

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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend Rule 19.3 (Criteria for Underlying Securities). The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A) of the Act³ and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.⁴

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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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

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 Fidelity Wise Origin Bitcoin Fund (“the Fidelity Fund”) and the ARK 21Shares Bitcoin ETF (the “ARK 21 Funds” and, with the Fidelity Fund, the “Bitcoin Funds”), designating the Bitcoin Funds as appropriate for options trading on the Exchange.⁵ This is a competitive filing that is based on a similar proposal submitted by Cboe Exchange, Inc. (“Cboe”) and approved by the Securities and Exchange Commission (“Commission”).⁶

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”) that represent certain types of interests,⁷ including

⁵ On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the iShares Bitcoin Trust. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR-NYSEARCA-2021-90; SRNYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SRCboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; SR-CboeBZX-2023-072) (“Bitcoin ETP Approval Order”).

⁶ See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-35) (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).

⁷ See Rule 19.3(i) which permits options trading on Fund Shares 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

interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Bitcoin Funds are Bitcoin-backed commodity exchange-traded funds (“ETFs”) structured as trusts. Similar to any Fund Share currently deemed appropriate for options trading under Rule 19.3(i), the investment objective of each Bitcoin Fund is for its shares to reflect the performance of Bitcoin (less the expenses of the trust’s operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for Fund Shares currently deemed appropriate for options trading, a Bitcoin Fund’s shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.⁸ The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and Fund Shares

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, the iShares Silver Trust, or the iShares Bitcoin Trust.

⁸ Each trust may include minimal cash.

currently deemed appropriate for options trading⁹ is that Fund Shares may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold Bitcoin (which is also deemed a commodity).

The Exchange believes each Bitcoin Fund satisfies the Exchange's initial listing standards for Fund Shares on which the Exchange may list options. Specifically, each Bitcoin Fund satisfies the initial listing standards set forth in Rule 19.3(i), as is the case for other Fund Shares on which the Exchange lists options (including trusts that hold commodities). Rule 19.3(i)(1) requires that Fund Shares either (1) meet the criteria and standards set forth in Rule 19.3(a) and (b), or (2) are 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. Each Bitcoin Fund satisfies Rule 19.3(i)(1)(B) as each is subject to this creation and redemption process.

While not required by Exchange Rules for purposes of options listings, the Exchange believes each Bitcoin Fund satisfies the criteria and guidelines set forth in Rule

⁹ The Exchange notes that the Bitcoin Funds are similar to the iShares Bitcoin Trust, which is already eligible for options trading on the Exchange. See Rule 19.3(i) and Securities Exchange Act Release No. 34-101778 (November 27, 2024), 89 FR 95871 (December 3, 2024) (SR-MEMX-2024-45).

19.3(a) and (b). Pursuant to Rule 19.3(a), a security (which includes a Fund Share) 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 Securities Exchange Act of 1934, as amended (the “Act”)), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.¹⁰ Each Bitcoin Fund is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.¹¹ The Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded. As of August 7, 2024, the Bitcoin Funds had the following number of shares outstanding:

Bitcoin Fund	Shares Outstanding
Fidelity Fund	201,100,100
ARK 21 Fund	45,495,000

Each Bitcoin Fund had significantly more than 7,000,000 shares outstanding (approximately 29 and 6.5 times that amount, respectively), which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b). The Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of the Bitcoin Funds as of the specified dates:

Bitcoin Fund	Beneficial Holders	Date
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¹⁰ The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 19.3(b), subject to exceptions.

¹¹ An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR § 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

Fidelity Fund	279,656	6/27/2024
ARK 21 Fund	69,425	6/26/2024

As this table shows, each Bitcoin Fund has significantly more than 2,000 beneficial holders (approximately 140 and 35 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b). Therefore, the Exchange believes the shares of each Bitcoin Fund are widely held.

The Exchange also believes the shares of each Bitcoin Fund are actively traded. As of August 7, 2024, the total trading volume (by shares) for each fund for the six-month period of February 8 through August 7, 2024 and the approximate average daily volume (“ADV”) (in shares and notional) over the 30-day period of July 9 through August 7, 2024 for each Bitcoin Fund was as follows:

Bitcoin Fund	6-Month Trading Volume (Shares)	30-Day ADV (Shares)	30-Day ADV (Notional \$)
Fidelity Fund	1,112,861,581	6,014,335	250,354,755
ARK 21 Fund	297,360,739	1,893,335	90,484,307

As demonstrated above, despite the fact that the Bitcoin Funds had been trading for approximately seven months¹² only as of August 7, 2024, the six-month trading volume for each as of that date was substantially higher than 2,400,000 shares (approximately 464 and 124 times that amount, respectively), which is the minimum 12-month volume the Exchange generally requires for a corporate stock in order to list options on that security as set forth in Rule 19.3(b). Additionally, as of August 7, 2024,

¹² The Bitcoin Funds began trading on January 11, 2024.

the trading volume for each Bitcoin Fund was in the top 5% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Bitcoin Fund is characterized as having shares that are actively traded.

Options on the Bitcoin Funds will be subject to the Exchange's continued listing standards set forth in Rule 19.4(g) for Fund Shares deemed appropriate for options trading pursuant to Rule 19.3(i). Specifically, 19.4(g) provides that Fund Shares that were initially approved for options trading pursuant to Rule 19.3 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 security ceases to be an NMS stock (see Rule 19.4(b)(4)). Additionally, the Exchange will not open for trading any additional series of option contracts of the class covering Fund Shares in any of the following circumstances: (1) in the case of options covering Fund Shares approved for trading under Rule 19.3(i)(4)(A), in accordance with the terms of Rule 19.4(b)(1), (2) and (3); (2) in the case of options covering Fund Shares approved pursuant to Rule 19.3(i)(4)(B), following the initial 12-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange and are defined as 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, 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 or Money Market Instruments, or portfolio of securities 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 each Bitcoin Fund will be physically settled contracts with American-style exercise.¹³ Consistent with current Rule 19.5, which governs the opening of options series on a specific underlying security (including Fund Shares), the Exchange will open at least one expiration month for options on each Bitcoin Fund¹⁴ at the commencement of trading on the Exchange and may also list series of options on each Bitcoin Fund for trading on a weekly,¹⁵ monthly,¹⁶ or quarterly¹⁷ basis.

Pursuant to Rule 19.5, Interpretation and Policy .01, which governs strike prices of series of options on Fund Shares, the interval of strikes prices for series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater

¹³ See 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).

¹⁴ See Rule 19.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 19.3. Monthly listings expire the third Friday of the month. The term “expiration date” (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. See OCC By-Laws Article I, Section 1. Pursuant to Rule 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. 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.

¹⁵ See Rule 19.5, Interpretation and Policy .05.

¹⁶ See Rule 19.5, Interpretation and Policy .08.

¹⁷ See Rule 19.5, Interpretation and Policy .04.

where the strike price is over \$200.¹⁸ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,¹⁹ the \$0.50 Strike Program,²⁰ the \$2.50 Strike Price Program,²¹ and the \$5 Strike Program.²² Pursuant to Rule 21.5, where the price of a series of a Bitcoin Fund option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.²³ Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 19.5 and 21.5, as applicable.

