





1. Text of the Proposed Rule Change

(a) MEMX LLC (“MEMX” or the “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend Rule 19.3 (Criteria for Underlying Securities) to allow the Exchange to list and trade options on the iShares Bitcoin Trust, designating the trust as appropriate for options trading on the Exchange. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.<sup>4</sup>

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

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

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

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

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

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

a. Purpose

The Exchange proposes to amend Exchange Rule 19.3 (Criteria for Underlying Securities) to allow the Exchange to list and trade options on the iShares Bitcoin Trust (“the Trust”), designating the Trust as appropriate for options trading on the Exchange. This is a competitive filing that is based on a similar proposal submitted by Nasdaq ISE, LLC (“ISE”) and approved by the Securities and Exchange Commission (“Commission”).<sup>5</sup>

Current Exchange Rule 19.3(i) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include shares or other securities (“Fund Shares”), including but not limited to Partnership Units as defined in the Rule, that are principally traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS and that meet specified criteria enumerated in the rule. Exchange Rule 19.3(i) provides that such shares or other securities:

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<sup>5</sup> See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (Self-Regulatory Organizations; Nasdaq ISE, LLC; 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).

(4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust or iShares Silver Trusts, provided that all conditions described under Rule 19.3(i)(1)-(2) are met.

#### Proposal

The Exchange proposes to amend Exchange Rule 19.3(i) to expand the list of securities that are appropriate for options trading on the Exchange.

#### Description of the Trust<sup>6</sup>

The shares are issued by the Trust, a Delaware statutory trust. The Trust operates pursuant to a trust agreement (the “Trust Agreement”) between the Sponsor, BlackRock Fund Advisors (the “Trustee”) as the trustee of the Trust and Wilmington Trust, National Association, as Delaware trustee. The Trust issues shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust consist only of bitcoin, held by a custodian on behalf of the Trust except under limited circumstances when transferred through the Trust’s prime broker temporarily (described below), and cash. Coinbase Custody Trust Company, LLC (the “Bitcoin Custodian”) is the custodian for the Trust’s bitcoin holdings, and maintains a custody account for the Trust (“Custody Account”); Coinbase, Inc. (the “Prime Execution Agent”), an affiliate of the Bitcoin Custodian, is the prime broker for the Trust and maintains a trading account for the Trust (“Trading Account”); and Bank of New York Mellon is the custodian for the Trust’s cash

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<sup>6</sup> 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; SRNASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SRCboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; 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) for a complete description of the Trust.

holdings (the “Cash Custodian” and together with the Bitcoin Custodian, the “Custodians”) and the administrator of the Trust (the “Trust Administrator”). Under the Trust Agreement, the Trustee may delegate all or a portion of its duties to any agent, and has delegated the bulk of the day to day responsibilities to the Trust Administrator and certain other administrative and recordkeeping functions to its affiliates and other agents. The Trust is not an investment company registered under the Investment Company Act of 1940, as amended. The investment objective of the Trust is to reflect generally the performance of the price of bitcoin. The Trust seeks to reflect such performance before payment of the Trust’s expenses and liabilities. The shares are intended to constitute a simple means of making an investment similar to an investment in bitcoin through the public securities market rather than by acquiring, holding and trading bitcoin directly on a peer-to-peer or other basis or via a digital asset exchange. The shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in bitcoin, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the bitcoin owned by the Trust at such time, less the Trust’s expenses and liabilities. Although the shares are not the exact equivalent of a direct investment in bitcoin, they provide investors with an alternative method of achieving investment exposure to bitcoin through the public securities market, which may be more familiar to them.

#### **Custody of the Trust’s Bitcoin**

An investment in the shares is backed by bitcoin held by the Bitcoin Custodian on behalf of the Trust. All of the Trust’s bitcoin will be held in the Custody Account, other than the Trust’s bitcoin which is temporarily maintained in the Trading Account under

limited circumstances, i.e., in connection with creation and redemption Basket<sup>7</sup> activity or sales of bitcoin deducted from the Trust's holdings in payment of Trust expenses or the Sponsor's fee (or, in extraordinary circumstances, upon liquidation of the Trust). The Custody Account includes all of the Trust's bitcoin held at the Bitcoin Custodian, but does not include the Trust's bitcoin temporarily maintained at the Prime Execution Agent in the Trading Account from time to time. The Bitcoin Custodian will keep all of the private keys associated with the Trust's bitcoin held in the Custody Account in "cold storage".<sup>8</sup> The hardware, software, systems, and procedures of the Bitcoin Custodian may not be available or cost-effective for many investors to access directly.

The Exchange believes that offering options on the Trust will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to spot Bitcoin as well as a hedging vehicle to meet their investment needs in connection with Bitcoin products and positions. Similar to other commodity-based trusts on which options may be listed on the Exchange (e.g. SPDR® Gold Trust, the iShares COMEX Gold Trust, or the iShares Silver Trust),<sup>9</sup> the Trust essentially offers the same objectives and benefits to investors as do other commodity-based trusts on which options may be listed on the Exchange.

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<sup>7</sup> The Trust issues and redeems Shares only in blocks of 40,000 or integral multiples thereof. A block of 40,000 Shares is called a "Basket." These transactions take place in exchange for Bitcoin.

<sup>8</sup> The term "cold storage" refers to a safeguarding method by which the private keys corresponding to the Trust's bitcoins are generated and stored in an offline manner, subject to layers of procedures designed to enhance security. Private keys are generated by the Bitcoin Custodian in offline computers that are not connected to the internet so that they are more resistant to being hacked.

<sup>9</sup> See Exchange Rule 19.3(i).

Options on the Trust will trade in the same manner as options on other ETFs (otherwise referred to as “Fund Shares”) on the Exchange. Exchange Rules that currently apply to the listing and trading of all options on ETFs on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures, will apply to the listing and trading of options on the Trust on the Exchange. Today, these rules apply to options on the various commodities-based trusts deemed appropriate for options trading on the Exchange pursuant to Exchange Rule 19.3(i).

The Exchange’s initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to the Trust. Pursuant to Exchange Rule 19.3(a), a security (which includes ETFs) on which options may be listed and traded on the Exchange must be registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held and actively traded. Exchange Rule 19.3(i)(1) requires that, in relevant part, Funds Shares must either (A) meet the criteria and standards set forth in Exchange Rule 19.3(a) or Exchange Rule 19.3(b), or (B) be available for creation or redemption each business day in cash or in kind from the investment company, commodity pool or other entity at a price related to net asset value, and the investment company, commodity pool or other entity is obligated to provide that Fund Shares may be created even if some or all of the securities and/or cash required to be deposited have not been received by the Fund, the unit investment trust or the management investment company, provided the authorized creation participant has

undertaken to deliver the securities and/or cash 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 Fund, all as described in the Fund's or unit trust's prospectus.

Options on the Trust will also be subject to the Exchange's continued listing standards set forth in Exchange Rule 19.4(g), for Fund Shares deemed appropriate for options trading pursuant to Exchange Rule 19.3(i). Specifically, Exchange Rule 19.4(g) provides that Fund Shares that were initially approved for options trading pursuant to Exchange Rule 19.3(i) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Fund Shares, if the Fund Shares are delisted from trading pursuant to Exchange Rule 19.4(b)(4). In addition, options on Fund Shares may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Fund Shares approved for trading under Exchange Rule 19.3(i)(4)(A), in accordance with the terms of paragraphs (b)(1), (2), and (3) of Exchange Rule 19.4; (2) in the case of options covering Fund Shares approved for trading under Exchange Rule 19.3(i)(4)(B), following the initial twelve-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange and are defined as an NMS stock under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Fund Shares for 30 consecutive days; (3) the value of the index, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or

financial instruments and money market instruments on which the Fund Shares are based 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 in such options on the Exchange inadvisable.

Options on the Trust would be physically settled contracts with American-style exercise.<sup>10</sup> Consistent with current Exchange Rule 19.5, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on the Trust<sup>11</sup> and may also list series of options on the Trust for trading on a weekly,<sup>12</sup> monthly,<sup>13</sup> or quarterly<sup>14</sup> basis.

