

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102816; File No. SR-NYSEAMER-2025-23]

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Rules 904, Rule 915, and 916

April 11, 2025.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 9, 2025, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 904, Rule 915, and 916 to allow the Exchange to list and trade options on the iShares Ethereum Trust ETF and the Fidelity Ethereum Fund. The proposed rule change is available on the Exchange’s website at [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 self-regulatory organization 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 those statements may be examined at the

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 904 (Position Limits), Rule 915 (Criteria for Underlying Securities), and Rule 916 (Withdrawal of Approval of Underlying Securities) to allow the Exchange to list and trade options on the following exchange-traded products: the iShares Ethereum Trust ETF (“ETHA”) and the Fidelity Ethereum Fund (“FETH”) (each, an “Ether Fund” or collectively, the “Ether Funds”).<sup>4</sup> This is a competitive filing based on similar proposals submitted by Nasdaq ISE, LLC (“ISE”) and Cboe Exchange, Inc. (“Cboe”) and approved by the Securities and Exchange Commission (the “Commission”).<sup>5</sup>

Rule 915 provides that, subject to certain other criteria set forth in the Rule, securities deemed appropriate for options trading include Exchange-Traded Fund Shares (or ETFs) as defined in Commentary .06, that represent certain types of interests<sup>6</sup> and exchange-traded

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<sup>4</sup> See proposed Rule 915, Commentary .10(a).

<sup>5</sup> See Securities Exchange Act Release Nos. 102798 (April 9, 2025) (SR-ISE-2024-35) (approving the listing and trading of options on ETHA); 102797 (April 9, 2025) (SR-Cboe-2024-036) (approving the listing and trading of options on FETH) (collectively, the “Ether ETP Options Approval Orders”).

<sup>6</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) [sic] 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

products (“ETPs”) structured as trusts that hold precious metals (which are deemed commodities).<sup>7</sup> Recently, the Exchange received approval from the Commission to list and trade options on specific funds that hold bitcoin (also deemed a commodity).<sup>8</sup> Like ETPs backed by precious 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>9</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

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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>7</sup> See Rule 915, Commentary .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).

<sup>8</sup> On October 19 [sic], 2024, the Commission approved NYSE American’s proposal to list and trade options on the Grayscale Bitcoin Trust (BTC) (“GBTC”), the Grayscale Bitcoin Mini Trust BTC (“BTC”), and the Bitwise Bitcoin ETF (“BITB”). See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49). See also Rule 915, Commentary .10(a) (permitting options trading on bitcoin-backed ETPs, including GBTC, BTC, and BITB).

<sup>9</sup> See proposed Rule 915, Commentary .10(a) (permitting the Exchange to list and trade options on shares of ETHA and FETH, pursuant to Rule 915 and 916).

of the price of ether and offer access to the ether market.<sup>10</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>11</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>12</sup>

First, each of the Ether Funds satisfy the criteria and guidelines set forth in Rule 915(a). 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>13</sup> Each of the Ether Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.<sup>14</sup> The Exchange believes each Ether Fund is characterized by a substantial number of outstanding shares that are widely held and

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<sup>10</sup> The trust may include minimal cash.

<sup>11</sup> Commentary .01 to Rule 915 provides for guidelines to be used by the Exchange when evaluating potential underlying securities for Exchange option transactions.

<sup>12</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.

<sup>13</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>14</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").

actively traded.

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</b>
<b>ETHA (as of 10/22/24)</b>	57,440,000	1,160,000,000
<b>FETH (as of 12/23/24)</b>	41,700,000	1,433,229,000

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 the Exchange's rules. The Exchange believes this demonstrates that each Ether Fund is characterized by a substantial number of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of the Ether Funds.

<b>Ether Fund</b>	<b>Beneficial Holders</b>
<b>ETHA (as of 12/19/24)</b>	93,352
<b>FETH (as of 11/26/24)</b>	38,170

As this table shows, each Ether Fund has significantly more than 2,000 beneficial holders (approximately 46 and 19 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock to list options on that stock pursuant to the Exchanges [sic] rules. Therefore, the Exchange believes the shares of each Ether Fund are widely held.

The Exchange also believes that shares of the Ether Funds are actively traded. Both Funds

began trading on July 23, 2024. Regarding ETHA, since the inception of trading through December 14, 2024, the average daily volume was 5,302,533 shares and the average notional volume for this period is \$127,825,276.00. For FETH, since the inception of trading through December 23, 2024, the average daily volume was 115,589,047 shares and the average notional volume for this period is \$33,864,193. Even though the Ether Funds have been trading for less than a year, the trading volume for each Ether Fund is substantially higher than 2,400,000 shares (roughly 2 and 48 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security to list options on that security. 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>15</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 916 or the fund is halted from trading on its primary market.<sup>16</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 of Commentary .01 to Rule 916 (i.e., the continued listing standards); (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

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<sup>15</sup> The Exchange proposes to modify 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.

<sup>16</sup> See Commentary .07 to Rule 916.

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.<sup>17</sup>

Options on each Ether Fund will be physically settled contracts with American-style exercise.<sup>18</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>19</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>20</sup> monthly,<sup>21</sup> or quarterly<sup>22</sup> basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from twelve to thirty-nine months from the time they are listed.<sup>23</sup>

Pursuant to Rule 903, Commentary .05(a), which governs strike prices of series of options

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<sup>17</sup> See id.

<sup>18</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>19</sup> 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. See Rule 903, Commentary .04. 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. See id.

<sup>20</sup> See Rule 903(h).

<sup>21</sup> See Rule 903, Commentary .11.

