





1. Text of the Proposed Rule Change

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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

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

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

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

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

a. Purpose

The Exchange proposes to amend 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 Fidelity Ethereum Fund (the "Fidelity Fund" or "FETH"), the Grayscale Ethereum Trust ETF (the "Grayscale Fund" or "ETHE"), the Grayscale Ethereum Mini Trust ETF (the "Grayscale Mini Fund" or "ETH"), and the Bitwise Ethereum ETF (the "Bitwise Fund" or "ETHW" and, collectively, the "Ethereum Funds").<sup>5</sup> Options on each Ethereum Fund were approved for trading on other options exchanges.<sup>6</sup>

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<sup>5</sup> See Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEArca-2023-70; SR-NYSEArca-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; and SR-CboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) ("Ethereum ETP Approval Order"); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (SR-NYSEArca-2024-44; and SR-NYSEArca-2024- 53) (Order Granting Approval of Proposed Rule Changes To List and Trade Shares of the Grayscale Ethereum Mini Trust and ProShares Ethereum ETF).

<sup>6</sup> See Securities Exchange Act Release Nos. 102797 (April 9, 2025), 90 FR 15746 (Order Approving SR-Cboe-2024-036, as modified by Amendment No. 1) ("Cboe Approval Order"); Securities Exchange Act Release No. 102799 (April 9, 2025), (Order Approving SR-NYSEAMER-2024-45, as modified by Amendment No. 2), 90 FR 15764 ("NYSE American Approval").

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,<sup>7</sup> including interests in certain specific trusts that hold financial instruments, money market instruments, precious metals (which are deemed commodities), or Bitcoin (which is another crypto currency and deemed a commodity). In addition, Rule 19.3(i) requires that Fund Shares (1) meet the criteria and standards set forth in Rule 19.3(a) and (b),<sup>8</sup> 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 even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the

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<sup>7</sup> See Rule 19.3(i), which permits options trading on Fund Shares that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (“Funds”) and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and /or non-U.S. currency (“Commodity Pool ETFs”) or (3) represent interests in a trust or similar entity that holds a specified non- U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”), or (4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust, the iShares Silver Trust, abrdn Standard Physical Silver Trust, abrdn Standard Physical Gold Trust, abrdn Standard Physical Palladium Trust, abrdn Standard Physical Platinum Trust, Sprott Physical Gold Trust, Goldman Sachs Physical Gold ETF, Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, iShares Bitcoin Trust, Grayscale Bitcoin Trust, Grayscale Bitcoin Mini Trust, Bitwise Bitcoin ETF, or iShares Ethereum Trust.

<sup>8</sup> 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.

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 Exchange proposes to expand the list of Funds that are appropriate for options trading on the Exchange in Rule 19.3(i) to include the Ethereum Funds.<sup>9</sup>

The Ethereum Funds are Ethereum-backed commodity 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 Ethereum Fund is for its shares to reflect the performance of Ethereum (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Ethereum without the complexities of Ethereum delivery. As is the case for Fund Shares currently deemed appropriate for options trading, an Ethereum Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Ethereum and are designed to track Ethereum or the performance of the price of Ethereum and offer access to the Ethereum market.<sup>10</sup> The Ethereum Funds provide investors with cost-efficient alternatives that allow a level of participation in the Ethereum market through the securities market.

The Exchange's initial listing standards for Fund Shares on which options may be listed and traded on the Exchange will apply to the Ethereum 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

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<sup>9</sup> Specifically, the Exchange proposes to amend Rule 19.3(i) to include the name of each Ethereum Fund to enable options to be listed on the Ethereum Funds on the Exchange.

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

(as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, as amended (the “Act”)), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>11</sup> Additionally, 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),<sup>12</sup> 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 Ethereum Fund satisfies Rule 19.3(i)(1)(B), as each is subject to this creation and redemption process.

While not required by the Rules for purposes of options listings, the Exchange believes the Ethereum Funds satisfy the criteria and guidelines set forth in Rule 19.3(a) and (b). Pursuant to Rule 19.3(a), a security (which includes a Fund Share) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the

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<sup>11</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 19.3(b), subject to exceptions.