Pursuant to Exchange Rule 19.5(d)(4), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on ETFs approved for options trading pursuant to Exchange Rule 19.3(i) shall be fixed at a price per share

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<sup>10</sup> See Exchange Rule 19.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (“OCC”); see also OCC Rules, Chapters 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).

<sup>11</sup> See Exchange Rule 19.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Exchange Rule 19.5 and its Interpretations and Policies. 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 19.5(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 19.5(c), new series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

<sup>12</sup> See Exchange Rule 19.5, Interpretation and Policy .05.

<sup>13</sup> See Exchange Rule 19.5, Interpretation and Policy .08.

<sup>14</sup> See Exchange Rule 19.5, Interpretation and Policy .04.

which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange. With respect to the Short Term Options Series or Weekly Program, during the month prior to expiration of an option class that is selected for the Short Term Option Series Program, the strike price intervals for the related non-Short Term Option (“Related non-Short Term Option”) shall be the same as the strike price intervals for the Short Term Option.<sup>15</sup> Specifically, the Exchange may open for trading Short Term Option Series at strike price intervals of (i) \$0.50 or greater where the strike price is less than \$100, and \$1 or greater where the strike price is between \$100 and \$150 for all option classes that participate in the Short Term Options Series Program; (ii) \$0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) \$2.50 or greater where the strike price is above \$150.<sup>16</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>17</sup> the \$0.50 Strike Program,<sup>18</sup> and the \$2.50 Strike Price Program.<sup>19</sup> Pursuant to Exchange Rule 21.5, where the price of a series of options for the Trust 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>20</sup> consistent with the minimum increments for options on other ETFs listed on the Exchange. Any and

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<sup>15</sup> See Exchange Rule 19.5, Interpretation and Policy .05(e).

<sup>16</sup> Id.

<sup>17</sup> See Exchange Rule 19.5, Interpretation and Policy .02.

<sup>18</sup> See Exchange Rule 19.5, Interpretation and Policy .06.

<sup>19</sup> See Exchange Rule 19.5, Interpretation and Policy .03.

<sup>20</sup> See Exchange Rule 21.5.

all new series of Trust options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 19.5 and 21.5, as applicable.

Pursuant to Exchange Rules 18.7<sup>21</sup> and 18.9, the position and exercise limits, respectively, for options on the Trust will be 25,000 same side options contracts. In considering the appropriate position and exercise limits for the Trust, the Exchange reviewed the data presented by ISE in its filing, specifically in Exhibit 3 of the filing,<sup>22</sup> where ISE measured the Trust's market capitalization and ADV against other industry data as explained further below.

In its filing, ISE considered the Trust's market capitalization and ADV, and prospective position limit in relation to other securities. In measuring the Trust against other securities, ISE aggregated market capitalization and volume data for securities that have defined position limits utilizing data from The Options Clearing Corporations ("OCC").<sup>23</sup> This pool of data took into consideration 3,984 options on single stock securities, excluding broad based ETFs.<sup>24</sup> Next, ISE aggregated the data based on market

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<sup>21</sup> See Regulatory Notice 23-12, available at: <https://info.memxtrading.com/wp-content/uploads/2023/09/RegNotice-23-12-Options-Position-Limits.pdf>, which informed Exchange members of the specific position limits applicable to options trading on MEMX Options, pursuant to Rule 18.7, as those position limits calculated and disseminated by the OCC, published daily and which can be found at: <https://www.theocc.com/market-data/market-data-reports/series-and-trading-data/position-limits>

<sup>22</sup> See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (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) (Exhibit 3) ("IBIT Approval Order") (letter from Angela Dunn, Nasdaq ISE, LLC, to Vanessa Countryman, Secretary, Commission, dated August 21, 2024) ("ISE Letter").

<sup>23</sup> The computations are based on OCC data from August 6, 2024. Data displaying zero values in market capitalization or ADV were removed.

<sup>24</sup> The Trust has one asset and therefore is not comparable to a broad based ETF where there are typically multiple components.

capitalization and ADV and grouped option symbols by position limit utilizing statistical thresholds for ADV and market capitalization that were one standard deviation above the mean for each position limit category (i.e. 25,000, 50,000 to 65,000, 75,000, 100,000 to less than 250,000, 250,000 to 400,000, 450,000 to 1,000,000, and greater than or equal to 1,000,000)(sic).<sup>25</sup> The OCC publishes a list of position limits for various contracts listed by other options exchanges, which the Exchange utilizes whenever it is listing a new product that has already been listed by another options exchange. For example, like on ISE, a 25,000 contract limit on the Exchange applies to those options having an underlying security that does not meet the requirements for a higher options contract limit. ISE performed an exercise to demonstrate the Trust's position limit relative to other options symbols in terms of market capitalization and ADV. For reference the market capitalization for the Trust was 19,789,068 billion<sup>26</sup> with an ADV, for the preceding three months prior to August 7, 2024, of greater than 26 million shares.<sup>27</sup> Today, by comparison, other options symbols with similar market capitalization and ADV have a position limit in excess of 400,000.<sup>28</sup> Therefore, the proposed 25,000 same side position limit for options on the Trust is extremely conservative relative to these options symbols which are a full standard deviation above the mean in comparison.

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<sup>25</sup> See ISE Letter at 10.

<sup>26</sup> ISE acquired this figure as of August 13, 2024. See <https://www.ishares.com/us/products/333011/isharesbitcoin-trust>. The global supply of bitcoin grows each day bitcoin are minted.

<sup>27</sup> See ISE Letter at 10.

<sup>28</sup> See, e.g., iShares® iBoxx® \$ High Yield Corporate Bond ETF (“HYG”) with a market capitalization of 13,859,235,000 billion as of November 4, 2024. See <https://www.ishares.com/us/products/239565/isharesiboxx-high-yield-corporate-bond-etf>. The Exchange notes that HYG has a position limit of 500,000 contracts.

Second, ISE reviewed the Trust's data relative to the market capitalization of the entire bitcoin market in terms of exercise risk and availability of deliverables. Utilizing data as of August 3, 2024, there were 19,737,193 bitcoins in circulation.<sup>29</sup> ISE took a price of \$57,000 that equates to a market capitalization of greater than 1.125 trillion US dollars, and applied that to a position limit of 400,000 for options on the Trust.<sup>30</sup> If a position limit of 400,000 options were considered (the position limit that would be typically assigned based upon data) the exercisable risk would represent only 6.6% of the outstanding shares of the Trust. The 25,000 position limit being sought only represents 0.4% of the outstanding shares of the Trust. Since the Trust has a creation and redemption process managed through the issuer, additionally it can be compared to the position limit sought to the total market capitalization of the entire bitcoin market. In this case, the exercisable risk for options on the Trust would be less than 0.01% of the market capitalization of all outstanding bitcoin. Assuming a scenario where all options on the Trust's shares were exercised given the proposed 25,000 per same side position limit, this would have a virtually unnoticed impact on the entire bitcoin market. This analysis demonstrates that the proposed 25,000 per same side position limit is also extremely conservative and more than appropriate for options on the Trust.

Third, ISE reviewed the proposed position limit by comparing it to position limits for derivative products regulated by the Commodity Futures Trading Commission ("CFTC"). While the CFTC, through the relevant Designated Contract Markets, only regulates options positions based upon delta equivalents (creating a less stringent

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<sup>29</sup> See ISE Letter at 10.

<sup>30</sup> Id.

standard), ISE examined equivalent bitcoin futures position limits. In particular, ISE looked at the CME bitcoin futures contract<sup>31</sup> that has a position limit of 2,000 futures.<sup>32</sup> On August 7, 2024, CME bitcoin futures settled at \$55,000.<sup>33</sup> Taking the position limit of 2,000 futures at a \$5 multiplier<sup>34</sup> equates to \$550 million of notional value for bitcoin futures. By way of comparison, on August 7, 2024, the Trust settled at \$31.19 per share, which would equate to 17,633,857 shares of the Trust<sup>35</sup> if the CME notional position limit were utilized. Since substantial portions of any distributed options portfolio are likely to be out of the money on expiration, an options position limit equivalent to the CME position limit for bitcoin futures (considering that all options deltas are  $\leq 1.00$ ) should be a bit higher than the CME implied 176,338 limit.

