

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 Rule 19.3 regarding the criteria for underlying securities. Specifically, the Exchange proposes to amend Rule 19.3(i) to allow the Exchange to list and trade options on shares or other securities (“Fund Shares”) that are principally traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS and that represent interests in the Grayscale Bitcoin Trust (the “Grayscale Fund”), the Grayscale Bitcoin Mini Trust (the “Grayscale Mini Fund”), or the Bitwise Bitcoin ETF (the “Bitwise Fund” and, together with the Grayscale Fund, and the Grayscale Mini Fund, the “Bitcoin Funds”).⁵ This is a competitive filing based on a similar proposal submitted by NYSE American, LLC (“NYSE American”) which was recently approved by the Securities and Exchange Commission (the “Commission”).⁶ Current Rule 19.3(i) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Fund Shares that represent certain types of interests,⁷ including interests in certain specific trusts that

⁵ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, (January 17, 2024) (SR-NYSEArca-2021-90; SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SRNASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (“Bitcoin ETP Approval Order”).

⁶ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR-NYSEAMER-2024-49) (“NYSE American Approval”).

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

hold financial instruments, money market instruments, precious metals (which are deemed commodities), or Bitcoin (which is deemed a commodity). In addition, Rule 19.3(i)(1) requires that Fund Shares meet the criteria and standards set forth in Rule 19.3(a) and (b)⁸ or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Fund Shares in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

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

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 477 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 Rule 19.3(a) and (b) sets forth the criteria that underlying securities must satisfy for option contracts on those underlying securities to be eligible for listing and trading on the Exchange.

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.⁹ 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 trading 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 Bitcoin Funds are similar to the iShares Bitcoin Trust, which is already eligible for options trading on the Exchange.¹⁰

The Exchange's initial listing standards for Fund Shares on which options may be listed and traded on the Exchange will apply to the Bitcoin Funds. 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 Act; and the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded. Rule 19.3(i)(1) requires that Fund Shares either (1) meet the criteria and

⁹ The trust may include minimal cash.

¹⁰ See Rule 19.3(i).

standards set forth in Rule 19.3(a) and (b),¹¹ 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.

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

¹¹ Rule 19.3(a) and (b) sets forth the criteria an underlying security must meet for the Exchange to be able to list options on the underlying.

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.¹² 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 Fund¹³ at the commencement of

¹² 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).

¹³ 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

trading on the Exchange and may also list series of options on each Bitcoin Fund for trading on a weekly,¹⁴ monthly,¹⁵ or quarterly¹⁶ 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 \$200.¹⁷ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,¹⁸ the \$0.50 Strike Program,¹⁹ the \$2.50 Strike Price Program,²⁰ and the \$5 Strike Program.²¹ 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 \$0.10.²² Any and all new series of Bitcoin Fund options that the Exchange lists will be

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.

¹⁴ See Rule 19.5, Interpretation and Policy .05.

¹⁵ See Rule 19.5, Interpretation and Policy .08.

¹⁶ See Rule 19.5, Interpretation and Policy .04.

¹⁷ 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.

¹⁸ See Rule 19.5, Interpretation and Policy .02.

¹⁹ See Rule 19.5, Interpretation and Policy .06.

²⁰ See Rule 19.5, Interpretation and Policy .03.

²¹ See Rule 19.5(d)(5).

²² 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).

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, including the precious-metal backed commodity Fund Shares and the Fidelity and Ark 21 Funds already deemed appropriate for options trading on the Exchange pursuant to current already deemed appropriate for options trading on the Exchange pursuant to current Rule 19.3(i).

Pursuant to Rules 18.7²³ and 18.9, the position and exercise limits, respectively, for each Bitcoin Fund option will be 25,000 same side option contracts. In considering the appropriate position and exercise limits for the Bitcoin Funds, the Exchange reviewed the data presented by NYSE American in its filing.²⁴ NYSE American aggregated market capitalization, volume, and shares outstanding data of the Bitcoin Funds and compared that data to those of other ETFs, and compared the proposed position limit of the Bitcoin

²³ 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>

²⁴ See NYSE American Approval.