Bitcoin Fund options will trade in the same manner as any other Fund Share options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange,

¹⁸ The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rule 19.5, Interpretations and Policies .05, .08, and .04 specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

¹⁹ See Rule 19.5, Interpretation and Policy .02.

²⁰ See Rule 19.5, Interpretation and Policy .06.

²¹ See Rule 19.5, Interpretation and Policy .03.

²² See Rule 19.5(d)(5).

²³ If options on a Bitcoin Fund are eligible to participate in the Penny Interval Program, the minimum increment will be \$0.01 for series with a price below \$3.00 and \$0.05 for series with a price at or above \$3.00. See Rule 21.5(d) (which describes the requirements for the Penny Interval Program).

including the precious-metal backed commodity Fund Shares already deemed appropriate for options trading on the Exchange pursuant to current Rule 19.3(i).

Pursuant to Rules 18.7²⁴ and 18.9, the position and exercise limits, respectively, for each Bitcoin Fund option will be 25,000 same side option contracts. The Exchange believes these proposed position and exercise limits considering, among other things, the approximate six-month average daily volume (“ADV”) and outstanding shares of each underlying Bitcoin Fund (which as discussed above demonstrate that each Bitcoin Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of August 7, 2024):

Underlying Bitcoin Fund	Six-Month ADV (shares)	Outstanding Shares	Market Capitalization (\$)
Fidelity Fund	8,902,893	201,100,100	14,217,013,188
ARK 21 Fund	2,378,886	45,495,000	2,487,666,600

The Exchange then compared the number of outstanding shares of the Bitcoin Funds to those of other ETFs. The following table provides the approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of August 27, 2024), compared to the proposed position and exercise limit for the Bitcoin Fund options:²⁵

²⁴ 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>

²⁵ With respect to the Fidelity Fund, over 80% of the ETFs used for comparison have a limit of at least 200,000, and more than half have a limit of 250,000. Additionally, the three-month ADV of

Underlying Bitcoin Fund	Average Limit of Other ETF Options (contracts)	Proposed Limit (contracts)
Fidelity Fund	188,110	25,000
ARK 21 Fund	108,696	25,000

The Exchange considered current position and exercise limits of options on ETFs with outstanding shares comparable to those of each Bitcoin Fund, with the proposed limit significantly lower (between two and ten times lower) than the average limits of the options on the other ETFs. As discussed above, the Bitcoin Funds are actively held and widely traded: (1) each Bitcoin Fund (as of August 7, 2024) had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b)(1); (2) each Bitcoin Fund (as of the dates listed above) had significantly more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b)(2); and (3) each Bitcoin Fund had a six-month trading volume substantially higher than 2,400,000 shares, which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 19.3(b)(4).

With respect to outstanding shares, if a market participant held the maximum number of positions possible pursuant to the proposed position and exercise limits, the

the majority of the ETFs used for comparison to the Fidelity Fund was lower than the Fidelity Fund three-month ADV of 5,665,027 shares. With respect to the ARK 21 Fund, nearly 80% of the ETFs used for comparison have a limit of at least 75,000 (and up to 250,000). Additionally, the three-month ADV of the majority of ETFs used for comparison was lower (many more than four times lower) than the ARK 21 Fund three-month ADV of 1,737,327 shares.

equivalent shares represented by the proposed position/exercise limit would represent the following approximate percentage of current outstanding shares:

Underlying Bitcoin Fund	Proposed Position/Exercise Limit (in equivalent shares)	Outstanding Shares	Percentage of Outstanding Shares
Fidelity Fund	2,500,000	201,100,100	1.2%
ARK 21 Fund	2,500,000	45,495,000	5.5%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Bitcoin Fund.

There are two methods of qualifying for a position limit tier above 25,000 option contracts. The first method is based on six-month trading volume in the underlying security, and the second method is based on slightly lower six-month trading volume and number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on trading volume and number of shares outstanding would be required to have the minimum number of outstanding shares as shown in middle column of the table below.

The table, which provides the equivalent shares of the position limits applicable to equity options, including ETFs, further represents the percentages of the minimum number of outstanding shares that an underlying stock or ETF must have to qualify for

that position limit (under the second method described above), all of which are higher than the percentages for the Bitcoin Funds.²⁶

Position/Exercise Limit (in equivalent shares)	Minimum Outstanding Shares	Percentage of Outstanding Shares
2,500,000	6,300,000	40.0%
5,000,000	40,000,000	12.5%
7,500,000	120,000,000	6.3%
20,000,000	240,000,000	8.3%
25,000,000	300,000,000	8.3%

The equivalent shares represented by the proposed position and exercise limits for each Bitcoin Fund as a percentage of outstanding shares of the underlying Bitcoin Fund is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000 (under 6% compared to 40%) and is lower than that percentage for each current position limit bucket.²⁷

Further, the proposed position and exercise limits for each Bitcoin Fund option are significantly below the limits that would otherwise apply pursuant to current Rules 18.7 and 18.9. These position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than

²⁶ 6,300,000 is the minimum number of outstanding shares an underlying security must have for the Exchange to continue to list options on that security, so this would be the smallest number of outstanding shares permissible for any corporate option that would have a position limit of 25,000 contract. See Rule 19.4(b)(1). This rule applies to corporate stock options but not ETF options, which currently have no requirement regarding outstanding shares of the underlying ETF for the Exchange to continue listing options on that ETF. Therefore, there may be ETF options trading for which the 25,000 contract position limits represents an even larger percentage of outstanding shares of the underlying ETF than set forth above.

²⁷ As these percentages are based on the minimum number of outstanding shares an underlying security must have to qualify for the applicable position limit, these are the highest possible percentages that would apply to any option subject to that position and exercise limit.

appropriate given the market capitalization, average daily volume, and high number of outstanding shares of the Bitcoin Funds.

All of the above information demonstrates that the proposed position and exercise limits for the Bitcoin Fund options are more than reasonable and appropriate. The trading volume, ADV, and outstanding shares of each Bitcoin Fund demonstrate that these funds are actively traded and widely held, and proposed position and exercise limits are well below those of other ETFs with similar market characteristics. The proposed position and exercise limits are the lowest position and exercise limits available for equity options in the industry, are extremely conservative, and are more than appropriate given each Bitcoin Fund's market capitalization, ADV, and high number of outstanding shares.

Today, the Exchange has an adequate surveillance program in place for options. MEMX intends to apply those same program procedures to options on the Bitcoin Funds that it applies to the Exchange's other options products.²⁸ The Exchange's market surveillance staff would have access to the surveillances conducted by the Exchange and its affiliate exchange, MEMX Equities, with respect to the Bitcoin Funds, trading in the shares of the underlying Bitcoin Funds, and would review activity in the underlying Bitcoin Funds when conducting surveillances for market abuse or manipulation in the options on the Bitcoin Funds. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to obtaining surveillance data

²⁸ The surveillance program includes patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging).

information from MEMX Equities, the Exchange would be able to obtain information regarding trading in shares of the underlying Bitcoin Funds from their primary listing market, Cboe BZX, and from other markets that trades shares of the Bitcoin Funds through ISG. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) for certain market surveillance, investigation and examinations functions. Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.²⁹

The underlying shares of spot bitcoin exchange-traded products (“ETPs”), including the Bitcoin Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of several exchanges to list and trade shares of spot bitcoin-based ETPs, “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.³⁰ The Exchange states that, given the

²⁹ Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (“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.