Of note, unlike options contracts, CME position limits are calculated on a net futures equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).<sup>36</sup> Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month

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<sup>31</sup> CME Bitcoin Futures are described in Chapter 350 of CME's Rulebook.

<sup>32</sup> See the Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5 of CME's Rulebook.

<sup>33</sup> See [https://finance.yahoo.com/quote/BTC%3DF/history/?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce\\_referrer\\_sig=AQAAAM7ngaS6ZQS9c2Wzx7JW2IUe-\\_-IFnLyr8TQw4jjkleHyCENfSMIEpPPt2hCzPDEryTVyB78NIwxkwFB5Fuw-jAYiuSmYJHBriWbV6dYn91VQfzQnt3p0I2RkYL](https://finance.yahoo.com/quote/BTC%3DF/history/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAM7ngaS6ZQS9c2Wzx7JW2IUe-_-IFnLyr8TQw4jjkleHyCENfSMIEpPPt2hCzPDEryTVyB78NIwxkwFB5Fuw-jAYiuSmYJHBriWbV6dYn91VQfzQnt3p0I2RkYL)

<sup>34</sup> Each bitcoin futures contract is valued at 5 bitcoins as defined by the CME CF Bitcoin Reference Rate ("BRR"). See CME Rule 35001.

<sup>35</sup> See ISE Letter at 11.

<sup>36</sup> See <https://www.cmegroup.com/education/courses/market-regulation/position-limits/positionlimitsaggregation-of-contracts-and-table.htm>.

position limits.<sup>37</sup> If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading, but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. Considering CME's position limits on futures for bitcoin, the Exchange believes that that the proposed 25,000 per same side position limit is conservative and more than appropriate for options on the Trust.

In analyzing the proposed position limit for options on the Trust, ISE also considered the supply of bitcoin. Specifically, ISE examined the number of market participants with position limits that would need to exercise in unison to put the underlying asset under stress. In the case of options on the Trust, the proposed 25,000 same side position limit effectively restricts a market participant from holding positions that could be exercised in excess of 2,500,000 shares of the Trust. Utilizing data from August 12, 2024, the Trust had 611,040,000 shares outstanding, therefore 244 market participants would have to simultaneously exercise position limits in order to create a scenario that may put the underlying asset (the Trust) under stress.<sup>38</sup> The Exchange notes that historically, from observation only, it appears that no more than five market participants holding position limits in any security have exercised in unison in any option. As unlikely an occurrence as all market participants exercising their position limits in

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<sup>37</sup> Id.

<sup>38</sup> See <https://www.ishares.com/us/products/333011/ishares-bitcoin-trust>.

unison would be, if it were to occur, it should be noted that even such an occurrence would not likely put the Trust under stress as economic incentives, would induce the creation of more shares through the ETF creation and redemption process.

By way of example, given that the current global supply of bitcoin, the underlying asset of the Trust, is 19,789,068<sup>39</sup> and that each bitcoin can currently be redeemed for 1,755 shares of the Trust, another 34,729,814,340 shares of the Trust could be created. To exhaust this supply of the Trust, 13,891 market participants would have to simultaneously exercise their position limit. Comparing the Trust to the SPDR Gold Shares (“GLD”) ETF or the iShares Silver Trust (“SLV”) ETF, which have position limits of 250,000 or ten times the proposed position limit for the Trust as well as lower shares outstanding in both products,<sup>40</sup> it is unjustified to mandate a different level of stringency with respect to a position limit for options on the Trust.

The supply of bitcoin does have a limit, which will take years to fully mint.<sup>41</sup> The Exchange notes that bitcoin is a viable economic alternative to traditional assets. The price of goods denominated by bitcoin has actually declined. This dynamic not only makes a fixed supply desirable, but a necessary condition of the value added by this asset in the broader economy. Further, the Exchange notes that corporations have a limited number of outstanding shares. Corporations may authorize additional shares, repurchase

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<sup>39</sup> This figure was acquired as of August 13, 2024. See <https://www.ishares.com/us/products/333011/isharesbitcoin-trust>. The global supply of bitcoin grows each day bitcoin are minted.

<sup>40</sup> As of August 13, 2024, GLD had 294,000,000 shares outstanding and SLV had 510,200,000 shares outstanding. See <https://www.ssga.com/us/en/intermediary/etfs/funds/spdr-gold-shares-gld> and <https://www.ishares.com/us/products/239855/ishares-silver-trust-fund>.

<sup>41</sup> A recent article suggested that the remaining supply will take over 100 years to fully mint. See Sen. Vivek. “94% of Bitcoin's Supply Has Now Been Issued.” Bitcoin Magazine, <https://bitcoinmagazine.com/business/94-of-bitcoins-supply-has-now-been-issued>. August 19, 2024.

shares or split their shares. Similarly, ETFs, like the Trust, may also create, redeem, or split shares to suit the demand of the marketplace.

Importantly, because the supply of bitcoin is much larger than the available supply of most securities and the proposed 25,000 contract position limit is so conservative, the Exchange believes that evaluating the available supply of bitcoin in establishing a position limit for options on the Trust would demonstrate that the proposed limit is safe for investors and the market.<sup>42</sup> The Trust constitutes less than 2% of the entire bitcoin supply. When comparing the market capitalization of bitcoin against the largest securities, bitcoin would rank 7th among those securities.<sup>43</sup> Further, the Exchange believes that its proposal to list options on the Trust with a position limit of 25,000 on the same side is a conservative position limit that does not lend itself to manipulation in the market given the ample market capitalization and liquidity in the Trust. If we look to the liquidity statistics of similar instruments and their concomitant position limits, we are able to extrapolate a reasonable standard for arriving at a position limit for a new product. In this case we can look to GLD, SLV, and the ProShares Bitcoin Strategy ETF (“BITO”). These products have volume statistics and “float” statistics, which gauge liquidity, which are in line, yet slightly lower than the Trust. All three of these reference products have position limits of 250,000 contracts. These reference products are remarkably similar in nature to the Trust; they are exchange-traded products (“ETPs”) holding one asset in a trust.

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<sup>42</sup> A supply consideration would likely be valuable for an option symbol that had far less liquidity than the Trust.

<sup>43</sup> See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

The Exchange further notes that Exchange Rule 28.3, which governs margin requirements applicable to trading on the Exchange, including options on ETFs, will also apply to the trading of the Trust options. The Exchange proposes the position and exercise limits for the options on the Trust to be 25,000 contracts on the same side.

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on the Trust. Also the Exchange represents that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including the proposed Trust options.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options on the Trust that it applies to the Exchange's other options products.<sup>44</sup> The Exchange's staff will have access to the surveillance programs conducted by its affiliate exchange, MEMX Equities, with respect to trading in the shares of the underlying Trust when conducting surveillances for market abuse or manipulation in the options on the Trust. 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 MEMX Equities, the Exchange

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<sup>44</sup> The surveillance program includes patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging).

will be able to obtain information regarding trading in the shares of the underlying Trust from Nasdaq, LLC 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 exchanges allocate regulatory responsibilities to FINRA to conduct certain options related market surveillance that are common to rules of all options exchanges.<sup>45</sup>

The underlying shares of spot bitcoin ETPs, including the Trust, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in 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.<sup>46</sup>

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].”<sup>47</sup>

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<sup>45</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 (“common members”). 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.

<sup>46</sup> See Bitcoin ETP Order, 89 FR at 3010-11.

<sup>47</sup> 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 Trust,<sup>48</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 Trust. Further, the Exchange represents that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Trust.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and Options Price Reporting Authority or “OPRA” have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on the Trust up to the number of expirations currently permissible under the Rules. Because the proposal is limited to one class, the Exchange believes any additional traffic that may be generated from the introduction of the Trust options will be manageable.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>49</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>50</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

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<sup>48</sup> See Securities Exchange Act Release No. 99295 (January 8, 2024), 89 FR 2321, 2334-35 (January 12, 2024) (SR-NASDAQ-2023-016) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the iShares Bitcoin Trust Under Nasdaq Rule 5711(d)).

