

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101745; File No. SR-SAPPHIRE-2024-37)

November 25, 2024

Self-Regulatory Organizations; MIA X Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 402, Criteria for Underlying Securities, to List and Trade Options on the Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust, and the Bitwise Bitcoin ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 21, 2024, MIA X Sapphire, LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Exchange Rule 402, Criteria for Underlying Securities. The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings>, at the Exchange’s principal office, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange³ proposes to amend Exchange Rule 402, Criteria for Underlying Securities, to allow the Exchange to list and trade options on the following exchange-traded products: the Grayscale Bitcoin Trust (BTC) (the “Grayscale Fund” or “GBTC”), the Grayscale Bitcoin Mini Trust BTC (the “Grayscale Mini Fund” or “BTC”), and the Bitwise Bitcoin ETF (the “Bitwise Fund” or “BITB” and, collectively, the “Bitcoin Funds” or “Funds”).⁴ As noted above, MIAX’s rules governing position limits and exercise limits for options positions are incorporated by reference into the MIAX Sapphire Rulebook and are therefore MIAX Sapphire rules applicable to market participants on MIAX Sapphire. MIAX is filing a substantively similar proposal to list and trade options on the Bitcoin Funds. That filing includes proposed change to Exchange Rules 307 (position limits) and 309 (exercise limits), which changes will be incorporated by reference into the MIAX Sapphire Rulebook.

³ The Exchange notes that its affiliate options exchanges, Miami International Securities Exchange, LLC (“MIAX”) and MIAX PEARL, LLC (“MIAX Pearl”), plan to submit (or have already submitted) substantively identical proposals to list and trade options on the Bitcoin Funds. The Exchange notes that all the rules of Chapter III of MIAX, including Exchange Rules 307 and 309, are incorporated by reference to the MIAX Pearl and MIAX Sapphire Rulebooks. The Exchange also notes that all of the rules of Chapter III of MIAX, including Exchange Rules 307 and 309, and the rules of Chapter IV of MIAX, including Exchange Rule 402, are incorporated by reference into the Exchange’s affiliate, MIAX Emerald, LLC (“MIAX Emerald”).

⁴ On January 10, 2024, the Securities and Exchange Commission (“Commission”) approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the iShares Bitcoin Trust. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) (“Bitcoin ETP Order”).

The Exchange notes that this is a competitive filing based on a similar proposal submitted by NYSE American LLC (“NYSE American”), which was approved by the Commission.⁵ The Commission also recently approved a rule proposal by Nasdaq ISE, LLC (“ISE”) to allow the listing and trading of options on iShares Bitcoin Trust (or IBIT), which is a trust that holds bitcoin (referred to herein as the “ISE IBIT Approval Order”).⁶ As discussed herein, the Exchange believes, like the recently-approved options on IBIT, options on the Bitcoin Funds would permit hedging, and allow for more liquidity, better price efficiency, and less volatility with respect to the underlying Funds. Further, permitting the listing of such options would enhance the transparency and efficiency of markets in these and correlated products.

Current Exchange Rule 402(i)(4) provides that securities deemed appropriate for options trading include shares or other securities (“Exchange Traded Fund Shares” or “ETFs”) that represent certain types of interests,⁷ including interests in certain specific trusts that hold

⁵ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds).

⁶ See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, To Permit the Listing and Trading of Options on the iShares Bitcoin Trust (“IBIT”) (“ISE IBIT Approval Order”).

⁷ See Exchange Rule 402(i), which permits options trading on ETFs that: (1) 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 (“Funds”), including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase 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 broad-based 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); (2) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust which when aggregated in some specified minimum number may be surrendered to the trust or similar entity by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”); (3) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts,

financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Bitcoin Funds are Bitcoin-backed commodity ETFs structured as trusts. Similar to any ETFs currently deemed appropriate for options trading under Exchange Rule 402(i), the investment objective of each Bitcoin Fund is for its shares to reflect the performance of Bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for ETFs currently deemed appropriate for options trading, a Bitcoin Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.⁸ The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold Bitcoin (which is also deemed a commodity).

options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs"); (4) are issued by the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Silver Trust, the Aberdeen Standard Physical Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust; or (5) represent an interest in a registered investment company ("Investment Company") organized as an open-end management 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 subparagraphs (5)(i) and 5(ii) are met.