Funds to the position limits of the options overlying those other ETFs. The Exchange reviewed NYSE American's data that demonstrated that each of these three Bitcoin Funds would easily qualify for the 250,000-contract position limit available to other ETFs and ETPs.²⁵

Bitcoin Fund	Total Volume (shares) (as of September 30, 2024)
Grayscale Fund	723,758,100
Grayscale Mini Fund	335,492,930
Bitwise Fund	263,965,870

Based on this trading volume,²⁶ each Bitcoin Fund exceeded the requisite 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits. By comparison, the underlying of other options with six-month trading volume less than the volumes in the table above are eligible for position and exercise limits of at least 250,000.²⁷

Second, with respect to the outstanding shares of these three Bitcoin Funds, the Exchange reviewed NYSE American's data regarding the outstanding shares of each of these Bitcoin Funds. NYSE American performed an exercise to demonstrate that if a market participant held the maximum number of contracts possible pursuant to the

²⁵ To be eligible for the 250,000 option contract limit, either the most recent six-month trading volume of the underlying security must have totaled at least 100,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 75,000,000 shares and the underlying security must have at least 300,000,000 currently outstanding.

²⁶ See FactSet, 9/30/2024, <https://www.factset.com/data-attribution>. Bitwise Fund shares began trading on July 31, 2024, and therefore the data in the above table has only two months of trading data available.

²⁷ See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/SeriesSearch> (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position and exercise limits (2,500,000 shares) would represent the following approximate percentage of outstanding shares as of August 30, 2024:

Bitcoin Fund	Proposed Position/Exercise Limits in Equivalent Shares	Outstanding Shares	Percentage of Outstanding Shares
Grayscale Fund	2,500,000	284,570,100	0.9%
Grayscale Mini Fund	2,500,000	366,950,100	0.7%
Bitwise Fund	2,500,000	68,690,000	3.6%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Bitcoin Fund. For example, as noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Bitcoin Fund (if that market participant exercised all its options). NYSE American used the number of shares outstanding for each Bitcoin Fund as of August 30, 2024, and calculated 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	Outstanding Shares	Number of Market Participants with 25,000 Same Side Positions
Grayscale Fund	284,570,100	114
Grayscale Mini Fund	366,950,100	147

Bitwise Fund	68,690,000	27
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This means if 114 market participants had 25,000 same side positions in options on the Grayscale Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 147 market participants had 25,000 same side positions in options on the Grayscale Mini Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Finally, this means if 27 market participants had 25,000 same side positions in options on the Bitwise Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for this to occur; however, even if such event did occur, the Exchange would not expect any of the Bitcoin Fund to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

NYSE American also performed an exercise to compare the size of the proposed position limit to the market capitalization of the Bitcoin market given that the issuer of each of these three Bitcoin Funds may create and redeem shares that represent an interest in Bitcoin. NYSE American took the global supply of Bitcoin, which was 19,747,066, and the price of one Bitcoin, which was approximately \$59,108.23, as of August 30, 2024, which equates to a market capitalization of approximately \$1.167 trillion.²⁸ Consider the proposed position and exercise limit of 25,000 option contracts for each

²⁸

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

Bitcoin Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the Grayscale Fund, the Grayscale Mini Fund, or the Bitwise Fund, as applicable (if that market participant exercised all its options). NYSE American considered the share price of each Bitcoin Fund on August 30, 2024 and calculated 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	Share Price (\$)	Value of 2,500,000 Shares	Percentage of Bitcoin Market
Grayscale Fund	46.75	116,875,000	0.010%
Grayscale Mini Fund	5.20	13,000,000	0.001%
Bitwise Fund	31.95	79,875,000	0.007%

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

The Exchange also reviewed NYSE American's data regarding the market capitalization of each of these three Bitcoin Funds relative to the market capitalization of the entire Bitcoin market, as of August 30, 2024:²⁹

	Bitcoin/Shares Outstanding	Market Value (\$)	% of Total Bitcoin Market
Total Bitcoin Market	19,747,066	1,167,214,096,788	100
Grayscale Fund	284,570,100	13,443,091,524	1.15

²⁹ See id.

Grayscale Mini Fund	366,950,100	1,930,157,526	0.17
Bitwise Fund	68,690,000	2,221,640,670	0.19

As this data gathered by NYSE American demonstrates, none of these three Bitcoin Funds represent more than 1.2% of the global supply of Bitcoin (19,747,066). Based on the \$46.75 price of a Grayscale Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,264 Grayscale Fund shares. Another 24,967,146,455 Grayscale Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 9,987 market participants would have to simultaneously exercise 25,000 same side positions in Grayscale Fund options to receive shares of the Grayscale Fund holding the entire global supply of Bitcoin. Similarly, based on the \$5.20 price of a Grayscale Mini Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 11,367 Grayscale Mini Fund shares. Another 224,464,249,382 Grayscale Mini Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 89,786 market participants would have to simultaneously exercise 25,000 same side positions in Grayscale Mini Fund options to receive shares of Grayscale Mini Fund holding the entire global supply of Bitcoin. Similarly, based on the \$31.95 price of a Bitwise Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,850 Bitwise Fund shares. Another 36,532,522,591 Bitwise Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 14,613 market participants would have to simultaneously exercise 25,000 same side positions in Bitwise Fund options to receive shares of Bitwise Fund holding the entire global supply of Bitcoin.