³⁰ See Bitcoin ETP Approval Order.

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].”³¹ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,³² the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and 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 Bitcoin Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to two classes, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin Fund options will be manageable.

³¹ See Bitcoin ETP Approval Order, 89 FR at 3010-11.

³² See Securities Exchange Act Release Nos. 99290 (January 8, 2024), 89 FR 2338, 2343, 2347 - 2348 (January 12, 2024) (SR-CboeBZX-2023-044) (Notice of Filing of Amendment No. 3 to a Proposed Rule Change to List and Trade Shares of the Fidelity Wise Origin Bitcoin Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); and 99288 (January 8, 2024), 89 FR 2387, 2392, 2399 - 2400 (January 12, 2024) (SR-CboeBZX-2023-028) (Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares). See also Bitcoin ETP Approval Order.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (“OTC”) options market,³³ but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Fund Shares that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any Fund Share options, including Fund Shares that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange.

b. Statutory Basis

³³ The Exchange understands from customers that investors have historically transacted in options on Fund Shares in the OTC options market if such options were not available for trading in a listed environment.

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.³⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁵ 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, 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)³⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange the Exchange believes that the proposal to list and trade options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on the Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and

³⁴ 15 U.S.C. 78f(b).

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ Id.

associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based Fund Shares,³⁷ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Fund Share options it currently lists for trading.

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

³⁷ See Rule 19.3(i)(4).

trading of all Fund Share options, including permissible expirations, strike prices and minimum increments, and applicable margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed position and exercise limits are designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as they are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are 25,000 contracts, which is the lowest limit applicable to any equity options (including ETF and options on other Bitcoin ETFs). The Exchange believes the proposed position and exercise limits are extremely conservative for each Bitcoin Fund option given the trading volume and outstanding shares for each. The information above demonstrates that the average position and exercise limits of options on ETFs with comparable outstanding shares and trading volume to those of the Bitcoin Funds are significantly higher than the proposed position and exercise limits for Bitcoin Fund options. Therefore, the proposed position and exercise limits for the Bitcoin Fund options are conservative relative to options on ETFs with comparable market characteristics.

Further, given that the issuer of each Bitcoin Fund may create and redeem shares that represent an interest in Bitcoin, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the Bitcoin market. As of August 27, 2024, the global supply of Bitcoin was 19,745,940, and the price of one Bitcoin was approximately \$59,466.82,³⁸ which equates to a market capitalization of approximately

³⁸ See [Blockchain.com | Charts - Total Circulating Bitcoin](https://blockchain.com/charts-total-circulating-bitcoin).

\$1.165 trillion. Consider the proposed position and exercise limit of 25,000 option contracts for each Bitcoin Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 of Fidelity Fund shares or ARK 21 Fund shares, as applicable (if that market participant exercised all its options). The following table shows the share price of each Bitcoin Fund on August 27, 2024, the value of 2,500,000 shares of the Bitcoin Fund at that price, and the approximate percentage of that value of the size of the Bitcoin market:

Bitcoin Fund	August 27, 2024 Share Price (\$)	Value of 2,500,000 Shares of Bitcoin Fund (\$)	Percentage of Bitcoin Market
Fidelity Fund	54.33	135,825,000	0.01%
ARK 21 Fund	62.08	155,200,000	0.01%

Therefore, if a market participant with the maximum 25,000 same side contracts in either Fidelity Fund options or ARK 21 Fund options exercised all positions at one time, such an event would have no practical impact on the Bitcoin market.

The Exchange also believes the proposed limits are appropriate given position limits for Bitcoin futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 2,000 futures (for the initial spot month) on its Bitcoin futures contract.³⁹ On August 28, 2024, CME Aug 24 Bitcoin Futures settled at \$58,950. A position of 2,000 CME Bitcoin futures, therefore, would have a notional value of

³⁹ See CME Rulebook Chapter 350 (description of CME Bitcoin Futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME Bitcoin futures contract is valued at five Bitcoins as defined by the CME CF Bitcoin Reference Rate (“BRR”). See CME Rule 35001.

\$589,500,000. The following table shows the share price of each Bitcoin Fund on August 28, 2024 and the approximate number of option contracts that equates to that notional value:

Bitcoin Fund	August 28, 2024 Share Price (\$)	Number of Option Contracts
Fidelity Fund	51.47	114,532
ARK 21 Fund	58.83	100,203

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

The Exchange notes, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).⁴⁰ Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.⁴¹ If a position exceeds position limits because of an option

⁴⁰ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

⁴¹ Id.

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 same side position limits are more than appropriate for the Bitcoin Fund options.

The Exchange believes the proposed position and exercise limits will have no material impact to the supply of Bitcoin. For example, consider again the proposed position limit of 25,000 option contracts for each Bitcoin Fund option. As noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Bitcoin Fund (if that market participant exercised all its options). As of August 7, 2024, the Bitcoin Funds had the number of shares outstanding set forth in the table below. The table below also sets forth the approximate number of market participants that could hold the maximum of 25,000 same side positions in each Bitcoin Fund that would equate to the number of shares outstanding of that Bitcoin Fund:

Bitcoin Fund	Shares Outstanding	Number of Market Participants with 25,000 Same Side Positions
Fidelity Fund	201,100,100	80
ARK 21 fund	45,495,000	18

This means if 80 market participants had 25,000 same side positions in Fidelity Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 18 market participants had 25,000 same side positions in ARK 21 Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for either such event to occur; however, even if either such event did occur, the Exchange would not expect either Bitcoin Fund to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

As of August 7, 2024, the global supply of Bitcoin was approximately 19,736,528.⁴² Based on the \$47.88 price of a Fidelity Fund share on August 7, 2024, a market participant could have redeemed one Bitcoin for approximately 1,149 Fidelity Fund shares. Another 22,677,270,672 Fidelity Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 9,070 market participants would have to simultaneously exercise 25,000 same side positions in Fidelity Fund options to receive shares of the Fidelity Fund holding the entire global supply of Bitcoin. Similarly, based on the \$54.68 price of an ARK 21 Fund share on August 7, 2024, a market participant could have redeemed one Bitcoin for approximately 1,006 ARK 21 Fund Shares. Another 19,855 ARK 21 Fund shares could be created before the supply of Bitcoin were exhausted. As a result, 7,941 market participants would have to simultaneously exercise

⁴² See [Blockchain.com | Charts - Total Circulating Bitcoin](https://blockchain.com/charts-total-circulating-bitcoin) (which also shows the price of one Bitcoin equal to \$55,033.47).

25,000 same side positions in ARK 21 Fund options to receive shares of the ARK 21 Fund holding the entire global supply of Bitcoin. Unlike the Bitcoin Funds, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Bitcoin Funds may create, redeem, or split shares in response to demand. While the supply of Bitcoin is limited to 21,000,000, it is believed that it will take more than 100 years to fully mine the remaining Bitcoin.⁴³ The supply of Bitcoin is larger than the available supply of most securities.⁴⁴ Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Bitcoin Funds should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity options in the industry) to protect the supply of Bitcoin.⁴⁵

The Exchange believes the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the Bitcoin Funds.⁴⁶ Position and exercise limits are not a tool that should be used to address a potential

⁴³ See Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53 - 54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

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

⁴⁵ This would be even more unlikely with respect to the Bitcoin Funds for which the Exchange proposes lower position limits.