<sup>12</sup> 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.

Act, and be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>13</sup> Each of the Ethereum Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.<sup>14</sup> Further, the Exchange believes each Ethereum Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

#### Fidelity Fund

Based on data in the Cboe Approval Order, as of December 23, 2024, the Fidelity Fund had 41,700,000 shares outstanding, which is nearly six times more than the minimum number of shares of a corporate stock (i.e., 7,000,000 shares) that is generally required to list options on that stock pursuant to Rule 19.3(b)(1). The Cboe Approval Order noted that it believed that this demonstrates that the Fidelity Fund is characterized by a substantial number of outstanding shares. Further, the Cboe Approval Order noted that as of November 26, 2024, there were 38,170 beneficial holders of shares of the Fidelity Fund, which is significantly more than 2,000 beneficial holders (approximately 19 times more), which is the minimum number of holders generally required for corporate stock in order to list options on that stock pursuant to Rule 19.3(b)(2). Therefore, the Cboe Approval Order noted that it believed the shares of the Fidelity Fund were widely held and actively traded. Further, the Cboe Approval Order noted that as of December 23, 2024, the total trading volume (by shares) and the approximate average

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<sup>13</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 19.3(b), subject to exceptions.

<sup>14</sup> An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR § 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

daily volume (“ADV”) (in shares and notional) from July 23, 2024 (the date on which shares of the Fidelity Fund began trading) to December 23, 2024 for the Fidelity Fund was as follows:

<b>Trading Volume (Shares)</b>	<b>ADV (Shares)</b>	<b>ADV (Notional \$)</b>
115,589,047	1,070,269	33,864,193

The Cboe Approval Order noted that, as demonstrated above, despite the fact that the Fidelity Fund has been trading for approximately five months as of December 23, 2024, its total trading volume as of that date was substantially higher than 2,400,000 shares (more than 48 times that amount), which is the minimum 12-month volume generally required for a corporate stock in order to list options on that security as set forth in Exchange Rule 19.3(b). Additionally, as of December 23, 2024, the trading volume for the Fidelity Fund was in the top 5% of all ETFs that are currently trading. The Cboe Approval Order noted that this data demonstrates the Fidelity Fund is characterized as having shares that are actively traded.

Grayscale Fund, Grayscale Mini Fund, or Bitwise Fund ("NYSE Ethereum Funds")

With respect to the NYSE Ethereum Funds, the Exchange reviewed the data presented by NYSE American in its filing with respect to shares outstanding (and corresponding market capitalization), number of beneficial holders, and trading volume. As of November 29, 2024, the NYSE Ethereum Funds had the following number of shares outstanding (and corresponding market capitalization):

<b>NYSE Ethereum Fund</b>	<b>Shares Outstanding</b>	<b>Market Value (11/29/24)</b>
Grayscale Fund	177,838,500	\$5,425,852,635
Grayscale Mini Fund	45,220,787	\$1,547,003,157
Bitwise Fund	16,600,000	\$430,886,200

As shown above, each of the NYSE Ethereum Funds had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b).<sup>15</sup> The Exchange believes this demonstrates that each NYSE Ethereum Fund is characterized by a substantial number of outstanding shares. Further, the below table contains information regarding the number of beneficial holders of the NYSE Ethereum Funds as of December 31, 2024.

<b>NYSE Ethereum Fund</b>	<b>Beneficial Holders (as of 12/31/24)</b>
Grayscale Fund	112,320
Grayscale Mini Fund	17,396
Bitwise Fund	5,992

As this table shows, each NYSE Ethereum Fund has significantly more than 2,000 beneficial holders (approximately 56, 9, and 3 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b).<sup>16</sup> Therefore, the Exchange believes the shares of each NYSE Ethereum Fund are widely held.

The Exchange also believes that, based on trading volume since the NYSE Ethereum Funds began trading on July 23, 2024, shares of the NYSE Ethereum Funds are actively traded. In particular, the table below sets forth the total trading volume (by shares and notional) from the inception of trading through either November 29, 2024 (for

<sup>15</sup> The Exchange notes that on November 19, 2024, the Grayscale Mini Fund underwent a reverse stock split, reducing the number of shares outstanding -- and increasing the share price -- tenfold.