<sup>49</sup> 15 U.S.C. 78f(b).

<sup>50</sup> 15 U.S.C. 78f(b)(5).

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5)<sup>51</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on the Trust 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 the Trust will provide investors with a greater opportunity to realize the benefits of utilizing options on an ETF based on spot bitcoin, including cost efficiencies and increased hedging strategies. The Exchange believes that offering options on a competitively priced ETF based on spot bitcoin will benefit investors by providing them with an additional, relatively lower-cost risk management tool, allowing them to manage, more easily, their positions and associated risks in their portfolios in connection with exposure to spot bitcoin. Today, the Exchange lists options on other commodity ETFs structured as a trust, which essentially offer the same objectives and benefits to investors, and for which the Exchange has not identified any issues with the continued listing and trading of options on those ETFs.

The Exchange also believes the proposal to permit options on the Trust will remove impediments to and perfect the mechanism of a free and open market and a

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<sup>51</sup> Id.

national market system, because options on the Trust will comply with current Exchange Rules. Options on the Trust must satisfy the initial listing standards and continued listing standards currently in the Exchange Rules, applicable to options on all ETFs, including options on other commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Exchange Rule 19.3(i). Additionally, as demonstrated above, the Trust is characterized by a substantial number of shares that are widely held and actively traded. Further, Exchange Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits (as proposed herein), and margin requirements, will govern the listing and trading of options on the Trust. The proposed position and exercise limits for options on the Trust 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 Trust's market capitalization, average daily volume, and high number of outstanding shares. The proposed position limit, and exercise limit, is consistent with the Act as it addresses concerns related to manipulation and protection of investors because, as demonstrated above, the position limit (and exercise limit) is extremely conservative and more than appropriate given the Trust is actively traded. In support of the proposed position and exercise limits for options on the Trust is 25,000 contracts, the Exchange is citing the in depth analysis ISE did in its filing. As noted above, in the IBIT Approval Order, ISE considered the: (i) Trust's market capitalization and ADV, and prospective position limit in relation to other securities; (ii) market capitalization of the entire bitcoin market in terms of exercise risk and availability of deliverables; (iii) proposed position limit by comparing it to position limits for derivative

products regulated by the CFTC; and (iv) supply of bitcoin. Based on the Exchange's review of IBIT Approval Order, the Exchange believes that setting position and exercise limits for options on the Trust of 25,000 contracts is more than appropriate for the Trust. 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 as well as the Bitcoin market.<sup>52</sup>

The Exchange represents that it has the necessary systems capacity to support options on the Trust. 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 on ETFs, including the Trust options. Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options on the Trust that it applies to the Exchange's other options products.<sup>53</sup> The Exchange's staff will have access to the surveillance programs conducted by its affiliate exchange, MEMX Equities, with respect to the underlying Trust when conducting surveillances for market abuse or manipulation in the options on the Trust. The Exchange will review activity in the underlying Trust 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

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<sup>52</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SRCBOE-1997-11).

<sup>53</sup> The surveillance program includes patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging).

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 MEMX Equities, the Exchange will be able to obtain information from Nasdaq, LLC and other markets through ISG. In addition, the Exchange has a Regulatory Services Agreement 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 surveillance that are common to rules of all options exchanges.<sup>54</sup>

The underlying shares of spot bitcoin ETPs, including the Trust, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in 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.<sup>55</sup>

The Exchange states that, given the consistently high correlation between the CME bitcoin futures market and the spot bitcoin market, as confirmed by the

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<sup>54</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 ("common members"). 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.

<sup>55</sup> See supra note 46.

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].”<sup>56</sup>

In light of surveillance measures related to both options and futures as well as the underlying Trust,<sup>57</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 Trust. Further, the Exchange represents that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Trust.

Finally, the Commission has previously approved the listing and trading of options on other commodity ETFs structured as a trust, such as SPDR® Gold Trust,<sup>58</sup> the

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<sup>56</sup> See Bitcoin ETP Order, 89 FR at 3010-11.

<sup>57</sup> See Securities Exchange Act Release No. 99295 (January 8, 2024), 89 FR 2321, 2334-35 (January 12, 2024) (SR-NASDAQ-2023-016) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the iShares Bitcoin Trust Under Nasdaq Rule 5711(d)).

<sup>58</sup> See Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-Amex2008-15; SR-CBOE-2005-11; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SRPhlx-2008-17) (Order Granting Approval of a Proposed Rule Change, as Modified, and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified, Relating to Listing and Trading Options on the SPDR Gold Trust).

iShares COMEX Gold Trust<sup>59</sup> the iShares Silver Trust,<sup>60</sup> the ETFS Gold Trust,<sup>61</sup> and the ETFS Silver Trust.<sup>62</sup>

4. 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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to filings submitted by ISE.<sup>63</sup>

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 options on the Trust will be subject to initial listing standards and continued listing standards the same as other options on ETFs listed on the Exchange. Further, options on the Trust will be subject to Exchange Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits (including as proposed herein), and margin requirements. Options on the Trust will be equally available to all

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<sup>59</sup> See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR-Amex-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SRNYSEArca-2008-66; and SR-Phlx-2008-58) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Listing and Trading Options on Shares of the iShares COMEX Gold Trust and the iShares Silver Trust).

<sup>60</sup> Id.

<sup>61</sup> See Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SRCBOE-2010-007; SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110) (Order Granting Approval of Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing and Trading Options on the ETFS Gold Trust and the ETFS Silver Trust).

<sup>62</sup> Id.

<sup>63</sup> See supra note 5.

market participants who wish to trade such options. Also, and as stated above, the Exchange already lists options on other commodity ETFs structured as a trust.

The Exchange does not believe that the proposal to list to list and trade options on the Trust 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 permitting options on the Trust to trade on the Exchange may make the Exchange a more attractive marketplace to market participants, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the Trust. 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 options on the Trust 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 spot bitcoin prices and bitcoin related products and positions.

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

The Exchange neither solicited nor received comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A) of the Act<sup>64</sup> and Rule 19b-4(f)(6)<sup>65</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposed rule change is substantively identical to a proposal by ISE that was recently approved by the Commission.<sup>66</sup> Additionally, the Exchange notes that the Commission recently approved a similar rule filing of another options exchange on October 18, 2024.<sup>67</sup> While that filing applies to options on different Bitcoin ETFs, the substantive issues to be considered are the same for options on the Trust as proposed herein. Accelerated approval is essential for competitive purposes given these recent approvals. The Exchange believes that this proposed rule change, which is essential to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the recently approved ISE proposal or the Cboe proposal. Therefore, the Exchange believes that the proposed rule change is

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<sup>64</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>65</sup> 17 CFR 240.19b-4(f)(6).

<sup>66</sup> See supra note 5.

<sup>67</sup> See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-35) (Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Permit the Listing and Trading of Options on Bitcoin Exchange Traded Funds)

well-suited for, and meets the standards applicable to, the Commission's treatment of non-controversial proposals under Section 19(b)(3)(A) of the Act<sup>68</sup> and Rule 19b-4(f)(6) thereunder.<sup>69</sup>

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file a 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. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>70</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>71</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange respectfully requests that the Commission waive the 30-day operative delay. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to permit the listing of options on the Trust at the same time as ISE.

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.

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<sup>68</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>69</sup> 17 CFR 240.19b-4(f)(6).

<sup>70</sup> 17 CFR 240.19b-4(f)(6).

<sup>71</sup> Id.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on the filing recently submitted by ISE and approved by the Commission.<sup>72</sup>

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5. Text of Proposed Rule Change.