⁸ The trust may include minimal cash.

The Exchange believes each Bitcoin Fund satisfies the Exchange's initial listing standards for ETFs on which the Exchange may list options.⁹ Specifically, each Bitcoin Fund satisfies the initial listing standards set forth in Exchange Rule 402(i)(5)(i), as is the case for other ETFs on which the Exchange lists options (including trusts that hold commodities). Exchange Rule 402(i)(5)(i) requires that the ETFs must either (1) meet the criteria and standards set forth in Exchange Rule 402(a) or 402(b),¹⁰ or (2) 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 units 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. Each Bitcoin Fund satisfies Exchange Rule 402(i)(5)(i)(B), as each is subject to this creation and redemption process.

While not required by the Rules for purposes of options listings, the Exchange believes each Bitcoin Fund satisfies the criteria and guidelines set forth in Exchange Rule 402. Pursuant to Exchange Rule 402, a security (which includes ETFs) 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.¹¹ Each Bitcoin Fund is an

⁹ Subparagraphs (a) and (b) of Exchange Rule 402 provide for guidelines to be used by the Exchange when evaluating potential underlying securities for Exchange option transactions.

¹⁰ See Exchange Rule 402(a)-(b).

¹¹ The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Exchange Rule 402(b), subject to exceptions.

NMS Stock as defined in Rule 600 of Regulation NMS under the Act.¹² The Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

Pursuant to the data presented in the NYSE American filing¹³, as of August 30, 2024, the Bitcoin Funds had the following number of shares outstanding (and corresponding market capitalization):

<u>Bitcoin Fund</u>	<u>Shares Outstanding</u>	<u>Market Value (8/30/2024)</u>
GBTC	284,570,100	\$13,443,091,524
BTC	366,950,100	\$1,930,157,526
BITB	68,690,000	\$2,221,640,670

As shown above, each Bitcoin Fund had significantly more than 7,000,000 shares outstanding (approximately 29 and 6.5 times that amount, respectively), which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Exchange Rule 402(b)(1). The Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

Further, according to the NYSE American filing¹⁴, the below table contains information regarding the number of beneficial holders of the Bitcoin Funds as of August 14, 2024:

¹² 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”).

¹³ See supra note 5.

¹⁴ See supra note 5.

<u>Bitcoin Fund</u>	<u>Beneficial Holders (8/14/24)</u>
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GBTC	464,364
BTC	13,403
BITB	75,437

As this table shows, each Bitcoin Fund has significantly more than 2,000 beneficial holders (approximately 232, 7, and 38 time 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 Exchange Rule 402(b)(2). Therefore, the Exchange believes the shares of each Bitcoin Fund are widely held.

In addition, the Exchange believes the shares of each Bitcoin Fund are actively traded. Further, according to the NYSE American filing¹⁵, as of September 30, 2024, the total trading volume (by shares and notional) for these funds since they began trading¹⁶ and the average daily volume (“ADV”) over the 30-day period of September 1 through September 30, 2024, was as follows:¹⁷

<u>Bitcoin Fund</u>	<u>Trading Volume (Shares)</u>	<u>Trading Volume (Notional \$)</u>	<u>ADV (Shares)</u>
GBTC	1,803,567,700	93,472,544,497	3,266,138
BTC	335,492,930	1,792,866,521	6,838,546
BITB	434,815,840	14,433,361,384	1,949,835

¹⁵ See supra note 5.

¹⁶ As noted by NYSE American, GBTC and BITB began trading on January 11th and BTC began trading on July 31st. Thus, the measurement period for the trading volume (shares/notional) is January 11 through September 20, 2024, for GBTC and BITB (i.e., nine months) and July 31 through September 20, 2024, for BTC (i.e., two months). See supra note 5.

¹⁷ See FactSet, 9/30/2024, available at <https://www.factset.com/data-attribution>.

As demonstrated above, even though these Bitcoin Funds have been trading for less than one year, the trading volume for each is substantially higher than 2,400,000 shares (between roughly 165 and 700 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 Exchange Rule 402(b). The Exchange believes this data demonstrates each Bitcoin 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 the Bitcoin Funds will be subject to the Exchange's continued listing standards as set forth in Exchange Rule 403(g).¹⁸ Pursuant to Exchange Rule 403(g), 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 Exchange Rule 402(b) or the fund is halted from trading on its primary market.¹⁹ 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 Exchange Rule 403(b); (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.