NYSE American also compared the proposed position limits to the position limit of CME Bitcoin futures, which as noted above is 2,000 futures. 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	Share Price (\$)	Number of Option Contracts
Grayscale Fund	46.94	125,585
Grayscale Mini Fund	5.23	1,127,151
Bitwise Fund	32.08	183,759

The approximate number of option contracts for each Bitcoin Fund that equate to the notional value of CME Bitcoin futures is significantly higher than the proposed limit of 25,000 options contracts for each Bitcoin Fund option. As noted above, 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, again, 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).³⁰ Therefore, if a portfolio includes positions in options on futures, CME would aggregate

³⁰ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

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.³¹ 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 Grayscale Fund, Grayscale Mini Fund, and Bitwise Fund options.

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.³² The Exchange notes that Bitcoin is a viable economic alternative to traditional assets. The price of goods denominated by Bitcoin has actually declined. This dynamic not only makes a fixed supply desirable, but a necessary condition of the value added by this asset in the broader economy. 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. Given the significant unlikelihood of any of events described above ever

³¹ Id.

³² See <https://www.blockchain.com/explorer/assets/btc> (citing 21 million as the "total supply" of bitcoin).

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.

Importantly, because the supply of Bitcoin is much larger than the available supply of most securities and the proposed 25,000 contract position limit is so conservative, the Exchange believes that evaluating the available supply of Bitcoin in establishing a position limit for options on each of the Bitcoin Funds would demonstrate that the proposed limit is safe for investors and the market.³³ Each Bitcoin Fund represents less than 2% of the entire Bitcoin supply. When comparing the market capitalization of bitcoin against the largest securities, Bitcoin would rank 7th among those securities.³⁴ Further, the Exchange believes that its proposal to list options on the Bitcoin Funds each with a position limit of 25,000 on the same side is a conservative position limit that does not lend itself to manipulation in the market given the ample market capitalization and liquidity in each Bitcoin Fund. If we look to the liquidity statistics of similar instruments and their concomitant position limits, we are able to extrapolate a reasonable standard for arriving at a position limit for a new product. In this case we can look to GLD, SLV, and the ProShares Bitcoin Strategy ETF. These products have volume statistics and “float” statistics, which gauge liquidity, which are in line, yet slightly lower than the Bitcoin Funds. All three of these reference products have position limits of 250,000 contracts. These reference products are remarkably similar in nature to

³³ A supply consideration would likely be valuable for an option symbol that had far less liquidity than the Trust.

³⁴ See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

the Bitcoin Funds; they are exchange-traded products (“ETPs”) holding one asset in a trust.

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.³⁵ 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.³⁶ “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.”³⁷ 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

³⁵ 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”).

³⁶ 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.

³⁷ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

possibility for disruption of the options market itself, especially in illiquid options classes.”³⁸

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 2140.³⁹ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Fund would impact the supply of Bitcoin.⁴⁰ 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.

³⁸ See id.

³⁹ See iShares Fund Form S-1 Registration Statement, at p. 25 https://www.sec.gov/Archives/edgar/data/1980994/000143774923017574/bit20230608_s1.htm ; Grayscale Fund Form S-1 Registration Statement, at p. 17, <https://www.sec.gov/Archives/edgar/data/1588489/000119312517013693/d157414ds1.htm>; Grayscale Mini Fund, Form S-1 Registration Statement, at p. 21, <https://www.sec.gov/Archives/edgar/data/2015034/000119312524065444/d785023ds1.htm>; and Bitwise Amendment No 2. to S-1, at p. 47, https://www.sec.gov/Archives/edgar/data/1763415/000199937123000735/bitwise-s1a_120423.htm.

⁴⁰ See Bitcoin ETP Approval Order.

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 and ADV.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options on the Bitcoin Funds that it applies to the Exchange's other options products.⁴¹ 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 information from its affiliated market, the Exchange would be able to obtain information regarding trading in shares of the Bitcoin Funds from their primary listing market, NYSE Arca, and from

⁴¹ The surveillance program includes surveillance patterns for price and volume movements as well as patterns for potential manipulation (e.g., spoofing and marking the close).

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.⁴²

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.⁴³ 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

⁴² 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.

⁴³ See Bitcoin ETP Approval Order.

reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].”⁴⁴ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,⁴⁵ 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.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to

⁴⁴ See Bitcoin ETP Approval Order, 89 FR at 3010-11.