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<sup>72</sup> See supra note 5.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

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

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 19.3, Criteria for Underlying Securities, to Allow the Exchange to List and Trade Options on the iShares Bitcoin Trust (“the Trust”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 is filing with the Commission a proposed rule change to amend Rule 19.3, Criteria for Underlying Securities. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

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

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

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

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

1. Purpose

The Exchange proposes to amend Exchange Rule 19.3 (Criteria for Underlying Securities) to allow the Exchange to list and trade options on the iShares Bitcoin Trust (“the Trust”), designating the Trust as appropriate for options trading on the Exchange. This is a competitive filing that is based on a similar proposal submitted by Nasdaq ISE, LLC (“ISE”) and approved by the Securities and Exchange Commission (“Commission”).<sup>5</sup>

Current Exchange Rule 19.3(i) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include shares or other securities (“Fund Shares”), including but not limited to Partnership Units as defined in the Rule, that are principally traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS and that meet specified criteria enumerated in the rule. Exchange Rule 19.3(i) provides that such shares or other securities:

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<sup>5</sup> See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (Self-Regulatory Organizations; Nasdaq ISE, LLC; 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).

(4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust or iShares Silver Trusts, provided that all conditions described under Rule 19.3(i)(1)-(2) are met.

#### Proposal

The Exchange proposes to amend Exchange Rule 19.3(i) to expand the list of securities that are appropriate for options trading on the Exchange.

#### Description of the Trust<sup>6</sup>

The shares are issued by the Trust, a Delaware statutory trust. The Trust operates pursuant to a trust agreement (the “Trust Agreement”) between the Sponsor, BlackRock Fund Advisors (the “Trustee”) as the trustee of the Trust and Wilmington Trust, National Association, as Delaware trustee. The Trust issues shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust consist only of bitcoin, held by a custodian on behalf of the Trust except under limited circumstances when transferred through the Trust’s prime broker temporarily (described below), and cash. Coinbase Custody Trust Company, LLC (the “Bitcoin Custodian”) is the custodian for the Trust’s bitcoin holdings, and maintains a custody account for the Trust (“Custody Account”); Coinbase, Inc. (the “Prime Execution Agent”), an affiliate of the Bitcoin Custodian, is the prime broker for the Trust and maintains a trading account for the Trust (“Trading Account”); and Bank of New York Mellon is the custodian for the Trust’s cash

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<sup>6</sup> 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; SRNASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SRCboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; 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) for a complete description of the Trust.

holdings (the “Cash Custodian” and together with the Bitcoin Custodian, the “Custodians”) and the administrator of the Trust (the “Trust Administrator”). Under the Trust Agreement, the Trustee may delegate all or a portion of its duties to any agent, and has delegated the bulk of the day to day responsibilities to the Trust Administrator and certain other administrative and recordkeeping functions to its affiliates and other agents. The Trust is not an investment company registered under the Investment Company Act of 1940, as amended. The investment objective of the Trust is to reflect generally the performance of the price of bitcoin. The Trust seeks to reflect such performance before payment of the Trust’s expenses and liabilities. The shares are intended to constitute a simple means of making an investment similar to an investment in bitcoin through the public securities market rather than by acquiring, holding and trading bitcoin directly on a peer-to-peer or other basis or via a digital asset exchange. The shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in bitcoin, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the bitcoin owned by the Trust at such time, less the Trust’s expenses and liabilities. Although the shares are not the exact equivalent of a direct investment in bitcoin, they provide investors with an alternative method of achieving investment exposure to bitcoin through the public securities market, which may be more familiar to them.

#### **Custody of the Trust’s Bitcoin**

An investment in the shares is backed by bitcoin held by the Bitcoin Custodian on behalf of the Trust. All of the Trust’s bitcoin will be held in the Custody Account, other than the Trust’s bitcoin which is temporarily maintained in the Trading Account under

limited circumstances, i.e., in connection with creation and redemption Basket<sup>7</sup> activity or sales of bitcoin deducted from the Trust's holdings in payment of Trust expenses or the Sponsor's fee (or, in extraordinary circumstances, upon liquidation of the Trust). The Custody Account includes all of the Trust's bitcoin held at the Bitcoin Custodian, but does not include the Trust's bitcoin temporarily maintained at the Prime Execution Agent in the Trading Account from time to time. The Bitcoin Custodian will keep all of the private keys associated with the Trust's bitcoin held in the Custody Account in "cold storage".<sup>8</sup> The hardware, software, systems, and procedures of the Bitcoin Custodian may not be available or cost-effective for many investors to access directly.

The Exchange believes that offering options on the Trust will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to spot Bitcoin as well as a hedging vehicle to meet their investment needs in connection with Bitcoin products and positions. Similar to other commodity-based trusts on which options may be listed on the Exchange (e.g. SPDR® Gold Trust, the iShares COMEX Gold Trust, or the iShares Silver Trust),<sup>9</sup> the Trust essentially offers the same objectives and benefits to investors as do other commodity-based trusts on which options may be listed on the Exchange.

Options on the Trust will trade in the same manner as options on other ETFs (otherwise referred to as "Fund Shares") on the Exchange. Exchange Rules that currently

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<sup>7</sup> The Trust issues and redeems Shares only in blocks of 40,000 or integral multiples thereof. A block of 40,000 Shares is called a "Basket." These transactions take place in exchange for Bitcoin.

<sup>8</sup> The term "cold storage" refers to a safeguarding method by which the private keys corresponding to the Trust's bitcoins are generated and stored in an offline manner, subject to layers of procedures designed to enhance security. Private keys are generated by the Bitcoin Custodian in offline computers that are not connected to the internet so that they are more resistant to being hacked.

<sup>9</sup> See Exchange Rule 19.3(i).

apply to the listing and trading of all options on ETFs on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures, will apply to the listing and trading of options on the Trust on the Exchange. Today, these rules apply to options on the various commodities-based trusts deemed appropriate for options trading on the Exchange pursuant to Exchange Rule 19.3(i).

The Exchange's initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to the Trust. Pursuant to Exchange Rule 19.3(a), a security (which includes ETFs) on which options may be listed and traded on the Exchange must be registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held and actively traded. Exchange Rule 19.3(i)(1) requires that, in relevant part, Funds Shares must either (A) meet the criteria and standards set forth in Exchange Rule 19.3(a) or Exchange Rule 19.3(b), or (B) be available for creation or redemption each business day in cash or in kind from the investment company, commodity pool or other entity at a price related to net asset value, and the investment company, commodity pool or other entity is obligated to provide that Fund Shares may be created even if some or all of the securities and/or cash required to be deposited have not been received by the Fund, the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the securities and/or cash 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 Fund, all as described in the Fund's or unit trust's prospectus.

Options on the Trust will also be subject to the Exchange's continued listing standards set forth in Exchange Rule 19.4(g), for Fund Shares deemed appropriate for options trading pursuant to Exchange Rule 19.3(i). Specifically, Exchange Rule 19.4(g) provides that Fund Shares that were initially approved for options trading pursuant to Exchange Rule 19.3(i) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Fund Shares, if the Fund Shares are delisted from trading pursuant to Exchange Rule 19.4(b)(4). In addition, options on Fund Shares may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Fund Shares approved for trading under Exchange Rule 19.3(i)(4)(A), in accordance with the terms of paragraphs (b)(1), (2), and (3) of Exchange Rule 19.4; (2) in the case of options covering Fund Shares approved for trading under Exchange Rule 19.3(i)(4)(B), following the initial twelve-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange and are defined as an NMS stock under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Fund Shares for 30 consecutive days; (3) the value of the index, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Fund Shares are based 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 in such options on the Exchange inadvisable.

Options on the Trust would be physically settled contracts with American-style exercise.<sup>10</sup> Consistent with current Exchange Rule 19.5, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on the Trust<sup>11</sup> and may also list series of options on the Trust for trading on a weekly,<sup>12</sup> monthly,<sup>13</sup> or quarterly<sup>14</sup> basis.

Pursuant to Exchange Rule 19.5(d)(4), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on ETFs approved for options trading pursuant to Exchange Rule 19.3(i) shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for

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<sup>10</sup> See Exchange Rule 19.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (“OCC”); see also OCC Rules, Chapters 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).

<sup>11</sup> See Exchange Rule 19.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Exchange Rule 19.5 and its Interpretations and Policies. 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 19.5(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 19.5(c), new series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

<sup>12</sup> See Exchange Rule 19.5, Interpretation and Policy .05.