⁴⁶ Prior to Bitcoin ETFs, the Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits. See, e.g., Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the “listing and trading of Gold Trust Options will be subject to the exchanges’ rules pertaining to position and exercise limits and margin”). The Exchange notes when the Commission approved this filing, the position limits in Rule 8.30 were the same as they are today. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF (“GLD”) and options on iShares Silver Trust (“SLV”) are 250,000 contracts, or 10 times that proposed position and exercise limit for the Bitcoin Fund options.

limited supply of the underlying of an underlying. Position and exercise limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.⁴⁷ “Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.”⁴⁸ Position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”⁴⁹

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each Bitcoin Fund, each of which described the supply of Bitcoin as being limited to 21,000,000 (of which approximately 90% had already been mined), and that the limit would be reached around the year 2140.⁵⁰ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin ETF to be created.

⁴⁷ For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

⁴⁸ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁴⁹ See id.

⁵⁰ See Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53 - 54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Fund would impact the supply of Bitcoin.⁵¹ Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Bitcoin was sufficient to permit the creation of unlimited Bitcoin Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, given the significant size of the Bitcoin supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the above information demonstrating, among other things, that each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, the Exchange believes the proposed position and exercise limits are extremely conservative compared to those of ETF options with similar market characteristics. 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.⁵²

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. As discussed above, the Exchange believes that its existing

⁵¹ See Bitcoin ETP Approval Order.

⁵² See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading Fund Share options, including Bitcoin Fund options.

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 a filing submitted by Cboe.⁵³ 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 the Bitcoin Fund options will be equally available to all market participants who wish to trade such options and will trade generally in the same manner as other options. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange. Also, and as stated above, the Exchange already lists options on other commodity-based Fund Shares.⁵⁴ Further, the Bitcoin Funds would need to satisfy the maintenance listing standards set

⁵³ See supra note 6.

⁵⁴ See Rule 19.3(i)(4).

forth in the Exchange Rules in the same manner as any other Fund Share for the Exchange to continue listing options on them.

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

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering Bitcoin Fund options for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

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)

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act⁵⁵ and Rule 19b-4(f)(6)⁵⁶ thereunder.

The Exchange designates that the proposed rule change 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.

Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes the proposed rule change does not significantly affect the protection of investors or the public interest. Offering options on the Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a

⁵⁵ 15 U.S.C. 78s(b)(3)(A).

⁵⁶ 17 CFR 240.19b-4(f)(6).

Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based Fund Shares,⁵⁷ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Fund Share options it currently lists for trading.

Additionally, options on the Bitcoin Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Fund Shares, including Fund Shares that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin Fund options will trade in the same manner as any other Fund Share options — the same Exchange Rules that currently govern the listing and

⁵⁷ See Rule 19.3(i)(4).

trading of all Fund Share options, including permissible expirations, strike prices and minimum increments, and applicable margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are 25,000 contracts, which is the lowest limit applicable to any equity options (including ETF and options on other Bitcoin ETFs). The Exchange believes the proposed position and exercise limits are extremely conservative for each Bitcoin Fund option given the trading volume and outstanding shares for each. The information above demonstrates that the average position and exercise limits of options on ETFs with comparable outstanding shares and trading volume to those of the Bitcoin Funds are significantly higher than the proposed position and exercise limits for Bitcoin Fund options. Therefore, the proposed position and exercise limits for the Bitcoin Fund options are conservative relative to options on ETFs with comparable market characteristics.

The Exchange believes the proposed rule change does not impose any significant burden on competition. The Bitcoin Fund options will be equally available to all market participants who wish to trade such options and will trade generally in the same manner as other options. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of

Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange. Also, and as stated above, the Exchange already lists options on other commodity-based Fund Shares.⁵⁸ Further, the Bitcoin Funds would need to satisfy the maintenance listing standards set forth in the Exchange Rules in the same manner as any other Fund Share for the Exchange to continue listing options on them.

To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the Bitcoin Funds. The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

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

⁵⁸Id.

their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved. The Exchange respectfully requests that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. The proposed rule change is not novel or unique. The Commission recently approved a substantively identical filing.⁵⁹ Further, the Commission approved a similar rule filing of another options exchange on September 20, 2024,⁶⁰ and the options subject to that filing are currently trading on other markets. While that filing applies to options on a different Bitcoin ETF (iShares Bitcoin Trust), the substantive issues to be considered are the same for options on the Bitcoin Funds as proposed in this proposed rule change. Waiver of the pre-filing and operative delays is, therefore, essential for competitive purposes. This would benefit investors because it will permit the Exchange to list options on the Bitcoin Funds now that competitor exchanges

⁵⁹ See *supra* note 6.

⁶⁰ Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03).

can list options on a competitive product, which creates competition in the industry. The Exchange believes it promotes competition to make options available on multiple Bitcoin Funds, and the Exchange has provided comparable data and analysis for each Bitcoin Fund that the competitor exchange provided for the iShares Bitcoin Trust. It will protect investors by providing them with the benefits of options regardless of in which Bitcoin Fund they may choose to trade. Investors should not be denied the hedging and other investment protections and benefits that options offer merely because their investment strategies happen to involve one Bitcoin Fund versus another.

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 Cboe and approved by the Commission.⁶¹

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.

⁶¹ See supra note 6.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2024-46]
[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 Fidelity Wise Origin Bitcoin Fund and the ARK 21Shares Bitcoin ETF (“the Trust”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 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 Fidelity Wise Origin Bitcoin Fund (“the Fidelity Fund”) and the ARK 21Shares Bitcoin ETF (the “ARK 21 Funds” and, with the Fidelity Fund, the “Bitcoin Funds”), designating the Bitcoin Funds as appropriate for options trading on the Exchange.⁵ This is a competitive filing that is based on a similar proposal submitted by Cboe Exchange, Inc. (“Cboe”) and approved by the Securities and Exchange Commission (“Commission”).⁶

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

⁵ On January 10, 2024, the Commission approved proposals by NYSE Arca, Inc., The Nasdaq Stock Market LLC, and Cboe BZX Exchange, Inc. to list and trade the shares of 11 bitcoin-based commodity-based trust shares and trust units, including the iShares Bitcoin Trust. See Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (order approving File Nos. SR-NYSEARCA-2021-90; SRNYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SRCboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; SR-CboeBZX-2023-072) (“Bitcoin ETP Approval Order”).

⁶ See Securities Exchange Act Release No. 101387 (October 18, 2024), 89 FR 84948 (October 24, 2024) (SR-CBOE-2024-35) (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).

other securities (“Fund Shares”) that represent certain types of interests,⁷ including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

The Bitcoin Funds are Bitcoin-backed commodity exchange-traded funds (“ETFs”) structured as trusts. Similar to any Fund Share currently deemed appropriate for options trading under Rule 19.3(i), the investment objective of each Bitcoin Fund is for its shares to reflect the performance of Bitcoin (less the expenses of the trust’s operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for Fund Shares currently deemed appropriate for options trading, a Bitcoin Fund’s shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer

⁷ See Rule 19.3(i) which permits options trading on Fund Shares 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, the iShares Silver Trust, or the iShares Bitcoin Trust.

access to the Bitcoin market.⁸ The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and Fund Shares currently deemed appropriate for options trading⁹ is that Fund Shares may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold Bitcoin (which is also deemed a commodity).