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

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,⁴⁶ 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

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

⁴⁶ 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.

requirements of Section 6(b) of the Act.⁴⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁸ 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)⁴⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on the 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 options on a competitively priced ETF based on spot Bitcoin will benefit investors by providing them with an additional, relatively lower-cost risk management tool, allowing them to manage, more easily, their positions and associated risks in their portfolios in connection with exposure to spot Bitcoin. Today, the Exchange lists options on other commodity

⁴⁷ 15 U.S.C. 78f(b).

⁴⁸ 15 U.S.C. 78f(b)(5).

⁴⁹ Id.

(including Bitcoin) ETFs structured as a trust, which essentially offer the same objectives and benefits to investors, and for which the Exchange has not identified any issues with the continued listing and trading of options on those ETFs.

The Exchange also believes the proposal to permit options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system, because options on the Bitcoin Funds will comply with current Exchange Rules. Options on the Bitcoin Funds must satisfy the initial listing standards and continued listing standards currently in the Rules, applicable to options on all ETFs, including options on other commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Rule 19.3(i). Additionally, as demonstrated above, the Bitcoin Funds are characterized by a substantial number of shares that are widely held and actively traded. Further, Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits (as proposed herein), and margin requirements, will govern the listing and trading of options on the Bitcoin Funds.

The proposed position and exercise limits for options on each of the Bitcoin Funds is 25,000 contracts. These position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than appropriate given Bitcoin Fund's market capitalization, ADV, and high number of outstanding shares. The proposed position limit, and exercise limit, is consistent with the Act as it addresses concerns related to manipulation and protection of investors because, as demonstrated above, the position limit (and exercise limit) is extremely conservative and more than appropriate given the Bitcoin Funds are actively traded. In support of the

proposed position and exercise limits for options on the Bitcoin Funds of 25,000 contracts, the Exchange is citing the in depth analysis NYSE American did in its filing. As noted above, NYSE American considered: (1) the applicable Bitcoin Fund's market capitalization and ADV, and proposed position limit in relation to other securities; (2) the market capitalization of the entire Bitcoin market in terms of exercise risk and availability of deliverables; (3) the proposed position limit by comparing it to position limits for derivative products regulated by the CFTC; and (4) the supply of Bitcoin. Based on the Exchange's review of this analysis, the Exchange believes that setting position and exercise limits for options on each of the Bitcoin Funds of 25,000 contracts is more than appropriate. 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.⁵⁰

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.

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

⁵⁰ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

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. 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 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 (including Bitcoin-based).⁵¹ 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. The Commission recently

⁵¹ See Rule 19.3(i).

approved a rule filing of another exchange to permit the listing and trading of options on the Bitcoin Funds.⁵² 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)

⁵² See NYSE American Approval.

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act⁵³ and Rule 19b-4(f)(6)⁵⁴ 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 the Bitcoin Funds, 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

⁵³ 15 U.S.C. 78s(b)(3)(A).

⁵⁴ 17 CFR 240.19b-4(f)(6).

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 (including Bitcoin),⁵⁵ 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 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 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 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

⁵⁵ See Rule 19.3(i).

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 (including Bitcoin).⁵⁶ Further, the Bitcoin Funds would need to satisfy the maintenance

⁵⁶ Id.

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. The Commission approved a rule filing of another exchange to permit the listing and trading of options on the Bitcoin Funds.⁵⁷ 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.

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

⁵⁷ See NYSE American Approval.

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 of another options exchange.⁵⁸ Waiver of the pre-filing and operative delays is, therefore, essential for competitive purposes, as it will ensure fair competition among the exchanges by allowing the Exchange to list options on the Bitcoin Funds at the same time as other options exchanges.

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 NYSE American and approved by the Commission.⁵⁹

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

⁵⁸ See NYSE American Approval.

⁵⁹ Id.

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2024-47]

[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 Grayscale Bitcoin Trust, the Grayscale Bitcoin Mini Trust, and the Bitwise Bitcoin ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (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 Rule 19.3 regarding the criteria for underlying securities. Specifically, the Exchange proposes to amend Rule 19.3(i) to allow the Exchange to list and trade options on shares or other securities (“Fund Shares”) that are principally traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS and that represent interests in the Grayscale Bitcoin Trust (the “Grayscale Fund”), the Grayscale Bitcoin Mini Trust (the “Grayscale Mini Fund”), or the Bitwise Bitcoin ETF (the “Bitwise Fund” and, together with the Grayscale Fund, and the Grayscale Mini Fund, the “Bitcoin Funds”).⁵ This is a competitive filing based on a similar proposal submitted by NYSE American, LLC (“NYSE American”) which was recently approved by the Securities and Exchange Commission (the “Commission”).⁶ Current Rule 19.3(i) provides that, subject to certain other criteria set

⁵ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008, (January 17, 2024) (SR-NYSEArca-2021-90; SR-NYSEArca-2023-44; SR-NYSEArca-2023-58; SRNASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023- 038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; and SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (“Bitcoin ETP Approval Order”).