<sup>22</sup> See Rule 903, Commentary .09.

<sup>23</sup> See Rule 903, Commentary .03.

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>24</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>25</sup> the \$0.50 Strike Program,<sup>26</sup> the \$2.50 Strike Price Program,<sup>27</sup> and the \$5 Strike Program.<sup>28</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>29</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.

The Exchange may 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 security pursuant to Rule 915, subject to specified exceptions.<sup>30</sup> At this time, the Exchange is not proposing to permit Ether Fund options to trade as FLEX options.<sup>31</sup>

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<sup>24</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 .11 to Rule 903, specifically set forth intervals between strike prices on such option series.

<sup>25</sup> See Rule 903, Commentary .06.

<sup>26</sup> See Rule 903, Commentary .13.

<sup>27</sup> See Rule 903, Commentary .07(a).

<sup>28</sup> See Rule 903, Commentary .12.

<sup>29</sup> If options on any of the Ether Funds 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).

<sup>30</sup> See Rule 903G(a)(1). See generally Section 15 (Flexible Exchange (“FLEX”) Options).

<sup>31</sup> See Rule 903G(a)(1) (providing 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

### 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>32</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 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. Accordingly, 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

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FLEX option position limits for such options as appropriate.

<sup>32</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 position 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.

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>33</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.

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.<sup>34</sup> The 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.

As described herein, options on 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

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<sup>33</sup> See proposed Rule 904, Commentary .07(f) (proposing a 25,000-contract position limit for Ether Fund options, the same limit that has been approved for options on bitcoin-backed ETPs as set forth in current Commentary .07(f)). The exercise limit for Ether Fund options will be the same as the position limit (i.e., 25,000-contract). See Rule 905(a)(i).

<sup>34</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.

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. Further, as described above, Exchange Rules regarding position and exercise limits will likewise apply to options on the Ether Funds except 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 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 the Financial Industry Regulatory Authority (“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 ISG 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 (“RSA”) with 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>35</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:

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<sup>35</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: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

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>36</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>37</sup> In light of surveillance measures related to both options and futures as well as the underlying Ether Funds,<sup>38</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

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<sup>36</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”).

<sup>37</sup> See Ether ETP Approval Order, 89 FR, at 46941.

<sup>38</sup> See id.

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>39</sup> but may prefer to trade 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.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the

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<sup>39</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.

Act<sup>40</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>41</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the proposal to list and trade Ether Fund options 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>42</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

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<sup>40</sup> 15 U.S.C. 78f(b).

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> See Rule 915, Commentaries .10 (permitting the listing and trading of options on shares of ETPs that hold precious metals) and .10(a) (permitting the listing and trading of options on shares of ETPs that hold bitcoin).

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.

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 the 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 proposal to exclude Ether Fund options from eligibility for FLEX trading 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>43</sup> In addition, this proposal benefits investors and in public interest because adds clarity and transparency to Exchange rules making them easier to navigate and understand, which in turn removes impediments to and perfects the mechanism of a free and open market and a national market system.

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<sup>43</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).

The proposed position and exercise limit for options on the Ether Funds is 25,000 contracts, which proposed limits were recently approved for ETPs that hold bitcoin.<sup>44</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 outstanding shares. The proposed position and exercise limits are consistent with the Act as they addresses [sic] 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 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

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<sup>44</sup> See Rule 904, Commentary .07(f) (providing that options on bitcoin-backed ETPs are subject to a 25,000-contract position limit) and Rule 905(a)(i) (providing that the exercise limit for Ether Fund options is the same as the position limit established per Rule 904).

conducting surveillances for market abuse or manipulation in the options on the Ether Funds. Additionally, the Exchange is a member of the ISG under the ISG 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 an RSA 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. 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>45</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>46</sup>

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<sup>45</sup> See Ether ETP Approval Order, 89 FR, at 46938.

<sup>46</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>47</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.

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 furtherance of the purposes of the Act as Ether Fund options would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other option on an ETF before the Exchange could list these options. 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>48</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

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<sup>47</sup> See id.

<sup>48</sup> See Rule 915, Commentaries .10 (permitting the listing and trading of options on shares of ETPs that hold precious metals) and .10(a) (permitting the listing and trading of options on shares of ETPs that hold bitcoin).

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. As noted herein, this filing based on similar proposals submitted by ISE and Cboe and approved by the Commission.<sup>49</sup> Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the 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 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.

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<sup>49</sup> See supra note 5, Ether ETP Options Approval Orders.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>50</sup> and Rule 19b-4(f)(6) thereunder.<sup>51</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>52</sup> and Rule 19b-4(f)(6)<sup>53</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>54</sup> under the Act does not normally become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>55</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission previously approved the listing of options on the Ether Funds.<sup>56</sup> The Exchange has provided information regarding the underlying Ether Funds, including, among other things, information regarding trading volume, the number of beneficial holders, and the

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<sup>50</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>51</sup> 17 CFR 240.19b-4(f)(6).

<sup>52</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>53</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>54</sup> 17 CFR 240.19b-4(f)(6).

<sup>55</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>56</sup> See Ether ETP Options Approval Orders, supra note 5.

market capitalization of the Ether Funds. The proposal also establishes position and exercise limits for options on the Ether Funds and provides information regarding the surveillance procedures that will apply to Ether Funds options. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading Ether Funds options. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>57</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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

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<sup>57</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEAMER-2025-23 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-2025-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

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

protection. All submissions should refer to file number SR-NYSEAMER-2025-23 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>58</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>58</sup> 17 CFR 200.30-3(a)(12).