The Exchange believes each Bitcoin Fund satisfies the Exchange's initial listing standards for Fund Shares on which the Exchange may list options. Specifically, each Bitcoin Fund satisfies the initial listing standards set forth in Rule 19.3(i), as is the case for other Fund Shares on which the Exchange lists options (including trusts that hold commodities). Rule 19.3(i)(1) requires that Fund Shares either (1) meet the criteria and standards set forth in Rule 19.3(a) and (b), or (2) are 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

⁸ Each trust may include minimal cash.

⁹ The Exchange notes that the Bitcoin Funds are similar to the iShares Bitcoin Trust, which is already eligible for options trading on the Exchange. See Rule 19.3(i) and Securities Exchange Act Release No. 34-101778 (November 27, 2024), 89 FR 95871 (December 3, 2024) (SR-MEMX-2024-45).

in the Fund’s or unit trust’s prospectus. Each Bitcoin Fund satisfies Rule 19.3(i)(1)(B) as each is subject to this creation and redemption process.

While not required by Exchange Rules for purposes of options listings, the Exchange believes each Bitcoin Fund satisfies the criteria and guidelines set forth in Rule 19.3(a) and (b). Pursuant to Rule 19.3(a), a security (which includes a Fund Share) 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 Securities Exchange Act of 1934, as amended (the “Act”)), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.¹⁰ Each Bitcoin Fund is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.¹¹ The Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded. As of August 7, 2024, the Bitcoin Funds had the following number of shares outstanding:

Bitcoin Fund	Shares Outstanding
Fidelity Fund	201,100,100
ARK 21 Fund	45,495,000

Each Bitcoin Fund had significantly more than 7,000,000 shares outstanding (approximately 29 and 6.5 times that amount, respectively), which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options

¹⁰ The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 19.3(b), subject to exceptions.

¹¹ An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR § 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

on that stock pursuant to Rule 19.3(b). The Exchange believes this demonstrates that each Bitcoin Fund is characterized by a substantial number of outstanding shares.

Further, the below table contains information regarding the number of beneficial holders of the Bitcoin Funds as of the specified dates:

Bitcoin Fund	Beneficial Holders	Date
Fidelity Fund	279,656	6/27/2024
ARK 21 Fund	69,425	6/26/2024

As this table shows, each Bitcoin Fund has significantly more than 2,000 beneficial holders (approximately 140 and 35 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b). Therefore, the Exchange believes the shares of each Bitcoin Fund are widely held.

The Exchange also believes the shares of each Bitcoin Fund are actively traded. As of August 7, 2024, the total trading volume (by shares) for each fund for the six-month period of February 8 through August 7, 2024 and the approximate average daily volume (“ADV”) (in shares and notional) over the 30-day period of July 9 through August 7, 2024 for each Bitcoin Fund was as follows:

Bitcoin Fund	6-Month Trading Volume (Shares)	30-Day ADV (Shares)	30-Day ADV (Notional \$)
Fidelity Fund	1,112,861,581	6,014,335	250,354,755
ARK 21 Fund	297,360,739	1,893,335	90,484,307

As demonstrated above, despite the fact that the Bitcoin Funds had been trading for approximately seven months¹² only as of August 7, 2024, the six-month trading volume for each as of that date was substantially higher than 2,400,000 shares (approximately 464 and 124 times that amount, respectively), which is the minimum 12-month volume the Exchange generally requires for a corporate stock in order to list options on that security as set forth in Rule 19.3(b). Additionally, as of August 7, 2024, the trading volume for each Bitcoin Fund was in the top 5% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Bitcoin Fund is characterized as having shares that are actively traded.

Options on the Bitcoin Funds will be subject to the Exchange's continued listing standards set forth in Rule 19.4(g) for Fund Shares deemed appropriate for options trading pursuant to Rule 19.3(i). Specifically, 19.4(g) provides that Fund Shares that were initially approved for options trading pursuant to Rule 19.3 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 security ceases to be an NMS stock (see Rule 19.4(b)(4)). Additionally, the Exchange will not open for trading any additional series of option contracts of the class covering Fund Shares in any of the following circumstances: (1) in the case of options covering Fund

¹² The Bitcoin Funds began trading on January 11, 2024.

Shares approved for trading under Rule 19.3(i)(4)(A), in accordance with the terms of Rule 19.4(b)(1), (2) and (3); (2) in the case of options covering Fund Shares approved pursuant to Rule 19.3(i)(4)(B), following the initial 12-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange and are defined as 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, 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 or Money Market Instruments, or portfolio of securities 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 each Bitcoin Fund will be physically settled contracts with American-style exercise.¹³ Consistent with current Rule 19.5, which governs the opening of options series on a specific underlying security (including Fund Shares), the Exchange will open at least one expiration month for options on each Bitcoin Fund¹⁴ at the commencement of

¹³ See 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).

¹⁴ See Rule 19.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 19.3. Monthly listings expire the third Friday of the month. The term “expiration date” (unless separately defined elsewhere in the OCC By-Laws), when used in respect of an option contract (subject to certain exceptions), means the third Friday of the expiration month of such option contract, or if such Friday is a day on which the exchange on which such option is listed is not open for business, the preceding day on which such exchange is open for business. See OCC By-Laws Article I, Section 1. Pursuant to Rule 19.5(c), additional series of options of the same class may be opened for trading on the Exchange when the Exchange

trading on the Exchange and may also list series of options on each Bitcoin Fund for trading on a weekly,¹⁵ monthly,¹⁶ or quarterly¹⁷ basis.

Pursuant to Rule 19.5, Interpretation and Policy .01, which governs strike prices of series of options on Fund Shares, the interval of strikes prices for series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.¹⁸ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,¹⁹ the \$0.50 Strike Program,²⁰ the \$2.50 Strike Price Program,²¹ and the \$5 Strike Program.²² Pursuant to Rule 21.5, where the price of a series of a Bitcoin Fund option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.²³ Any and all new series of Bitcoin Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set

deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until the close of trading on the business day prior to expiration.

¹⁵ See Rule 19.5, Interpretation and Policy .05.

¹⁶ See Rule 19.5, Interpretation and Policy .08.

¹⁷ See Rule 19.5, Interpretation and Policy .04.

¹⁸ The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rule 19.5, Interpretations and Policies .05, .08, and .04 specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

¹⁹ See Rule 19.5, Interpretation and Policy .02.

²⁰ See Rule 19.5, Interpretation and Policy .06.

²¹ See Rule 19.5, Interpretation and Policy .03.

²² See Rule 19.5(d)(5).

²³ If options on a Bitcoin Fund are eligible to participate in the Penny Interval Program, the minimum increment will be \$0.01 for series with a price below \$3.00 and \$0.05 for series with a price at or above \$3.00. See Rule 21.5(d) (which describes the requirements for the Penny Interval Program).

forth in Rules 19.5 and 21.5, as applicable.