<sup>16</sup> The number of beneficial holders of the Grayscale Mini Fund may have been impacted by the 10:1 reverse stock split, as investors with fewer than 10 shares would have received a cash payout. See *id.*

the Grayscale Fund and the Grayscale Mini Fund) or December 31, 2024 (for the Bitwise Fund). In addition, the below table illustrates the ADV over the 30-day period of either October 29, 2024 - through November 29, 2024 (for the Grayscale Fund and the Grayscale Mini Fund) or November 29, 2024 - through December 31, 2024 (for the Bitwise Fund).<sup>17</sup>

<b>NYSE Ethereum Fund</b>	<b>Trading Volume (Shares)</b>	<b>Trading Volume (Notional \$)</b>	<b>ADV (Shares)</b>
Grayscale Fund	427,312,540	\$10,289,781,199	4,237,811
Grayscale Mini Fund	172,400,020	\$4,614,428,230	3,065,796
Bitwise Fund	44,477,060	\$959,491,343	291,627

As demonstrated above, even though the NYSE Ethereum Funds have been trading for less than one year, the trading volume for each NYSE Ethereum Fund is substantially higher than 2,400,000 shares (roughly 178, 72, and 16 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 19.3(b). The Exchange believes this data demonstrates each NYSE Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded.

Options on the Ethereum 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

<sup>17</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>.

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)(1)(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)(1)(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 Ethereum Fund will be physically settled contracts with American-style exercise.<sup>18</sup> Consistent with current Rule 19.5, which governs the opening of options series on a specific underlying security (including Fund Shares), the Exchange

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<sup>18</sup> 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).

will open at least one expiration month for options on Ethereum Funds<sup>19</sup> at the commencement of trading on the Exchange and may also list series of options on any Ethereum Fund for trading on a weekly,<sup>20</sup> monthly,<sup>21</sup> or quarterly<sup>22</sup> basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from 12 to 39 months from the time they are listed.<sup>23</sup>

Pursuant to Rule 19.5, Interpretation and Policy .01, which governs strike prices of series of options on Fund Shares, the interval of strike prices for series of options on the Trust will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.<sup>24</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>25</sup> the \$0.50 Strike Program,<sup>26</sup> the

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<sup>19</sup> See Rule 19.5(b) and (e). 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.

<sup>20</sup> See Rule 19.5, Interpretation and Policy .05.

<sup>21</sup> See Rule 19.5, Interpretation and Policy .08.

<sup>22</sup> See Rule 19.5, Interpretation and Policy .04.

<sup>23</sup> See Rule 19.7.

<sup>24</sup> The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, 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.

<sup>25</sup> See Rule 19.5, Interpretations and Policies .01 and .02.

<sup>26</sup> See Rule 19.5, Interpretation and Policy .06.

\$2.50 Strike Price Program,<sup>27</sup> and the \$5 Strike Program.<sup>28</sup> Pursuant to Rule 21.5, where the price of a series of a Trust option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.<sup>29</sup> Any and all new series of Ethereum 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.

The Ethereum 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 Ethereum 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 and Bitcoin-backed commodity Fund Shares already deemed appropriate for options trading on the Exchange pursuant to current Rule 19.3(i).

Position and exercise limits for options on ETFs, including options on the Ethereum Funds, are determined pursuant to Exchange Rules 18.7 and 18.9, respectively. Position and exercise limits for ETF options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the

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<sup>27</sup> See Rule 19.5, Interpretation and Policy .03.

<sup>28</sup> See Rule 19.5(d)(5).