¹⁸ The Exchange proposes to amend Exchange Rule 402(i)(4) to include the Bitcoin Funds in the list of ETPs deemed "Exchange-Traded Fund Shares" -- of ETFs -- for purposes of the continued listing standards set forth in Exchange Rule 403(g). See proposed Exchange Rule 402(i)(4). For avoidance of doubt, the Exchange refers "funds" rather than "ETFs" to make clear that the Bitcoin Funds are subject to these continued listing standards.

¹⁹ See Exchange Rule 403(g).

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.²⁰ Consistent with Exchange Rule 404, 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 Bitcoin Fund²¹ at the commencement of trading on the Exchange and may also list series of options on Bitcoin Funds for trading on a weekly,²² monthly,²³ or quarterly²⁴ 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.²⁵

Pursuant to Exchange Rule 404(g), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.²⁶ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price

²⁰ See Exchange Rule 401 (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 Options Clearing Corporation (“OCC”). 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.

²¹ See Exchange Rule 404. The monthly expirations are subject to certain listing criteria for underlying securities described within Exchange Rule 402. 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 Exchange Rule 404(c), 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. Pursuant to Exchange Rule 404(e), 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.

²² See Exchange Rule 404, Interpretation and Policy .02.

²³ See Exchange Rule 404, Interpretation and Policy .13.

²⁴ See Exchange Rule 404, Interpretation and Policy .03.

²⁵ See Exchange Rule 406.

²⁶ 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, Exchange Rules 404, Interpretation

Interval Program,²⁷ the \$0.50 Strike Program,²⁸ and the \$2.50 Strike Price Program.²⁹ Pursuant to Exchange Rule 510, where the price of a series of a Bitcoin 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 \$0.10.³⁰ Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Exchange Rules 404 and 510, as applicable. Further, the Exchange notes that MIAX Chapter XV Rules (Margin), which governs margin requirements applicable to the trading of all options on the Exchange as that chapter of rules is incorporated by reference into the MIAX Sapphire Rulebook, including options on ETFs and ETPs, will also apply to the trading of Bitcoin Fund options.

Position and Exercise Limits

As mentioned above, the rules for position and exercise limits for options, including options on Bitcoin Funds, are determined pursuant to MIAX Rules 307 and 309, respectively, as incorporated by reference into the MIAX Sapphire Rulebook. 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

and Policies .02, .03, and .13, specifically set forth intervals between strike prices on Short Term Option Series, Quarterly Options Series, and Monthly Options Series, respectively.

²⁷ See Exchange Rule 404, Interpretation and Policy .01.

²⁸ See Exchange Rule 404, Interpretation and Policy .04.

²⁹ See Exchange Rule 404(f).

³⁰ See Exchange Rule 510(a). If options on a Bitcoin 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 Exchange Rule 510(a)(3). See also Exchange Rule 510(c) (which describes the requirements for the Penny Interval Program).

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.³¹

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 MIAX Rule 307, 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 Bitcoin Funds at 25,000 contracts, a limit which has already been approved for IBIT at a competing exchange, an ETP that (like the Bitcoin Funds) holds bitcoin.³² 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 Bitcoin Funds and therefore appropriate given their liquidity. While the Exchange believes that the proposed

³¹ See MIAX Rule 307. 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 MIAX Rule 307. In addition, Interpretation and Policy .01 to MIAX Rule 307 establishes higher position limits for options on certain ETFs.

³² See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, to Permit the Listing and Trading of Options on the iShares Bitcoin Trust (“IBIT”) (“ISE IBIT Approval Order”).

25,000-contract position limit is conservative for options on the Bitcoin Funds, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.³³

As shown in the table below, provided in the NYSE American filing³⁴, GBTC, BITB and BTC would easily qualify for the 250,000-contract position limit available to other ETFs and ETPs pursuant to the criterion in MIAX Rule 307, which requires that, for the most recent six-month period, trading volume for the underlying security be at least 100,000,000 shares.³⁵ As noted in the NYSE American filing, BTC began trading on July 31, 2024, and therefore had only two months of trading data available at the time of the NYSE American filing, as shown below.³⁶

<u>Bitcoin Fund</u>	<u>Total volume (9/30/2024)</u>
GBTC	723,758,100 (6-months)
BTC	335,492,930 (2-months)
BITB	263,965,870 (6-months)

Thus, based on the most-recent trading volume, each Bitcoin Fund exceeded the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and

³³ The Exchange may file a subsequent rule change to amend the position and exercise limit for options on any or all the Bitcoin 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 Bitcoin Funds for prudent risk management purposes.