⁶ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24,

forth in that Rule, securities deemed appropriate for options trading include Fund Shares that represent certain types of interests,⁷ including interests in certain specific trusts that hold financial instruments, money market instruments, precious metals (which are deemed commodities), or Bitcoin (which is deemed a commodity). In addition, Rule 19.3(i)(1) requires that Fund Shares meet the criteria and standards set forth in Rule 19.3(a) and (b)⁸ or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Fund Shares in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is

2024) (SR-NYSEAMER-2024-49) (“NYSE American Approval”).

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 477 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 Rule 19.3(a) and (b) sets forth the criteria that underlying securities must satisfy for option contracts on those underlying securities to be eligible for listing and trading on the Exchange.

secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

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.⁹ 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 trading 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 Bitcoin Funds are similar to the iShares Bitcoin Trust, which is already eligible for options trading on the Exchange.¹⁰

The Exchange’s initial listing standards for Fund Shares on which options may be listed and traded on the Exchange will apply to the Bitcoin Funds. Pursuant to Rule

⁹ The trust may include minimal cash.

¹⁰ See Rule 19.3(i).

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 Act; and the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded. 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),¹¹ 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.

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

¹¹ Rule 19.3(a) and (b) sets forth the criteria an underlying security must meet for the Exchange to be able to list options on the underlying.

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.¹² 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

¹² 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).

at least one expiration month for options on each Bitcoin Fund¹³ at the commencement of trading on the Exchange and may also list series of options on each Bitcoin Fund for trading on a weekly,¹⁴ monthly,¹⁵ or quarterly¹⁶ 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 \$200.¹⁷ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,¹⁸ the \$0.50 Strike Program,¹⁹ the \$2.50 Strike Price Program,²⁰ and the \$5 Strike Program.²¹ Pursuant to Rule 21.5, where the price of a series of a Bitcoin Fund option is less than \$3.00, the minimum increment

¹³ 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.

¹⁴ See Rule 19.5, Interpretation and Policy .05.

¹⁵ See Rule 19.5, Interpretation and Policy .08.

¹⁶ See Rule 19.5, Interpretation and Policy .04.

¹⁷ 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.

¹⁸ See Rule 19.5, Interpretation and Policy .02.

¹⁹ See Rule 19.5, Interpretation and Policy .06.

²⁰ See Rule 19.5, Interpretation and Policy .03.

²¹ See Rule 19.5(d)(5).

will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.²² 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, including the precious-metal backed commodity Fund Shares and the Fidelity and Ark 21 Funds already deemed appropriate for options trading on the Exchange pursuant to current already deemed appropriate for options trading on the Exchange pursuant to current Rule 19.3(i).

Pursuant to Rules 18.7²³ and 18.9, the position and exercise limits, respectively, for each Bitcoin Fund option will be 25,000 same side option contracts. In considering the appropriate position and exercise limits for the Bitcoin Funds, the Exchange reviewed

²² 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).

²³ 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>

the data presented by NYSE American in its filing.²⁴ NYSE American aggregated market capitalization, volume, and shares outstanding data of the Bitcoin Funds and compared that data to those of other ETFs, and compared the proposed position limit of the Bitcoin Funds to the position limits of the options overlying those other ETFs. The Exchange reviewed NYSE American's data that demonstrated that each of these three Bitcoin Funds would easily qualify for the 250,000-contract position limit available to other ETFs and ETPs.²⁵

Bitcoin Fund	Total Volume (shares) (as of September 30, 2024)
Grayscale Fund	723,758,100
Grayscale Mini Fund	335,492,930
Bitwise Fund	263,965,870

Based on this trading volume,²⁶ each Bitcoin Fund exceeded the requisite 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits. By comparison, the underlying of other options with six-month trading volume less than the volumes in the table above are eligible for position and exercise limits of at least 250,000.²⁷

²⁴ See NYSE American Approval.

²⁵ To be eligible for the 250,000 option contract limit, either the most recent six-month trading volume of the underlying security must have totaled at least 100,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 75,000,000 shares and the underlying security must have at least 300,000,000 currently outstanding.

²⁶ See FactSet, 9/30/2024, <https://www.factset.com/data-attribution>. Bitwise Fund shares began trading on July 31, 2024, and therefore the data in the above table has only two months of trading data available.