<sup>13</sup> See Exchange Rule 19.5, Interpretation and Policy .08.

<sup>14</sup> See Exchange Rule 19.5, Interpretation and Policy .04.

trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange. With respect to the Short Term Options Series or Weekly Program, during the month prior to expiration of an option class that is selected for the Short Term Option Series Program, the strike price intervals for the related non-Short Term Option (“Related non-Short Term Option”) shall be the same as the strike price intervals for the Short Term Option.<sup>15</sup> Specifically, the Exchange may open for trading Short Term Option Series at strike price intervals of (i) \$0.50 or greater where the strike price is less than \$100, and \$1 or greater where the strike price is between \$100 and \$150 for all option classes that participate in the Short Term Options Series Program; (ii) \$0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) \$2.50 or greater where the strike price is above \$150.<sup>16</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>17</sup> the \$0.50 Strike Program,<sup>18</sup> and the \$2.50 Strike Price Program.<sup>19</sup> Pursuant to Exchange Rule 21.5, where the price of a series of options for the Trust 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>20</sup> consistent with the minimum increments for options on other ETFs listed on the Exchange. Any and all new series of Trust options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 19.5 and 21.5,

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<sup>15</sup> See Exchange Rule 19.5, Interpretation and Policy .05(e).

<sup>16</sup> Id.

<sup>17</sup> See Exchange Rule 19.5, Interpretation and Policy .02.

<sup>18</sup> See Exchange Rule 19.5, Interpretation and Policy .06.

<sup>19</sup> See Exchange Rule 19.5, Interpretation and Policy .03.

<sup>20</sup> See Exchange Rule 21.5.

as applicable.

Pursuant to Exchange Rules 18.7<sup>21</sup> and 18.9, the position and exercise limits, respectively, for options on the Trust will be 25,000 same side options contracts. In considering the appropriate position and exercise limits for the Trust, the Exchange reviewed the data presented by ISE in its filing, specifically in Exhibit 3 of the filing,<sup>22</sup> where ISE measured the Trust's market capitalization and ADV against other industry data as explained further below.

In its filing, ISE considered the Trust's market capitalization and ADV, and prospective position limit in relation to other securities. In measuring the Trust against other securities, ISE aggregated market capitalization and volume data for securities that have defined position limits utilizing data from The Options Clearing Corporations ("OCC").<sup>23</sup> This pool of data took into consideration 3,984 options on single stock securities, excluding broad based ETFs.<sup>24</sup> Next, ISE aggregated the data based on market capitalization and ADV and grouped option symbols by position limit utilizing statistical thresholds for ADV and market capitalization that were one standard deviation above the

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<sup>21</sup> See Regulatory Notice 23-12, available at: <https://info.memxtrading.com/wp-content/uploads/2023/09/RegNotice-23-12-Options-Position-Limits.pdf>, which informed Exchange members of the specific position limits applicable to options trading on MEMX Options, pursuant to Rule 18.7, as those position limits calculated and disseminated by the OCC, published daily and which can be found at: <https://www.theocc.com/market-data/market-data-reports/series-and-trading-data/position-limits>

<sup>22</sup> See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (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) (Exhibit 3) ("IBIT Approval Order") (letter from Angela Dunn, Nasdaq ISE, LLC, to Vanessa Countryman, Secretary, Commission, dated August 21, 2024) ("ISE Letter").

<sup>23</sup> The computations are based on OCC data from August 6, 2024. Data displaying zero values in market capitalization or ADV were removed.

<sup>24</sup> The Trust has one asset and therefore is not comparable to a broad based ETF where there are typically multiple components.

mean for each position limit category (i.e. 25,000, 50,000 to 65,000, 75,000, 100,000 to less than 250,000, 250,000 to 400,000, 450,000 to 1,000,000, and greater than or equal to 1,000,000)(sic).<sup>25</sup> The OCC publishes a list of position limits for various contracts listed by other options exchanges, which the Exchange utilizes whenever it is listing a new product that has already been listed by another options exchange. For example, like on ISE, a 25,000 contract limit on the Exchange applies to those options having an underlying security that does not meet the requirements for a higher options contract limit. ISE performed an exercise to demonstrate the Trust's position limit relative to other options symbols in terms of market capitalization and ADV. For reference the market capitalization for the Trust was 19,789,068 billion<sup>26</sup> with an ADV, for the preceding three months prior to August 7, 2024, of greater than 26 million shares.<sup>27</sup> Today, by comparison, other options symbols with similar market capitalization and ADV have a position limit in excess of 400,000.<sup>28</sup> Therefore, the proposed 25,000 same side position limit for options on the Trust is extremely conservative relative to these options symbols which are a full standard deviation above the mean in comparison.

Second, ISE reviewed the Trust's data relative to the market capitalization of the entire bitcoin market in terms of exercise risk and availability of deliverables. Utilizing

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<sup>25</sup> See ISE Letter at 10.

<sup>26</sup> ISE acquired this figure as of August 13, 2024. See <https://www.ishares.com/us/products/333011/isharesbitcoin-trust>. The global supply of bitcoin grows each day bitcoin are minted.

<sup>27</sup> See ISE Letter at 10.

<sup>28</sup> See, e.g., iShares® iBoxx® \$ High Yield Corporate Bond ETF (“HYG”) with a market capitalization of 13,859,235,000 billion as of November 4, 2024. See <https://www.ishares.com/us/products/239565/isharesiboxx-high-yield-corporate-bond-etf>. The Exchange notes that HYG has a position limit of 500,000 contracts.

data as of August 3, 2024, there were 19,737,193 bitcoins in circulation.<sup>29</sup> ISE took a price of \$57,000 that equates to a market capitalization of greater than 1.125 trillion US dollars, and applied that to a position limit of 400,000 for options on the Trust.<sup>30</sup> If a position limit of 400,000 options were considered (the position limit that would be typically assigned based upon data) the exercisable risk would represent only 6.6% of the outstanding shares of the Trust. The 25,000 position limit being sought only represents 0.4% of the outstanding shares of the Trust. Since the Trust has a creation and redemption process managed through the issuer, additionally it can be compared to the position limit sought to the total market capitalization of the entire bitcoin market. In this case, the exercisable risk for options on the Trust would be less than 0.01% of the market capitalization of all outstanding bitcoin. Assuming a scenario where all options on the Trust's shares were exercised given the proposed 25,000 per same side position limit, this would have a virtually unnoticed impact on the entire bitcoin market. This analysis demonstrates that the proposed 25,000 per same side position limit is also extremely conservative and more than appropriate for options on the Trust.

Third, ISE reviewed the proposed position limit by comparing it to position limits for derivative products regulated by the Commodity Futures Trading Commission ("CFTC"). While the CFTC, through the relevant Designated Contract Markets, only regulates options positions based upon delta equivalents (creating a less stringent standard), ISE examined equivalent bitcoin futures position limits. In particular, ISE

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<sup>29</sup> See ISE Letter at 10.

<sup>30</sup> Id.

looked at the CME bitcoin futures contract<sup>31</sup> that has a position limit of 2,000 futures.<sup>32</sup> On August 7, 2024, CME bitcoin futures settled at \$55,000.<sup>33</sup> Taking the position limit of 2,000 futures at a \$5 multiplier<sup>34</sup> equates to \$550 million of notional value for bitcoin futures. By way of comparison, on August 7, 2024, the Trust settled at \$31.19 per share, which would equate to 17,633,857 shares of the Trust<sup>35</sup> if the CME notional position limit were utilized. Since substantial portions of any distributed options portfolio are likely to be out of the money on expiration, an options position limit equivalent to the CME position limit for bitcoin futures (considering that all options deltas are  $\leq 1.00$ ) should be a bit higher than the CME implied 176,338 limit.

Of note, unlike options contracts, CME position limits are calculated on a net futures equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).<sup>36</sup> Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month

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<sup>31</sup> CME Bitcoin Futures are described in Chapter 350 of CME's Rulebook.

<sup>32</sup> See the Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5 of CME's Rulebook.