³⁴ See *supra* note 5.

³⁵ Per MIAX Rule 307, 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.

³⁶ See *supra* note 5. See FactSet, 9/30/2024, <https://www.factset.com/data-attribution>. For avoidance of doubt, the Exchange notes that this chart depicts the most recent six months (at the time the NYSE American filing was filed) of trading data by shares for GBTC and BITB whereas the earlier chart (that depicts volume by notional and shares) covered the first nine months of trading. For BTC, both charts depict the same two-month trading volume by shares.

exercise limits. By comparison, other options symbols with six-month trading volume less than GBTC, BITB, and BTC are eligible for position and exercise limits of at least 250,000.³⁷

With respect to the outstanding shares of each Bitcoin 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, according to the data presented in the NYSE American filing:³⁸

Bitcoin Fund	Proposed Position/Exercise Limits in Equivalent Shares	Outstanding Shares (8/30/24)	Percentage of Outstanding Shares
GBTC	2,500,000	284,570,100	0.9%
BTC	2,500,000	366,950,100	0.7%
BITB	2,500,000	68,690,000	3.6%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin 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 Bitcoin 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 Bitcoin Fund (if that market participant exercised all its options). Based on data presented in the NYSE American filing regarding the number of shares outstanding for each Bitcoin Fund as of August 30, 2024, the table below sets forth the approximate number of market participants that could hold the maximum of 25,000

³⁷ 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).

³⁸ See *supra* note 5.

same side positions in each Bitcoin Fund that would equate to the number of shares outstanding of that Bitcoin Fund:³⁹

Bitcoin Fund	Shares Outstanding	Number of Market Participants with 25,000 Same Side Positions
GBTC	284,570,100	114
BTC	366,950,100	147
BITB	68,690,000	27

This means if 114 market participants had 25,000 same side positions in options on GBTC, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 147 market participants had 25,000 same side positions in options on BTC, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Finally, this means if 27 market participants had 25,000 same side positions in options on BITB, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for this to occur; however, even if such event did occur, the Exchange would not expect any of the Bitcoin Fund 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 Bitcoin Fund may create and redeem shares that represent an interest in Bitcoin, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the Bitcoin market. As of August 30, 2024, the global supply of Bitcoin was 19,747,066, and the price of one Bitcoin was approximately

³⁹ See supra note 5.

\$59,108.23, which equates to a market capitalization of approximately \$1.167 trillion.⁴⁰

Consider the proposed position and exercise limit of 25,000 option contracts for each Bitcoin 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 GBTC, BTC, or BITB, as applicable (if that market participant exercised all its options). The following table from the NYSE American filing shows the share price of each Bitcoin Fund on August 30, 2024, the value of 2,500,000 shares of the Bitcoin Fund at that price, and the approximate percentage of that value of the size of the Bitcoin market:⁴¹

Bitcoin Fund	Aug. 30th Share Price (\$)	Value of 2,500,000 Shares of Bitcoin Funds (\$)	Percentage of Bitcoin Market
GBTC	46.75	116,875,000	0.010%
BTC	5.20	13,000,000	0.001%
BITB	31.95	79,875,000	0.007%

Therefore, if a market participant with the maximum 25,000 same side contracts in options on GBTC, BTC, or BITB exercised all positions at one time, such an event would have no practical impact on the Bitcoin market. As described in the NYSE American filing, the below chart shows the market capitalization of each Bitcoin Fund relative to the market capitalization of the entire bitcoin market, as of August 30, 2024.⁴²

⁴⁰ See <https://www.blockchain.com/explorer/charts/total-bitcoins>.

⁴¹ See *supra* note 5.

⁴² See *supra* note 5.