²⁷ See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/SeriesSearch> (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

Second, with respect to the outstanding shares of these three Bitcoin Funds, the Exchange reviewed NYSE American's data regarding the outstanding shares of each of these Bitcoin Funds. NYSE American performed an exercise to demonstrate that if a market participant held the maximum number of contracts possible pursuant to the proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position and exercise limits (2,500,000 shares) would represent the following approximate percentage of outstanding shares as of August 30, 2024:

Bitcoin Fund	Proposed Position/Exercise Limits in Equivalent Shares	Outstanding Shares	Percentage of Outstanding Shares
Grayscale Fund	2,500,000	284,570,100	0.9%
Grayscale Mini Fund	2,500,000	366,950,100	0.7%
Bitwise Fund	2,500,000	68,690,000	3.6%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the Bitcoin Fund options and exercised all of them at the same time, that market participant would control a small percentage of the outstanding shares of the underlying Bitcoin Fund. For example, as noted above, a position limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the applicable Bitcoin Fund (if that market participant exercised all its options). NYSE American used the number of shares outstanding for each Bitcoin Fund as of August 30, 2024, and calculated 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	Outstanding Shares	Number of Market Participants with 25,000 Same Side Positions
Grayscale Fund	284,570,100	114
Grayscale Mini Fund	366,950,100	147
Bitwise Fund	68,690,000	27

This means if 114 market participants had 25,000 same side positions in options on the Grayscale Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 147 market participants had 25,000 same side positions in options on the Grayscale Mini Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Finally, this means if 27 market participants had 25,000 same side positions in options on the Bitwise Fund, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. The Exchange believes it is highly unlikely for this to occur; however, even if such event did occur, the Exchange would not expect any of the Bitcoin Fund to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

NYSE American also performed an exercise to compare the size of the proposed position limit to the market capitalization of the Bitcoin market given that the issuer of each of these three Bitcoin Funds may create and redeem shares that represent an interest in Bitcoin. NYSE American took the global supply of Bitcoin, which was 19,747,066, and the price of one Bitcoin, which was approximately \$59,108.23, as of August 30,

2024, which equates to a market capitalization of approximately \$1.167 trillion.²⁸

Consider the proposed position and exercise limit of 25,000 option contracts for each Bitcoin Fund option. A position and exercise limit of 25,000 same side contracts effectively restricts a market participant from holding positions that could result in the receipt of no more than 2,500,000 shares of the Grayscale Fund, the Grayscale Mini Fund, or the Bitwise Fund, as applicable (if that market participant exercised all its options). NYSE American considered the share price of each Bitcoin Fund on August 30, 2024 and calculated 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	Share Price (\$)	Value of 2,500,000 Shares	Percentage of Bitcoin Market
Grayscale Fund	46.75	116,875,000	0.010%
Grayscale Mini Fund	5.20	13,000,000	0.001%
Bitwise Fund	31.95	79,875,000	0.007%

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

The Exchange also reviewed NYSE American's data regarding the market capitalization of each of these three Bitcoin Funds relative to the market capitalization of the entire Bitcoin market, as of August 30, 2024:²⁹

Bitcoin/Shares Outstanding	Market Value (\$)	% of Total Bitcoin Market
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²⁸ See <https://www.blockchain.com/explorer/charts/total-bitcoins>.

²⁹ See *id.*

Total Bitcoin Market	19,747,066	1,167,214,096,788	100
Grayscale Fund	284,570,100	13,443,091,524	1.15
Grayscale Mini Fund	366,950,100	1,930,157,526	0.17
Bitwise Fund	68,690,000	2,221,640,670	0.19

As this data gathered by NYSE American demonstrates, none of these three Bitcoin Funds represent more than 1.2% of the global supply of Bitcoin (19,747,066). Based on the \$46.75 price of a Grayscale Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,264 Grayscale Fund shares. Another 24,967,146,455 Grayscale Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 9,987 market participants would have to simultaneously exercise 25,000 same side positions in Grayscale Fund options to receive shares of the Grayscale Fund holding the entire global supply of Bitcoin. Similarly, based on the \$5.20 price of a Grayscale Mini Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 11,367 Grayscale Mini Fund shares. Another 224,464,249,382 Grayscale Mini Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 89,786 market participants would have to simultaneously exercise 25,000 same side positions in Grayscale Mini Fund options to receive shares of Grayscale Mini Fund holding the entire global supply of Bitcoin. Similarly, based on the \$31.95 price of a Bitwise Fund share on August 30, 2024, a market participant could have redeemed one Bitcoin for approximately 1,850 Bitwise Fund shares. Another 36,532,522,591 Bitwise Fund shares could be created before the supply of Bitcoin was exhausted. As a result, 14,613 market participants would have to simultaneously exercise 25,000 same side positions in Bitwise Fund options to

receive shares of Bitwise Fund holding the entire global supply of Bitcoin.