<sup>33</sup> See [https://finance.yahoo.com/quote/BTC%3DF/history/?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce\\_referrer\\_sig=AQAAAM7ngaS6ZQS9c2Wzx7JW2IUe--\\_IFnLyr8TQw4jjkleHyCENfSMIEpPPt2hCzPDEryTVyB78NIwxkwFB5Fuw-jAYiuSmYJHBriWbV6dYn91VQfzQnt3p0I2RkYL](https://finance.yahoo.com/quote/BTC%3DF/history/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAM7ngaS6ZQS9c2Wzx7JW2IUe--_IFnLyr8TQw4jjkleHyCENfSMIEpPPt2hCzPDEryTVyB78NIwxkwFB5Fuw-jAYiuSmYJHBriWbV6dYn91VQfzQnt3p0I2RkYL)

<sup>34</sup> Each bitcoin futures contract is valued at 5 bitcoins as defined by the CME CF Bitcoin Reference Rate ("BRR"). See CME Rule 35001.

<sup>35</sup> See ISE Letter at 11.

<sup>36</sup> See <https://www.cmegroup.com/education/courses/market-regulation/position-limits/positionlimitsaggregation-of-contracts-and-table.htm>.

position limits.<sup>37</sup> If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading, but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. Considering CME's position limits on futures for bitcoin, the Exchange believes that that the proposed 25,000 per same side position limit is conservative and more than appropriate for options on the Trust.

In analyzing the proposed position limit for options on the Trust, ISE also considered the supply of bitcoin. Specifically, ISE examined the number of market participants with position limits that would need to exercise in unison to put the underlying asset under stress. In the case of options on the Trust, the proposed 25,000 same side position limit effectively restricts a market participant from holding positions that could be exercised in excess of 2,500,000 shares of the Trust. Utilizing data from August 12, 2024, the Trust had 611,040,000 shares outstanding, therefore 244 market participants would have to simultaneously exercise position limits in order to create a scenario that may put the underlying asset (the Trust) under stress.<sup>38</sup> The Exchange notes that historically, from observation only, it appears that no more than five market participants holding position limits in any security have exercised in unison in any option. As unlikely an occurrence as all market participants exercising their position limits in

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<sup>37</sup> Id.

<sup>38</sup> See <https://www.ishares.com/us/products/333011/ishares-bitcoin-trust>.

unison would be, if it were to occur, it should be noted that even such an occurrence would not likely put the Trust under stress as economic incentives, would induce the creation of more shares through the ETF creation and redemption process.

By way of example, given that the current global supply of bitcoin, the underlying asset of the Trust, is 19,789,068<sup>39</sup> and that each bitcoin can currently be redeemed for 1,755 shares of the Trust, another 34,729,814,340 shares of the Trust could be created. To exhaust this supply of the Trust, 13,891 market participants would have to simultaneously exercise their position limit. Comparing the Trust to the SPDR Gold Shares (“GLD”) ETF or the iShares Silver Trust (“SLV”) ETF, which have position limits of 250,000 or ten times the proposed position limit for the Trust as well as lower shares outstanding in both products,<sup>40</sup> it is unjustified to mandate a different level of stringency with respect to a position limit for options on the Trust.

The supply of bitcoin does have a limit, which will take years to fully mint.<sup>41</sup> The Exchange notes that bitcoin is a viable economic alternative to traditional assets. The price of goods denominated by bitcoin has actually declined. This dynamic not only makes a fixed supply desirable, but a necessary condition of the value added by this asset in the broader economy. Further, the Exchange notes that corporations have a limited number of outstanding shares. Corporations may authorize additional shares, repurchase

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<sup>39</sup> This figure was acquired as of August 13, 2024. See <https://www.ishares.com/us/products/333011/isharesbitcoin-trust>. The global supply of bitcoin grows each day bitcoin are minted.

<sup>40</sup> As of August 13, 2024, GLD had 294,000,000 shares outstanding and SLV had 510,200,000 shares outstanding. See <https://www.ssga.com/us/en/intermediary/etfs/funds/spdr-gold-shares-gld> and <https://www.ishares.com/us/products/239855/ishares-silver-trust-fund>.

<sup>41</sup> A recent article suggested that the remaining supply will take over 100 years to fully mint. See Sen. Vivek. “94% of Bitcoin's Supply Has Now Been Issued.” Bitcoin Magazine, <https://bitcoinmagazine.com/business/94-of-bitcoins-supply-has-now-been-issued>. August 19, 2024.

shares or split their shares. Similarly, ETFs, like the Trust, may also create, redeem, or split shares to suit the demand of the marketplace.

Importantly, because the supply of bitcoin is much larger than the available supply of most securities and the proposed 25,000 contract position limit is so conservative, the Exchange believes that evaluating the available supply of bitcoin in establishing a position limit for options on the Trust would demonstrate that the proposed limit is safe for investors and the market.<sup>42</sup> The Trust constitutes less than 2% of the entire bitcoin supply. When comparing the market capitalization of bitcoin against the largest securities, bitcoin would rank 7th among those securities.<sup>43</sup> Further, the Exchange believes that its proposal to list options on the Trust with a position limit of 25,000 on the same side is a conservative position limit that does not lend itself to manipulation in the market given the ample market capitalization and liquidity in the Trust. If we look to the liquidity statistics of similar instruments and their concomitant position limits, we are able to extrapolate a reasonable standard for arriving at a position limit for a new product. In this case we can look to GLD, SLV, and the ProShares Bitcoin Strategy ETF (“BITO”). These products have volume statistics and “float” statistics, which gauge liquidity, which are in line, yet slightly lower than the Trust. All three of these reference products have position limits of 250,000 contracts. These reference products are remarkably similar in nature to the Trust; they are exchange-traded products (“ETPs”) holding one asset in a trust.

The Exchange further notes that Exchange Rule 28.3, which governs margin

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<sup>42</sup> A supply consideration would likely be valuable for an option symbol that had far less liquidity than the Trust.

<sup>43</sup> See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

requirements applicable to trading on the Exchange, including options on ETFs, will also apply to the trading of the Trust options. The Exchange proposes the position and exercise limits for the options on the Trust to be 25,000 contracts on the same side.

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on the Trust. Also the Exchange represents that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading options on ETFs, including the proposed Trust options.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options on the Trust that it applies to the Exchange's other options products.<sup>44</sup> The Exchange's staff will have access to the surveillance programs conducted by its affiliate exchange, MEMX Equities, with respect to trading in the shares of the underlying Trust when conducting surveillances for market abuse or manipulation in the options on the Trust. 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 MEMX Equities, the Exchange will be able to obtain information regarding trading in the shares of the underlying Trust

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<sup>44</sup> The surveillance program includes patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging).

from Nasdaq, LLC 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 exchanges allocate regulatory responsibilities to FINRA to conduct certain options related market surveillance that are common to rules of all options exchanges.<sup>45</sup>

The underlying shares of spot bitcoin ETPs, including the Trust, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in 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.<sup>46</sup>

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].”<sup>47</sup>

In light of surveillance measures related to both options and futures as well as the

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<sup>45</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 (“common members”). 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.

<sup>46</sup> See Bitcoin ETP Order, 89 FR at 3010-11.

<sup>47</sup> See Bitcoin ETP Order, 89 FR at 3010-11.

underlying Trust,<sup>48</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 Trust. Further, the Exchange represents that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Trust.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and Options Price Reporting Authority or “OPRA” have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on the Trust up to the number of expirations currently permissible under the Rules. Because the proposal is limited to one class, the Exchange believes any additional traffic that may be generated from the introduction of the Trust options will be manageable.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>49</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>50</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

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<sup>48</sup> See Securities Exchange Act Release No. 99295 (January 8, 2024), 89 FR 2321, 2334-35 (January 12, 2024) (SR-NASDAQ-2023-016) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the iShares Bitcoin Trust Under Nasdaq Rule 5711(d)).

<sup>49</sup> 15 U.S.C. 78f(b).

<sup>50</sup> 15 U.S.C. 78f(b)(5).