	Bitcoin/Shares Outstanding	Market Value (8/30/2024)	% of Total Bitcoin Market
Total Bitcoin Market	19,747,066 \$	\$1,167,214,096,788	100.00%
GBTC	284,570,100	\$13,443,091,524	1.15%
BTC	366,950,100	\$1,930,157,526	0.17%
BITB	68,690,000	\$2,221,640,670	0.19%

As shown above, the Bitcoin Funds collectively represent approximately 1.51% of the global supply of Bitcoin (19,747, 066). Based on the \$46.75 price of a GBTC share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,264 GBTC shares. Another 24,967,146,455 GBTC shares could be created before the supply of Bitcoin was exhausted. As a result, 9,987 market participants would have to simultaneously exercise 25,000 same side positions in GBTC options to receive shares of the GBTC holding the entire global supply of Bitcoin. Similarly, based on the \$5.20 price of a BTC share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 11,367 BTC shares. Another 224,464,249,382 BTC shares could be created before the supply of Bitcoin was exhausted. As a result, 89,786 market participants would have to simultaneously exercise 25,000 same side positions in BTC options to receive shares of BTC holding the entire global supply of Bitcoin. Similarly, based on the \$31.95 price of a BITB share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,850 BITB shares. Another 36,532,522,591 BITB shares could be created before the supply of Bitcoin was exhausted. As a result, 14,613 market participants would have to simultaneously exercise 25,000 same side positions in BITB options to receive shares of BITB holding the entire global supply of Bitcoin. Unlike the Bitcoin 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 Bitcoin Funds may create, redeem, or split shares in response to demand. While the supply of

Bitcoin is limited to 21,000,000, it is believed that it will take more than 100 years to fully mine the remaining Bitcoin.⁴³ The supply of Bitcoin is larger than the available supply of most securities.⁴⁴ Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Bitcoin 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 Bitcoin.

The Exchange also believes the proposed limits are appropriate given position limits for Bitcoin futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 2,000 futures (for the initial spot month) on its Bitcoin futures contract.⁴⁵ On August 28, 2024, CME Aug 24 Bitcoin Futures settled at \$58,950. A position of 2,000 CME Bitcoin futures, therefore, would have a notional value of \$589,500,000. The following table shows the share price of each Bitcoin Fund on August 28, 2024, and the approximate number of option contracts that equates to that notional value:⁴⁶

Bitcoin Fund	Aug. 28th Share Price	Number of Option Contracts
GBTC	46.94	125,585
BTC	5.23	1,127,151
BITB	32.08	183,759

The approximate number of option contracts for each Bitcoin Fund that equate to the notional value of CME Bitcoin futures is significantly higher than the proposed limit of 25,000

⁴³ See <https://www.blockchain.com/explorer/assets/btc> (citing 21 million as the “total supply” of bitcoin).

⁴⁴ The market capitalization of Bitcoin would rank in the top 10 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

⁴⁵ See CME Rulebook Chapter 350 (description of CME Bitcoin Futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME Bitcoin futures contract is valued at five Bitcoins as defined by the CME CF Bitcoin Reference Rate (“BRR”). See CME Rule 35001.

⁴⁶ See *supra* note 5.

options contract for each Bitcoin 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 a Bitcoin Future is 1, further demonstrates how conservative the proposed limits of 25,000 options contracts are for the Bitcoin 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).⁴⁷ 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.⁴⁸ 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 Bitcoin, the Exchange believes that the proposed same side position limits are more than appropriate for the Bitcoin Fund options.

The Exchange believes the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the Bitcoin Funds.⁴⁹ Position

⁴⁷ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

⁴⁸ Id.

⁴⁹ 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

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.⁵⁰ “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.”⁵¹ 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 possibility for disruption of the options market itself, especially in illiquid options classes.”⁵²

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each Bitcoin Fund, each of which described the supply of Bitcoin as being limited to 21,000,000 (of which approximately 90% had already been mined), and that the limit

(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 the position limits in Exchange Rule 307 are the same as when the Commission approved this filing. 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.

⁵⁰ 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.

⁵¹ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁵² Id.

would be reached around the year 2140.⁵³ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Fund would impact the supply of Bitcoin.⁵⁴ Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Bitcoin was sufficient to permit the creation of unlimited Bitcoin 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 Bitcoin 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 Bitcoin 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 Bitcoin Funds. 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

⁵³ See, e.g., GBTC Form S-1 Registration Statement, at p. 17, <https://www.sec.gov/Archives/edgar/data/1588489/000119312517013693/d157414ds1.htm>; BTC Form S-1 Registration Statement, at p. 21, <https://www.sec.gov/Archives/edgar/data/2015034/000119312524065444/d785023ds1.htm>; and BITB Amendment No 2. to S-1, at p. 47, https://www.sec.gov/Archives/edgar/data/1763415/000199937123000735/bitwise-s1a_120423.htm (“Bitcoin Funds Reg. Stmts.”).