Bitcoin Fund options will trade in the same manner as any other Fund Share options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange, including the precious-metal backed commodity Fund Shares already deemed appropriate for options trading on the Exchange pursuant to current Rule 19.3(i).

Pursuant to Rules 18.7²⁴ and 18.9, the position and exercise limits, respectively, for each Bitcoin Fund option will be 25,000 same side option contracts. The Exchange believes these proposed position and exercise limits considering, among other things, the approximate six-month average daily volume (“ADV”) and outstanding shares of each underlying Bitcoin Fund (which as discussed above demonstrate that each Bitcoin Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of August 7, 2024):

Underlying Bitcoin Fund	Six-Month ADV (shares)	Outstanding Shares	Market Capitalization (\$)
Fidelity Fund	8,902,893	201,100,100	14,217,013,188

²⁴ 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>

ARK 21 Fund	2,378,886	45,495,000	2,487,666,600
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The Exchange then compared the number of outstanding shares of the Bitcoin Funds to those of other ETFs. The following table provides the approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of August 27, 2024), compared to the proposed position and exercise limit for the Bitcoin Fund options:²⁵

Underlying Bitcoin Fund	Average Limit of Other ETF Options (contracts)	Proposed Limit (contracts)
Fidelity Fund	188,110	25,000
ARK 21 Fund	108,696	25,000

The Exchange considered current position and exercise limits of options on ETFs with outstanding shares comparable to those of each Bitcoin Fund, with the proposed limit significantly lower (between two and ten times lower) than the average limits of the options on the other ETFs. As discussed above, the Bitcoin Funds are actively held and widely traded: (1) each Bitcoin Fund (as of August 7, 2024) had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b)(1); (2) each Bitcoin Fund (as of the dates listed above) had significantly more

²⁵ With respect to the Fidelity Fund, over 80% of the ETFs used for comparison have a limit of at least 200,000, and more than half have a limit of 250,000. Additionally, the three-month ADV of the majority of the ETFs used for comparison to the Fidelity Fund was lower than the Fidelity Fund three-month ADV of 5,665,027 shares. With respect to the ARK 21 Fund, nearly 80% of the ETFs used for comparison have a limit of at least 75,000 (and up to 250,000). Additionally, the three-month ADV of the majority of ETFs used for comparison was lower (many more than four times lower) than the ARK 21 Fund three-month ADV of 1,737,327 shares.

than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b)(2); and (3) each Bitcoin Fund had a six-month trading volume substantially higher than 2,400,000 shares, which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 19.3(b)(4).

With respect to outstanding shares, if a market participant held the maximum number of positions possible pursuant to the proposed position and exercise limits, the equivalent shares represented by the proposed position/exercise limit would represent the following approximate percentage of current outstanding shares:

Underlying Bitcoin Fund	Proposed Position/Exercise Limit (in equivalent shares)	Outstanding Shares	Percentage of Outstanding Shares
Fidelity Fund	2,500,000	201,100,100	1.2%
ARK 21 Fund	2,500,000	45,495,000	5.5%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Bitcoin Fund.

There are two methods of qualifying for a position limit tier above 25,000 option contracts. The first method is based on six-month trading volume in the underlying security, and the second method is based on slightly lower six-month trading volume and number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on trading volume and number of shares outstanding

would be required to have the minimum number of outstanding shares as shown in middle column of the table below.

The table, which provides the equivalent shares of the position limits applicable to equity options, including ETFs, further represents the percentages of the minimum number of outstanding shares that an underlying stock or ETF must have to qualify for that position limit (under the second method described above), all of which are higher than the percentages for the Bitcoin Funds.²⁶

Position/Exercise Limit (in equivalent shares)	Minimum Outstanding Shares	Percentage of Outstanding Shares
2,500,000	6,300,000	40.0%
5,000,000	40,000,000	12.5%
7,500,000	120,000,000	6.3%
20,000,000	240,000,000	8.3%
25,000,000	300,000,000	8.3%

The equivalent shares represented by the proposed position and exercise limits for each Bitcoin Fund as a percentage of outstanding shares of the underlying Bitcoin Fund is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000 (under 6% compared to 40%) and is lower than that percentage for

²⁶ 6,300,000 is the minimum number of outstanding shares an underlying security must have for the Exchange to continue to list options on that security, so this would be the smallest number of outstanding shares permissible for any corporate option that would have a position limit of 25,000 contract. See Rule 19.4(b)(1). This rule applies to corporate stock options but not ETF options, which currently have no requirement regarding outstanding shares of the underlying ETF for the Exchange to continue listing options on that ETF. Therefore, there may be ETF options trading for which the 25,000 contract position limits represents an even larger percentage of outstanding shares of the underlying ETF than set forth above.

each current position limit bucket.²⁷

Further, the proposed position and exercise limits for each Bitcoin Fund option are significantly below the limits that would otherwise apply pursuant to current Rules 18.7 and 18.9. 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 market capitalization, average daily volume, and high number of outstanding shares of the Bitcoin Funds.

All of the above information demonstrates that the proposed position and exercise limits for the Bitcoin Fund options are more than reasonable and appropriate. The trading volume, ADV, and outstanding shares of each Bitcoin Fund demonstrate that these funds are actively traded and widely held, and proposed position and exercise limits are well below those of other ETFs with similar market characteristics. The proposed position and exercise limits are the lowest position and exercise limits available for equity options in the industry, are extremely conservative, and are more than appropriate given each Bitcoin Fund's market capitalization, ADV, and high number of outstanding shares.

Today, the Exchange has an adequate surveillance program in place for options. MEMX intends to apply those same program procedures to options on the Bitcoin Funds that it applies to the Exchange's other options products.²⁸ The Exchange's market surveillance staff would have access to the surveillances conducted by the Exchange and its affiliate exchange, MEMX Equities, with respect to the Bitcoin Funds, trading in the

²⁷ As these percentages are based on the minimum number of outstanding shares an underlying security must have to qualify for the applicable position limit, these are the highest possible percentages that would apply to any option subject to that position and exercise limit.

²⁸ The surveillance program includes patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging).

shares of the underlying Bitcoin Funds, and would review activity in the underlying Bitcoin Funds when conducting surveillances for market abuse or manipulation in the options on the Bitcoin Funds. Additionally, the Exchange is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition to obtaining surveillance data information from MEMX Equities, the Exchange would be able to obtain information regarding trading in shares of the underlying Bitcoin Funds from their primary listing market, Cboe BZX, and from other markets that trades shares of the Bitcoin Funds through ISG. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) for certain market surveillance, investigation and examinations functions. Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.²⁹

The underlying shares of spot bitcoin exchange-traded products (“ETPs”), including the Bitcoin Funds, are also subject to safeguards related to addressing market abuse and manipulation. As the Commission stated in its order approving proposals of

²⁹ Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (“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.

several exchanges to list and trade shares of spot bitcoin-based ETPs, “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.³⁰ 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].”³¹ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,³² the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Bitcoin Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic

³⁰ See Bitcoin ETP Approval Order.

³¹ See Bitcoin ETP Approval Order, 89 FR at 3010-11.