<sup>29</sup> If options on an Ethereum 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).

largest in capitalization and the most frequently traded ETFs have an option position and exercise limits of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization ETFs have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.<sup>30</sup>

Position limits are designed to limit the number of options contracts traded on the Exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control. The purpose of position limits, which are set forth in Exchange Rule 18.7, is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. As such, position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that investors may use for legitimate economic purposes. To achieve this balance, the Exchange proposes to set the position and exercise limits for the options on the Ethereum Funds at 25,000 contracts. Capping the position limit at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of

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<sup>30</sup> See Exchange Rule 18.7. For an option to be eligible for the 50,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 20,000,000 shares, or most recent six-month trading volume of at least 15,000,000 shares and at least 40,000,000 shares currently outstanding. For an option to be eligible for the 75,000-contract limit, the underlying security must have most recent six-month trading volume of at least 40,000,000 shares, or most recent six-month trading volume of at least 30,000,000 shares and at least 120,000,000 shares currently outstanding. For an option to be eligible for the 200,000-contract limit, the underlying security must have most recent six-month trading volume of at least 80,000,000 shares, or most recent six-month trading volume of at least 60,000,000 shares and at least 240,000,000 shares currently outstanding. For an option to be eligible for the 250,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 100,000,000 shares, or most recent six-month trading volume of at least 75,000,000 shares and at least 300,000,000 shares currently outstanding. The 25,000-contract limit applies to options on underlying securities that do not qualify for a higher contract limit. See Exchange Rule 18.7. In addition, Interpretation and Policy .01 to Exchange Rule 18.7 establishes higher position limits for options on certain ETFs.

investors as this number is conservative for the Ethereum Funds and therefore appropriate given their liquidity. While the Exchange believes that the proposed 25,000-contract position limit is conservative for options on the Ethereum Funds, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.<sup>31</sup>

#### Fidelity Fund

As provided in the Cboe Approval Order, the proposed position and exercise limits were determined considering, among other things, the ADV (since trading of the Fidelity Fund began on July 23, 2024) and outstanding shares of the Fidelity Fund (which as discussed above demonstrate that the Fidelity Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of December 23, 2024):

<b>ADV (shares)</b>	<b>Outstanding Shares</b>	<b>Market Capitalization (\$)</b>
1,070,269	41,700,000	1,433,229,000

As provided in the Cboe Approval Order, the number of outstanding shares of the Fidelity Fund were compared to those of other ETFs. The approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of December 31, 2024) was approximately 102,703 contracts, which is significantly higher (approximately 4 times) than the proposed position and exercise limit of 25,000 contracts for Fidelity

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<sup>31</sup> The Exchange may file a subsequent rule change to amend the position and exercise limit for options on any or all the Ethereum Funds based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position limit would allow institutional investors to utilize options on the Ethereum Funds for prudent risk management purposes.

Fund options.<sup>32</sup> As discussed above, shares of the Fidelity Fund are actively held and widely traded: (1) the Fidelity Fund (as of December 23, 2024) had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b)(1); (2) the Fidelity Fund (as of November 26, 2024) had significantly more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b)(2); and (3) the Fidelity Fund had a trading volume in the approximately five-month time period since it began trading substantially higher than 2,400,000 shares, which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 19.3(b)(4).

As provided in the Cboe Approval Order, if a market participant held the maximum number of positions possible pursuant to the proposed position and exercise limits, the equivalent shares represented by the proposed position/exercise limit would represent approximately 6.0% of the 41,700,000 current outstanding shares of the Fidelity Fund. Therefore, if a market participant held the maximum permissible options positions in Fidelity 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 Fidelity Fund.

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<sup>32</sup> The position limits for those ETF options for which the underlying ETFs had similar outstanding shares were all 50,000 or above, and nearly half of them had position limits of 200,000 or 250,000 contracts.

Rule 18.7(d) provides two methods of qualifying for a position limit tier above 25,000 option contracts. The first method is based on six-month trading volume in the underlying security, and the second method is based on slightly lower six-month trading volume and number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on trading volume and number of shares outstanding would be required to have the minimum number of outstanding shares as shown in middle column of the table below. The table below, which provides the equivalent shares of the position limits applicable to equity options, including ETFs, further represents the percentages of the minimum number of outstanding shares that an underlying stock or ETF must have to qualify for that position limit (under the second method described above).