⁵⁴ See Bitcoin ETP Approval Order.

establishing options positions that could be used to manipulate the market of the underlying Bitcoin Funds as well as the Bitcoin market.⁵⁵

As described herein, options on the Bitcoin Funds will trade in the same manner as any other ETF or ETP options on the Exchange. 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 Bitcoin 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 Exchange Rule 404. Further, as described above, Exchange Rules regarding position and exercise limits will likewise apply to options on the Bitcoin 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 Bitcoin 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 Bitcoin Funds. The Exchange believes any additional traffic that would be generated from the trading of options on

⁵⁵ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

Bitcoin Funds would be manageable. The Exchange represents that Exchange Members⁵⁶ will not have a capacity issue as a result of this proposed rule change.

The Exchange represents that the same surveillance procedures⁵⁷ applicable to all other options currently listed and traded on the Exchange will apply to options on Bitcoin 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 Bitcoin Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Bitcoin Funds in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's staff will have access to the surveillance programs conducted by its affiliate exchanges, MIAX and MIAX Pearl, with respect to trading in the shares of the underlying trust for each Fund when conducting surveillances for market abuse or manipulation in the options on the 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 obtaining surveillance data from MIAX and MIAX Pearl, the Exchange will be able to obtain information regarding trading in the shares of the underlying Bitcoin Funds from NYSE American and other markets through ISG. In addition, 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

⁵⁶ See Exchange Rule 100.

⁵⁷ The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing).

exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.⁵⁸ Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Bitcoin Funds.

The underlying shares of spot bitcoin ETPs, including the Bitcoin 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 bitcoin-based exchange-traded products (“Bitcoin ETP Order”):

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 bitcoin futures market.⁵⁹

The Exchange states that, given the consistently high correlation between the CME bitcoin futures market and the spot bitcoin 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 [Bitcoin ETPs].”⁶⁰

⁵⁸ 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.

⁵⁹ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, 3009 (January 17, 2024) (File Nos. SR-NYSEArca-2021-90; SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SR-NASDAQ2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units).

⁶⁰ See Bitcoin ETP Order, 89 FR at 3010-11.

In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,⁶¹ 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 Bitcoin 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 Bitcoin Funds will be available via OPRA and major market data vendors.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (“OTC”) options market,⁶² 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

⁶¹ See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2021-90), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-358659-884182.pdf>; Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Bitwise Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-44), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-44/srnysearca202344-358800-884322.pdf>; and Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust Under NYSE Arca Rule 8.201-E, Commodity-Based Trust Shares, Securities Exchange Act Release No. 100290 (June 6, 2024), 89 FR 49931 (June 12, 2024) (SR-NYSEARCA-2024-45).

⁶² 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.

and guarantor of all listed options. The Exchange believes that listing Bitcoin 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 Bitcoin 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 Bitcoin Funds.⁶³ Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.⁶⁴

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁶⁵ in general and furthers the objectives of Section 6(b)(5) of the Act⁶⁶ 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.

⁶³ See MIAX Rules 1307(b) and (e), which are incorporated by reference into the MIAX Sapphire Rulebook.

⁶⁴ See MIAX Rule 1309, which is incorporated by reference into the MIAX Sapphire Rulebook.

⁶⁵ 15 U.S.C. 78f(b).

⁶⁶ 15 U.S.C. 78f(b)(5).

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

The Exchange believes that offering Bitcoin 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 Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin 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,⁶⁷ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin 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

⁶⁷ See Exchange Rule 402(i)(4).

Bitcoin 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 and in the NYSE American filing⁶⁸, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin 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 Bitcoin Funds in the same manner.

The proposed position and exercise limit for options on the Bitcoin Funds is 25,000 contracts. 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 Bitcoin Funds' market capitalization, average daily volume, number of beneficial holders, and high number of outstanding shares.⁶⁹ The proposed position and exercise limits are consistent with the Act as they addresses concerns related to manipulation and protection of investors because the position and exercise limits are extremely conservative and more than appropriate given the Bitcoin Funds are actively traded.

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise

⁶⁸ See supra note 5.