NYSE American also compared the proposed position limits to the position limit of CME Bitcoin futures, which as noted above is 2,000 futures. 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	Share Price (\$)	Number of Option Contracts
Grayscale Fund	46.94	125,585
Grayscale Mini Fund	5.23	1,127,151
Bitwise Fund	32.08	183,759

The approximate number of option contracts for each Bitcoin Fund that equate to the notional value of CME Bitcoin futures is significantly higher than the proposed limit of 25,000 options contracts for each Bitcoin Fund option. As noted above, 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, again, 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).³⁰

³⁰ See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

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.³¹ 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 Grayscale Fund, Grayscale Mini Fund, and Bitwise Fund options.

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.³² The Exchange notes that Bitcoin is a viable economic alternative to traditional assets. The price of goods denominated by Bitcoin has actually declined. This dynamic not only makes a fixed supply desirable, but a necessary condition of the value added by this asset in the broader economy. 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

³¹ Id.

³² See <https://www.blockchain.com/explorer/assets/btc> (citing 21 million as the "total supply" of bitcoin).

demand. Given the significant unlikelihood of any of events described above 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.

Importantly, because the supply of Bitcoin is much larger than the available supply of most securities and the proposed 25,000 contract position limit is so conservative, the Exchange believes that evaluating the available supply of Bitcoin in establishing a position limit for options on each of the Bitcoin Funds would demonstrate that the proposed limit is safe for investors and the market.³³ Each Bitcoin Fund represents less than 2% of the entire Bitcoin supply. When comparing the market capitalization of bitcoin against the largest securities, Bitcoin would rank 7th among those securities.³⁴ Further, the Exchange believes that its proposal to list options on the Bitcoin Funds each with a position limit of 25,000 on the same side is a conservative position limit that does not lend itself to manipulation in the market given the ample market capitalization and liquidity in each Bitcoin Fund. If we look to the liquidity statistics of similar instruments and their concomitant position limits, we are able to extrapolate a reasonable standard for arriving at a position limit for a new product. In this case we can look to GLD, SLV, and the ProShares Bitcoin Strategy ETF. These products have volume statistics and “float” statistics, which gauge liquidity, which are in line, yet slightly lower than the Bitcoin Funds. All three of these reference products have position

³³ A supply consideration would likely be valuable for an option symbol that had far less liquidity than the Trust.

³⁴ See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

limits of 250,000 contracts. These reference products are remarkably similar in nature to the Bitcoin Funds; they are exchange-traded products (“ETPs”) holding one asset in a trust.

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.³⁵ 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.³⁶ “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.”³⁷ 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

³⁵ 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”).

³⁶ 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.

³⁷ *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

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.”³⁸

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 2140.³⁹ Each Registration Statement permits an unlimited number of shares of the applicable Bitcoin Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each Bitcoin Fund, which approval did not comment on the sufficient supply of Bitcoin or address whether there was a risk that permitting an unlimited number of shares for a Bitcoin Fund would impact the supply of Bitcoin.⁴⁰ 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

³⁸ See id.

³⁹ See iShares Fund Form S-1 Registration Statement, at p. 25 https://www.sec.gov/Archives/edgar/data/1980994/000143774923017574/bit20230608_s1.htm ; Grayscale Fund Form S-1 Registration Statement, at p. 17, <https://www.sec.gov/Archives/edgar/data/1588489/000119312517013693/d157414ds1.htm>; Grayscale Mini Fund, Form S-1 Registration Statement, at p. 21, <https://www.sec.gov/Archives/edgar/data/2015034/000119312524065444/d785023ds1.htm>; and Bitwise Amendment No 2. to S-1, at p. 47, https://www.sec.gov/Archives/edgar/data/1763415/000199937123000735/bitwise-s1a_120423.htm.

⁴⁰ See Bitcoin ETP Approval Order.

proposed positions limits are more than sufficient to protect investors and the market.

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 and ADV.

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply those same program procedures to options on the Bitcoin Funds that it applies to the Exchange's other options products.⁴¹ 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 information from its affiliated market, the Exchange would be able to obtain information regarding trading in

⁴¹ The surveillance program includes surveillance patterns for price and volume movements as well as patterns for potential manipulation (e.g., spoofing and marking the close).

shares of the Bitcoin Funds from their primary listing market, NYSE Arca, 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.⁴²

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.⁴³ 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

⁴² 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.