³² See Securities Exchange Act Release Nos. 99290 (January 8, 2024), 89 FR 2338, 2343, 2347 - 2348 (January 12, 2024) (SR-CboeBZX-2023-044) (Notice of Filing of Amendment No. 3 to a Proposed Rule Change to List and Trade Shares of the Fidelity Wise Origin Bitcoin Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares); and 99288 (January 8, 2024), 89 FR 2387, 2392, 2399 - 2400 (January 12, 2024) (SR-CboeBZX-2023-028) (Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares). See also Bitcoin ETP Approval Order.

associated with the listing of new series that may result from the introduction of options on Bitcoin Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to two classes, the Exchange believes any additional traffic that may be generated from the introduction of Bitcoin Fund options will be manageable.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter (“OTC”) options market,³³ but may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Fund Shares that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The

³³ The Exchange understands from customers that investors have historically transacted in options on Fund Shares in the OTC options market if such options were not available for trading in a listed environment.

Exchange notes that it has not identified any issues with the continued listing and trading of any Fund Share options, including Fund Shares that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange.

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.³⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁵ 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, 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)³⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange the Exchange believes that the proposal to list and trade options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on the Bitcoin Funds will provide investors

³⁴ 15 U.S.C. 78f(b).

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ Id.

with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based Fund Shares,³⁷ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Fund Share options it currently lists for trading.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it is consistent with current Exchange Rules previously filed with the Commission. Options on the Bitcoin Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Fund Shares, including Fund Shares that hold other commodities already deemed

³⁷ See Rule 19.3(i)(4).

appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin Fund options will trade in the same manner as any other Fund Share options — the same Exchange Rules that currently govern the listing and trading of all Fund Share options, including permissible expirations, strike prices and minimum increments, and applicable margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed position and exercise limits are designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as they are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are 25,000 contracts, which is the lowest limit applicable to any equity options (including ETF and options on other Bitcoin ETFs). The Exchange believes the proposed position and exercise limits are extremely conservative for each Bitcoin Fund option given the trading volume and outstanding shares for each. The information above demonstrates that the average position and exercise limits of options on ETFs with comparable outstanding shares and trading volume to those of the Bitcoin Funds are significantly higher than the proposed position and exercise limits for Bitcoin Fund options. Therefore, the proposed position and exercise limits for the Bitcoin Fund options are conservative relative to options on ETFs with comparable market characteristics.

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

size of a position limit to the market capitalization of the Bitcoin market. As of August 27, 2024, the global supply of Bitcoin was 19,745,940, and the price of one Bitcoin was approximately \$59,466.82,³⁸ which equates to a market capitalization of approximately \$1.165 trillion. Consider the proposed position and exercise limit of 25,000 option contracts for each Bitcoin Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 of Fidelity Fund shares or ARK 21 Fund shares, as applicable (if that market participant exercised all its options). The following table shows the share price of each Bitcoin Fund on August 27, 2024, the value of 2,500,000 shares of the Bitcoin Fund at that price, and the approximate percentage of that value of the size of the Bitcoin market:

Bitcoin Fund	August 27, 2024 Share Price (\$)	Value of 2,500,000 Shares of Bitcoin Fund (\$)	Percentage of Bitcoin Market
Fidelity Fund	54.33	135,825,000	0.01%
ARK 21 Fund	62.08	155,200,000	0.01%

Therefore, if a market participant with the maximum 25,000 same side contracts in either Fidelity Fund options or ARK 21 Fund options exercised all positions at one time, such an event would have no practical impact on the Bitcoin market.

The Exchange also believes the proposed limits are appropriate given position limits for Bitcoin futures. For example, the Chicago Mercantile Exchange (“CME”) imposes a position limit of 2,000 futures (for the initial spot month) on its Bitcoin futures

³⁸ See [Blockchain.com | Charts - Total Circulating Bitcoin](https://blockchain.com/charts-total-circulating-bitcoin).

contract.³⁹ On August 28, 2024, CME Aug 24 Bitcoin Futures settled at \$58,950. A position of 2,000 CME Bitcoin futures, therefore, would have a notional value of \$589,500,000. The following table shows the share price of each Bitcoin Fund on August 28, 2024 and the approximate number of option contracts that equates to that notional value:

Bitcoin Fund	August 28, 2024 Share Price (\$)	Number of Option Contracts
Fidelity Fund	51.47	114,532
ARK 21 Fund	58.83	100,203

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

The Exchange notes, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).⁴⁰ Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the

³⁹ See CME Rulebook Chapter 350 (description of CME Bitcoin Futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME Bitcoin futures contract is valued at five Bitcoins as defined by the CME CF Bitcoin Reference Rate (“BRR”). See CME Rule 35001.

⁴⁰ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.⁴¹ 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 same side position limits are more than appropriate for the Bitcoin Fund options.

The Exchange believes the proposed position and exercise limits will have no material impact to the supply of Bitcoin. For example, consider again the proposed position limit of 25,000 option contracts for each Bitcoin Fund option. As noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Bitcoin Fund (if that market participant exercised all its options). As of August 7, 2024, the Bitcoin Funds had the number of shares outstanding set forth in the table below. The table below also sets forth the approximate number of market participants that could hold the maximum of 25,000 same side positions in each Bitcoin Fund that would equate to the number of shares outstanding of that Bitcoin Fund:

Bitcoin Fund	Shares Outstanding	Number of Market Participants with 25,000
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⁴¹ Id.

		Same Side Positions
Fidelity Fund	201,100,100	80
ARK 21 fund	45,495,000	18

This means if 80 market participants had 25,000 same side positions in Fidelity Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 18 market participants had 25,000 same side positions in ARK 21 Fund options, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for either such event to occur; however, even if either such event did occur, the Exchange would not expect either Bitcoin Fund to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

As of August 7, 2024, the global supply of Bitcoin was approximately 19,736,528.⁴² Based on the \$47.88 price of a Fidelity Fund share on August 7, 2024, a market participant could have redeemed one Bitcoin for approximately 1,149 Fidelity Fund shares. Another 22,677,270,672 Fidelity Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 9,070 market participants would have to simultaneously exercise 25,000 same side positions in Fidelity Fund options to receive shares of the Fidelity Fund holding the entire global supply of Bitcoin. Similarly, based on the \$54.68 price of an ARK 21 Fund share on August 7, 2024, a market participant

⁴² See [Blockchain.com | Charts - Total Circulating Bitcoin](https://blockchain.com/charts-total-circulating-bitcoin) (which also shows the price of one Bitcoin equal to \$55,033.47).

could have redeemed one Bitcoin for approximately 1,006 ARK 21 Fund Shares. Another 19,855 ARK 21 Fund shares could be created before the supply of Bitcoin were exhausted. As a result, 7,941 market participants would have to simultaneously exercise 25,000 same side positions in ARK 21 Fund options to receive shares of the ARK 21 Fund holding the entire global supply of Bitcoin. Unlike the Bitcoin Funds, the number of shares that corporations may issue is limited. However, like corporations, which authorize additional shares, repurchase shares, or split their shares, the Bitcoin Funds may create, redeem, or split shares in response to demand. While the supply of Bitcoin is limited to 21,000,000, it is believed that it will take more than 100 years to fully mine the remaining Bitcoin.⁴³ The supply of Bitcoin is larger than the available supply of most securities.⁴⁴ Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the Bitcoin Funds should be subject to position and exercise limits even lower than those proposed (which are already equal to the lowest available limit for equity options in the industry) to protect the supply of Bitcoin.⁴⁵

The Exchange believes the available supply of Bitcoin is not relevant to the determination of position and exercise limits for options overlying the Bitcoin Funds.⁴⁶

⁴³ See Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53 - 54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

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

⁴⁵ This would be even more unlikely with respect to the Bitcoin Funds for which the Exchange proposes lower position limits.