⁶⁹ The Exchange notes that IBIT -- which has been approved for options trading -- represents a larger percentage of the bitcoin market than all three Bitcoin Funds. See ISE IBIT Approval Order, supra note 6. As noted herein, the Bitcoin Funds collectively represent approximately 1.51% of the bitcoin market. By comparison, IBIT options have an approved position limit of 25,000 contracts per side, which represents 4% of total underlying spot BTC liquidity, and IBIT is the most liquid spot Bitcoin ETF. See id.

from listing and trading options, including Bitcoin 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 Bitcoin Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Bitcoin 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 the surveillances conducted by its affiliates, MIAX and MIAX Pearl, with respect to the Bitcoin Funds and would review activity in the underlying Funds when conducting surveillances for market abuse or manipulation in the options on the Trust. 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, 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 Bitcoin Funds.

The underlying shares of spot bitcoin ETPs, including the Bitcoin 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 bitcoin-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 bitcoin futures market.⁷⁰ The Exchange states that, given the consistently high correlation between the CME bitcoin futures market and the spot bitcoin 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 [Bitcoin ETPs].”⁷¹ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,⁷² 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 Bitcoin Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin 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

⁷⁰ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, 3009 (January 17, 2024) (File Nos. SR-NYSEArca-2021-90; SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SR-NASDAQ2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units).

⁷¹ See Bitcoin ETP Order, 89 FR at 3010-11.

⁷² See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2021-90), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-358659-884182.pdf>; Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Bitwise Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-44), filed Jan. 5, 2024, available at <https://www.sec.gov/comments/sr-nysearca-2023-44/srnysearca202344-358800-884322.pdf>; and Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust Under NYSE Arca Rule 8.201-E, Commodity-Based Trust Shares, Securities Exchange Act Release No. 100290 (June 6, 2024), 89 FR 49931 (June 12, 2024) (SR-NYSEARCA-2024-45).

disclosure before trading options in Bitcoin Funds⁷³ and will require that brokers opening accounts and recommending options transactions comply with relevant customer suitability standards.⁷⁴

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 Bitcoin 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, Bitcoin 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 Bitcoin Funds. Also, and as stated above, the Exchange already lists options on other commodity-based ETPs.⁷⁵

Intermarket Competition: The Exchange does not believe that the proposal to list and trade options on Bitcoin 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 Bitcoin 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 is a competitive filing as

⁷³ See MIAX Rules 1307(b) and (e).

⁷⁴ See MIAX Rule 1309.

⁷⁵ See Exchange Rule 402(i).

the Commission recently approved the listing and trading of options on the Bitcoin Funds,⁷⁶ as well as another ETP that, like the Bitcoin Funds, holds bitcoin.⁷⁷ Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin Funds. The Exchange notes that listing and trading Bitcoin 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 Bitcoin 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 Bitcoin prices and Bitcoin-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

Written comments were neither solicited nor received.

⁷⁶ See supra note 5.

⁷⁷ See ISE IBIT Approval Order, supra note 6.

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 Act⁷⁸ and Rule 19b-4(f)(6) thereunder.⁷⁹ Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁸⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸¹

A proposed rule change filed under Rule 19b-4(f)(6)⁸² 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),⁸³ 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 Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust, and the Bitwise Bitcoin ETF.⁸⁴ The Exchange has

⁷⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷⁹ 17 CFR 240.19b-4(f)(6).

⁸⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸¹ 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 Commission waives this requirement.

⁸² 17 CFR 240.19b-4(f)(6).

⁸³ 17 CFR 240.19b-4(f)(6)(iii).

⁸⁴ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Permit the Listing and Trading of Options on Bitcoin Exchange-Traded Funds).

provided information regarding the underlying Bitcoin Funds, including, among other things, information regarding trading volume, the number of beneficial holders, and the market capitalization of the Bitcoin Funds. The proposal also establishes position and exercise limits for options on the Bitcoin Funds and provides information regarding the surveillance procedures that will apply to Bitcoin Fund options. The Commission believes that waiver of the operative delay could benefit investors by providing an additional venue for trading Bitcoin Fund 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.⁸⁵

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 shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

⁸⁵ 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).

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
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2024-37 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-SAPPHIRE-2024-37. 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-SAPPHIRE-2024-37 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.⁸⁶

Vanessa A. Countryman,
Secretary.

⁸⁶ 17 CFR 200.30-3(a)(12), (59).