⁴³ See Bitcoin ETP Approval Order.

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].”⁴⁴ In light of surveillance measures related to both options and futures as well as the underlying Bitcoin Funds,⁴⁵ 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.

The Exchange believes that offering options on Bitcoin Funds will benefit

⁴⁴ See Bitcoin ETP Approval Order, 89 FR at 3010-11.

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

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,⁴⁶ 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.

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

⁴⁶ 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.

requirements of Section 6(b) of the Act.⁴⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁸ 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)⁴⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposal to list and trade options on the 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 options on a competitively priced ETF based on spot Bitcoin will benefit investors by providing them with an additional, relatively lower-cost risk management tool, allowing them to manage, more easily, their positions and associated risks in their portfolios in connection with exposure to spot Bitcoin. Today, the Exchange lists options on other commodity

⁴⁷ 15 U.S.C. 78f(b).

⁴⁸ 15 U.S.C. 78f(b)(5).

⁴⁹ Id.

(including Bitcoin) ETFs structured as a trust, which essentially offer the same objectives and benefits to investors, and for which the Exchange has not identified any issues with the continued listing and trading of options on those ETFs.

The Exchange also believes the proposal to permit options on the Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system, because options on the Bitcoin Funds will comply with current Exchange Rules. Options on the Bitcoin Funds must satisfy the initial listing standards and continued listing standards currently in the Rules, applicable to options on all ETFs, including options on other commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Rule 19.3(i). Additionally, as demonstrated above, the Bitcoin Funds are characterized by a substantial number of shares that are widely held and actively traded. Further, Rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits (as proposed herein), and margin requirements, will govern the listing and trading of options on the Bitcoin Funds.

The proposed position and exercise limits for options on each of the Bitcoin Funds is 25,000 contracts. These position and exercise limits are the lowest position and exercise limits available in the options industry, are extremely conservative and more than appropriate given Bitcoin Fund's market capitalization, ADV, and high number of outstanding shares. The proposed position limit, and exercise limit, is consistent with the Act as it addresses concerns related to manipulation and protection of investors because, as demonstrated above, the position limit (and exercise limit) is extremely conservative and more than appropriate given the Bitcoin Funds are actively traded. In support of the

proposed position and exercise limits for options on the Bitcoin Funds of 25,000 contracts, the Exchange is citing the in depth analysis NYSE American did in its filing. As noted above, NYSE American considered: (1) the applicable Bitcoin Fund's market capitalization and ADV, and proposed position limit in relation to other securities; (2) the market capitalization of the entire Bitcoin market in terms of exercise risk and availability of deliverables; (3) the proposed position limit by comparing it to position limits for derivative products regulated by the CFTC; and (4) the supply of Bitcoin. Based on the Exchange's review of this analysis, the Exchange believes that setting position and exercise limits for options on each of the Bitcoin Funds of 25,000 contracts is more than appropriate. 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.⁵⁰

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

⁵⁰ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

of the Act. 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 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 (including Bitcoin-based).⁵¹ 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. The Commission recently approved a rule filing of another exchange to permit the listing and trading of options on

⁵¹ See Rule 19.3(i).

the Bitcoin Funds.⁵² The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

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

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

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 Act⁵³ and Rule 19b-4(f)(6)⁵⁴ thereunder. The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection

⁵² See NYSE American Approval.

⁵³ 15 U.S.C. 78s(b)(3)(A).

⁵⁴ 17 CFR 240.19b-4(f)(6).

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 the Bitcoin Funds, 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 (including Bitcoin),⁵⁵ which, as

⁵⁵ See Rule 19.3(i).

described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors and for which the Exchange has not identified any issues with the continued listing and trading of 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 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 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 (including Bitcoin).⁵⁶ 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. The Commission approved a rule filing of another exchange to permit the

⁵⁶ Id.

listing and trading of options on the Bitcoin Funds.⁵⁷ 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.

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

⁵⁷ See NYSE American Approval.

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 of another options exchange.⁵⁸ Waiver of the pre-filing and operative delays is, therefore, essential for competitive purposes, as it will ensure fair competition among the exchanges by allowing the Exchange to list options on the Bitcoin Funds at the same time as other options exchanges.

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-2024-47 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-2024-47. This file number should be included on the subject line if email is used. To help the Commission

⁵⁸ See NYSE American Approval.

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-2024-47 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.⁵⁹

Sherry R. Haywood,

Assistant Secretary.

⁵⁹ 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, Grayscale Bitcoin Trust, Grayscale Bitcoin Mini Trust, or Bitwise Bitcoin ETF; provided that all of the following conditions are met:

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