⁴⁶ Prior to Bitcoin ETFs, the Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits. See, e.g., Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the “listing and trading of Gold Trust Options

Position and exercise limits are not a tool that should be used to address a potential limited supply of the underlying of an underlying. Position and exercise limits do not limit the total number of options that may be held, but rather they limit the number of positions a single customer may hold or exercise at one time.⁴⁷ “Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise.”⁴⁸ Position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”⁴⁹

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

will be subject to the exchanges’ rules pertaining to position and exercise limits and margin”). The Exchange notes when the Commission approved this filing, the position limits in Rule 8.30 were the same as they are today. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF (“GLD”) and options on iShares Silver Trust (“SLV”) are 250,000 contracts, or 10 times that proposed position and exercise limit for the Bitcoin Fund options.

⁴⁷ For example, suppose an option has a position limit of 25,000 option contracts and there are a total of 10 investors trading that option. If all 10 investors max out their positions, that would result in 250,000 option contracts outstanding at that time. However, suppose 10 more investors decide to begin trading that option and also max out their positions. This would result in 500,000 option contracts outstanding at that time. An increase in the number of investors could cause an increase in outstanding options even if position limits remain unchanged.

⁴⁸ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁴⁹ See id.

that the limit would be reached around the year 2140.⁵⁰ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin ETF to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Fund would impact the supply of Bitcoin.⁵¹ Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of Bitcoin was sufficient to permit the creation of unlimited Bitcoin Fund shares, and does not believe considering this supply with respect to the establishment of position and exercise limits is appropriate given its lack of relevance to the purpose of position and exercise limits. However, given the significant size of the Bitcoin supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the above information demonstrating, among other things, that each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded and widely held, the Exchange believes the proposed position and exercise limits are extremely conservative compared to those of ETF options with similar market characteristics. 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

⁵⁰ See Pre-Effective Amendment No. 5 to Form S-1 Registration Statement No. 333-254652, Fidelity Fund, filed January 9, 2024, at 53 - 54; and Amendment No. 8 to Form S-1 Registration Statement No. 333-257474, ARK 21 Fund, filed January 9, 2024, at 15.

⁵¹ See Bitcoin ETP Approval Order.

used to manipulate the market of the underlying as well as the Bitcoin market.⁵²

The Exchange represents that it has the necessary systems capacity to support the new Bitcoin Fund options. As discussed above, 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 Fund Share options, including Bitcoin Fund options.

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 a filing submitted by Cboe.⁵³ 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 the Bitcoin Fund options will be equally available to all market participants who wish to trade such options and will trade generally in the same manner as other options. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange. Also, and as stated

⁵² See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

⁵³ See supra note 6.

above, the Exchange already lists options on other commodity-based Fund Shares.⁵⁴

Further, the Bitcoin Funds would need to satisfy the maintenance listing standards set forth in the Exchange Rules in the same manner as any other Fund Share for the Exchange to continue listing options on them.

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

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

⁵⁴ See Rule 19.3(i)(4).

competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

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

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act⁵⁵ and Rule 19b-4(f)(6)⁵⁶ thereunder.

The Exchange designates that the proposed rule change 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.

Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes the proposed rule change does not significantly affect the protection of investors or the public interest. Offering options on the Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a

⁵⁵ 15 U.S.C. 78s(b)(3)(A).

⁵⁶ 17 CFR 240.19b-4(f)(6).

Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based Fund Shares,⁵⁷ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Bitcoin rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Fund Share options it currently lists for trading.

Additionally, options on the Bitcoin Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Fund Shares, including Fund Shares that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Bitcoin Fund is characterized by a substantial number of shares that are widely held and actively traded. Bitcoin Fund options will trade in the same manner as any other Fund Share options — the same Exchange Rules that currently govern the listing and

⁵⁷ See Rule 19.3(i)(4).

trading of all Fund Share options, including permissible expirations, strike prices and minimum increments, and applicable margin requirements, will govern the listing and trading of options on Bitcoin Funds in the same manner.

The Exchange believes the proposed position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are 25,000 contracts, which is the lowest limit applicable to any equity options (including ETF and options on other Bitcoin ETFs). The Exchange believes the proposed position and exercise limits are extremely conservative for each Bitcoin Fund option given the trading volume and outstanding shares for each. The information above demonstrates that the average position and exercise limits of options on ETFs with comparable outstanding shares and trading volume to those of the Bitcoin Funds are significantly higher than the proposed position and exercise limits for Bitcoin Fund options. Therefore, the proposed position and exercise limits for the Bitcoin Fund options are conservative relative to options on ETFs with comparable market characteristics.

The Exchange believes the proposed rule change does not impose any significant burden on competition. The Bitcoin Fund options will be equally available to all market participants who wish to trade such options and will trade generally in the same manner as other options. The Exchange Rules that currently apply to the listing and trading of all Fund Share options on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures will apply to the listing and trading of

Bitcoin Funds options on the Exchange in the same manner as they apply to other options on all other Fund Shares that are listed and traded on the Exchange. Also, and as stated above, the Exchange already lists options on other commodity-based Fund Shares.⁵⁸ Further, the Bitcoin Funds would need to satisfy the maintenance listing standards set forth in the Exchange Rules in the same manner as any other Fund Share for the Exchange to continue listing options on them.

To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on the Bitcoin Funds. The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

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

⁵⁸Id.

their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved. The Exchange respectfully requests that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. The proposed rule change is not novel or unique. The Commission recently approved a substantively identical filing.⁵⁹ Further, the Commission approved a similar rule filing of another options exchange on September 20, 2024,⁶⁰ and the options subject to that filing are currently trading on other markets. While that filing applies to options on a different Bitcoin ETF (iShares Bitcoin Trust), the substantive issues to be considered are the same for options on the Bitcoin Funds as proposed in this proposed rule change. Waiver of the pre-filing and operative delays is, therefore, essential for competitive purposes. This would benefit investors because it will permit the Exchange to list options on the Bitcoin Funds now that competitor exchanges

⁵⁹ See *supra* note 6.

⁶⁰ Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03).

can list options on a competitive product, which creates competition in the industry. The Exchange believes it promotes competition to make options available on multiple Bitcoin Funds, and the Exchange has provided comparable data and analysis for each Bitcoin Fund that the competitor exchange provided for the iShares Bitcoin Trust. It will protect investors by providing them with the benefits of options regardless of in which Bitcoin Fund they may choose to trade. Investors should not be denied the hedging and other investment protections and benefits that options offer merely because their investment strategies happen to involve one Bitcoin Fund versus another.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-46 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-2024-46. 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-2024-46 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.⁶¹

Sherry R. Haywood,

Assistant Secretary.

⁶¹ 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, iShares Silver Trust, [or the]iShares Bitcoin Trust, Fidelity Wise Origin Bitcoin Fund or the ARK 21Shares Bitcoin ETF; provided that all of the following conditions are met:

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