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5)<sup>51</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on the Trust 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 the Trust will provide investors with a greater opportunity to realize the benefits of utilizing options on an ETF based on spot bitcoin, including cost efficiencies and increased hedging strategies. The Exchange believes that offering options on a competitively priced ETF based on spot bitcoin will benefit investors by providing them with an additional, relatively lower-cost risk management tool, allowing them to manage, more easily, their positions and associated risks in their portfolios in connection with exposure to spot bitcoin. Today, the Exchange lists options on other commodity ETFs structured as a trust, which essentially offer the same objectives and benefits to investors, and for which the Exchange has not identified any issues with the continued listing and trading of options on those ETFs.

The Exchange also believes the proposal to permit options on the Trust will remove impediments to and perfect the mechanism of a free and open market and a national market system, because options on the Trust will comply with current Exchange

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<sup>51</sup> Id.

Rules. Options on the Trust must satisfy the initial listing standards and continued listing standards currently in the Exchange Rules, applicable to options on all ETFs, including options on other commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Exchange Rule 19.3(i). Additionally, as demonstrated above, the Trust is characterized by a substantial number of shares that are widely held and actively traded. Further, Exchange Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits (as proposed herein), and margin requirements, will govern the listing and trading of options on the Trust. The proposed position and exercise limits for options on the Trust 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 Trust's market capitalization, average daily volume, and high number of outstanding shares. The proposed position limit, and exercise limit, is consistent with the Act as it addresses concerns related to manipulation and protection of investors because, as demonstrated above, the position limit (and exercise limit) is extremely conservative and more than appropriate given the Trust is actively traded. In support of the proposed position and exercise limits for options on the Trust is 25,000 contracts, the Exchange is citing the in depth analysis ISE did in its filing. As noted above, in the IBIT Approval Order, ISE considered the: (i) Trust's market capitalization and ADV, and prospective position limit in relation to other securities; (ii) market capitalization of the entire bitcoin market in terms of exercise risk and availability of deliverables; (iii) proposed position limit by comparing it to position limits for derivative products regulated by the CFTC; and (iv) supply of bitcoin. Based on the Exchange's

review of IBIT Approval Order, the Exchange believes that setting position and exercise limits for options on the Trust of 25,000 contracts is more than appropriate for the Trust. 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 as well as the Bitcoin market.<sup>52</sup>

The Exchange represents that it has the necessary systems capacity to support options on the Trust. 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 on ETFs, including the Trust options. Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options on the Trust that it applies to the Exchange's other options products.<sup>53</sup> The Exchange's staff will have access to the surveillance programs conducted by its affiliate exchange, MEMX Equities, with respect to the underlying Trust when conducting surveillances for market abuse or manipulation in the options on the Trust. The Exchange will review activity in the underlying Trust 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

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<sup>52</sup> See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SRCBOE-1997-11).

<sup>53</sup> The surveillance program includes patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging).

and investigative information sharing in the stock, options, and futures markets. In addition to obtaining surveillance data from MEMX Equities, the Exchange will be able to obtain information from Nasdaq, LLC and other markets through ISG. In addition, the Exchange has a Regulatory Services Agreement 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 surveillance that are common to rules of all options exchanges.<sup>54</sup>

The underlying shares of spot bitcoin ETPs, including the Trust, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in 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.<sup>55</sup>

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

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<sup>54</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 ("common members"). 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.

<sup>55</sup> See supra note 46.

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].”<sup>56</sup>

In light of surveillance measures related to both options and futures as well as the underlying Trust,<sup>57</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 Trust. Further, the Exchange represents that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Trust.

Finally, the Commission has previously approved the listing and trading of options on other commodity ETFs structured as a trust, such as SPDR® Gold Trust,<sup>58</sup> the iShares COMEX Gold Trust<sup>59</sup> the iShares Silver Trust,<sup>60</sup> the ETFS Gold Trust,<sup>61</sup> and the

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<sup>56</sup> See Bitcoin ETP Order, 89 FR at 3010-11.

<sup>57</sup> See Securities Exchange Act Release No. 99295 (January 8, 2024), 89 FR 2321, 2334-35 (January 12, 2024) (SR-NASDAQ-2023-016) (Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the iShares Bitcoin Trust Under Nasdaq Rule 5711(d)).

<sup>58</sup> See Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-Amex2008-15; SR-CBOE-2005-11; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SRPhlx-2008-17) (Order Granting Approval of a Proposed Rule Change, as Modified, and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified, Relating to Listing and Trading Options on the SPDR Gold Trust).

<sup>59</sup> See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR-Amex-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SRNYSEArca-2008-66; and SR-Phlx-2008-58) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Listing and Trading Options on Shares of the iShares COMEX Gold Trust and the iShares Silver Trust).

<sup>60</sup> Id.

<sup>61</sup> See Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SRCBOE-2010-007; SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110) (Order Granting Approval of Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing and Trading Options on the ETFS Gold Trust and the ETFS Silver Trust).

ETFS Silver Trust.<sup>62</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to filings submitted by ISE.<sup>63</sup>

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 options on the Trust will be subject to initial listing standards and continued listing standards the same as other options on ETFs listed on the Exchange. Further, options on the Trust will be subject to Exchange Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits (including as proposed herein), and margin requirements. Options on the Trust will be equally available to all market participants who wish to trade such options. Also, and as stated above, the Exchange already lists options on other commodity ETFs structured as a trust.

The Exchange does not believe that the proposal to list to list and trade options on the Trust 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 permitting options on the Trust to trade on the Exchange may make the Exchange a more attractive marketplace to market participants, such market participants are free to elect to become

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<sup>62</sup> Id.

<sup>63</sup> See supra note 5.

market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the Trust. 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 options on the Trust 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 spot bitcoin prices and bitcoin related products and positions.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>64</sup> and Rule 19b-4(f)(6)<sup>65</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may

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<sup>64</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>65</sup> 17 CFR 240.19b-4(f)(6).

designate if consistent with the protection of investors and the public interest.

The proposed rule change is substantively identical to a proposal by ISE that was recently approved by the Commission.<sup>66</sup> Additionally, the Exchange notes that the Commission recently approved a similar rule filing of another options exchange on October 18, 2024.<sup>67</sup> While that filing applies to options on different Bitcoin ETFs, the substantive issues to be considered are the same for options on the Trust as proposed herein. Accelerated approval is essential for competitive purposes given these recent approvals. The Exchange believes that this proposed rule change, which is essential to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the recently approved ISE proposal or the Cboe proposal. Therefore, the Exchange believes that the proposed rule change is well-suited for, and meets the standards applicable to, the Commission's treatment of non-controversial proposals under Section 19(b)(3)(A) of the Act<sup>68</sup> and Rule 19b-4(f)(6) thereunder.<sup>69</sup>

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file a 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. Furthermore, a proposed rule

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<sup>66</sup> See supra note 5.

<sup>67</sup> See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-35)( Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Permit the Listing and Trading of Options on Bitcoin Exchange Traded Funds)

<sup>68</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>69</sup> 17 CFR 240.19b-4(f)(6).

change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>70</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>71</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange respectfully requests that the Commission waive the 30-day operative delay. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to permit the listing of options on the Trust at the same time as ISE.

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.

#### 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](mailto:rule-comments@sec.gov). Please include file number

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<sup>70</sup> 17 CFR 240.19b-4(f)(6).

<sup>71</sup> Id.

SR-MEMX-2024-45 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MEMX-2024-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the 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-MEMX-2024-45 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>72</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>72</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Proposed new language is underlined; Proposed deletions are in [brackets].

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**CHAPTER 19. SECURITIES TRADED ON MEMX OPTIONS**

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## Rule 19.3. Criteria for Underlying Securities

(a) – (h) No change.

(i) Securities deemed appropriate for options trading shall include shares or other securities (“Fund Shares”), including but not limited to Partnership Units as defined in this Rule, that are principally traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS, and that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (“Funds”) 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 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”) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (2) represent 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 ETFs”) or (3) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies 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 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”), or (4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust, [or ]iShares Silver Trust, or the iShares Bitcoin Trust; provided that all of the following conditions are met:

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