states that excluding Ether Fund options from FLEX trading will allow the Exchange to continue to participate in ongoing discussions with the Commission regarding appropriate position limits for options on the Ether Funds. See Amendment No. 2 at 21.

<sup>124</sup> See Amendment No. 2 at 18.

<sup>125</sup> See Amendment No. 2 at 18.

<sup>126</sup> See id.

would also be able to obtain information regarding trading in shares of the Ether Funds on other exchanges though ISG.<sup>127</sup>

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

#### D. Retail Customers

Commenters expressed concern that the listing of options on spot ether-based exchange-traded products (“ETPs”) would harm retail investors because of the volatility of ether.<sup>128</sup> One commenter, who stated that ether dropped 22% over a 24-hour period in August of 2024, further stated that “[a]pproving options trading on an ETP with such a volatile underlying asset would inevitably harm retail investors.”<sup>129</sup> Another commenter stated that retail investors “could suffer immense harm” from trading options on ether-based ETPs.<sup>130</sup>

Existing rules governing broker-dealer conduct when dealing with retail customers will apply to the proposed Ether Fund options. For example, the Exchange’s rules require its members to “exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation.”<sup>131</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>132</sup> Further, FINRA’s heightened suitability requirements for options trading accounts require that a person

---

<sup>127</sup> See id.

<sup>128</sup> See Better Markets Letter at 3; and Rutkowski Letter at 1.

<sup>129</sup> Better Markets Letter at 3.

<sup>130</sup> Rutkowski Letter at 1.

<sup>131</sup> See Amendment No. 2 at 19-20 and Exchange Rule 921(c).

<sup>132</sup> See Exchange Rule 921, Commentary .01.

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>133</sup>

#### IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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-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>).

Copies of the submission, all subsequent amendments, all written statements with respect to the

---

<sup>133</sup> See FINRA Rule 2360(b)(19).

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*].

V. Accelerated Approval of Amendment No. 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 2 prior to the 30<sup>th</sup> day after the date of publication of notice of Amendment No. 2 in the Federal Register. As described more fully above, Amendment No. 2 narrows the scope of the proposal to provide for the listing and trading of options on the Ether Funds; provides additional information and analysis of trading data for the Ether Funds in support of the proposal, including the proposed position and exercise limits of 25,000 contracts; provides additional information related to the Exchange's surveillance program, including the manner in which the Exchange would surveil suspicious trading activity in the underlying Ether Funds; and provides that the Exchange will not list FLEX options on the Ether Funds. Amendment No. 2 provides data and analysis supporting the proposed position and exercise limits and states, among other

things, that the proposed position and exercise limits would represent approximately 1.4% of the outstanding shares of ETHE, 5.5% of the outstanding shares of ETH, and 15.1% of the outstanding shares of ETHW.<sup>134</sup> Amendment No. 2 also describes in greater detail the surveillance procedures that will apply to the proposed Ether Fund options. The additional information regarding these procedures 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. In addition, Amendment No. 2 revises the proposal to exclude Ether Fund options from FLEX trading. Excluding Ether Fund options from FLEX trading will allow the Commission to consider the listing of FLEX options on the Ether Funds in the context of any separate proposal to list such options. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>135</sup> to approve the proposed rule change, as modified by Amendment No. 2 on an accelerated basis.

---

<sup>134</sup> See Amendment No. 2 at 12.

<sup>135</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>136</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>137</sup> that the proposed rule change (SR-NYSEAMER-2024-45), as modified by Amendment No. 2, is approved.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>136</sup> 15 U.S.C. 78f(b)(5).

<sup>137</sup> 15 U.S.C. 78s(b)(2).