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

The equivalent shares represented by the proposed position and exercise limits for the Fidelity Fund as a percentage of outstanding shares of the Fidelity Fund is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000, which is the position limit the Exchange is proposing for Fidelity Fund options.<sup>33</sup>

<sup>33</sup> As these percentages are based on the minimum number of outstanding shares an underlying security must have to qualify for the applicable position limit, these are the highest possible percentages that would apply to any option subject to that position and exercise limit. 6,300,000 is the minimum number of outstanding shares an underlying security must have for the Exchange to

Further, the proposed position and exercise limits for Fidelity Fund options are equal to the lowest position and exercise limits available in the options industry for equity options, are extremely conservative and more than appropriate given the market capitalization, average daily volume, and high number of outstanding shares of the Fidelity Fund.

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

#### NYSE Ethereum Funds

As noted above, the Exchange believes that the trading volume in each NYSE Ethereum Fund is sufficient to qualify each Fund for position limits in excess of the

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

proposed 25,000-contract limit,<sup>34</sup> as shown in the table below, provided in the NYSE American Approval.<sup>35</sup>

<b>NYSE Ethereum Fund</b>	<b>Total Volume</b>
ETHE	427,312,540 (7/23/24 - 11/29/24)
ETH	172,400,020 (7/23/24 - 11/29/24)
ETHW	44,477,060 (7/23/24 - 12/31/24)

Specifically, the trading volume referenced in the table above in ETHE and ETH well exceeds the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits.<sup>36</sup> By comparison, other options symbols with less trading volume for six months than ETHE and ETH are eligible for position and exercise limits of at least 250,000.<sup>37</sup> Further, the trading volume referenced in the table above for ETHW well exceeded the requisite minimum of 40,000,000 shares necessary to qualify for the 75,000- contract position (and exercise) limit, which is three times the proposed 25,000- contract limit.<sup>38</sup> Finally, the proposed 25,000-contract position limit is the default for options that do not otherwise qualify for a higher limit and is therefore an

<sup>34</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>.

<sup>35</sup> See *supra* note 6.

<sup>36</sup> Exchange Rule 18.7(d)(5) states that 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.

<sup>37</sup> See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/Series-Search> (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

<sup>38</sup> Exchange Rule 18.7(d)(3) states that to be eligible for the 75,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least forty (40) million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least thirty (30) million shares and the underlying security must have at least 120 million shares currently outstanding

adequate limit for each NYSE Ethereum Fund.<sup>39</sup> With respect to the outstanding shares of each NYSE Ethereum Fund, if a market participant held the maximum number of contracts possible pursuant to the proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position/exercise limit (2,500,000 shares) would represent the following approximate percentage of current outstanding shares according to the data presented in the NYSE American Approval:<sup>40</sup>

<b>NYSE Ethereum Fund</b>	<b>Proposed Position/Exercise Limits in Equivalent Shares</b>	<b>Outstanding Shares</b>	<b>Percentage of Outstanding Shares</b>
ETHE	2,500,000	177,838,500	1.4%
ETH	2,500,000	45,220,787	5.5%
ETHW	2,500,000	16,600,000	15.1%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the NYSE Ethereum 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 NYSE Ethereum 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 NYSE Ethereum Fund (if that market participant exercised all its options). Based on the number of shares outstanding for each NYSE Ethereum Fund as of November 29, 2024, as presented in the NYSE American Approval,<sup>41</sup> the table below sets forth the approximate number of market participants that

<sup>39</sup> Exchange Rule 18.7(d)(1) states that a 25,000 contract limit applies to those options having an underlying security that does not meet the requirements for a higher option contract limit.

<sup>40</sup> See supra note 6.

<sup>41</sup> See supra note 6.

could hold the maximum of 25,000 same side positions in each NYSE Ethereum Fund that would equate to the number of shares outstanding of that NYSE Ethereum Fund:

<b>NYSE Ethereum Fund</b>	<b>Outstanding Shares</b>	<b>Number of Market Participants with 25,000 Same Side Positions</b>
ETHE	177,838,500	71
ETH	45,220,787	18
ETHW	16,600,000	7

This means if 71 market participants had 25,000 same side positions in options on ETHE, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 18 market participants had 25,000 same side positions in options on the ETH, 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 7 market participants had 25,000 same side positions in options on ETHW, 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 for any of these scenarios; however, even if such event did occur, the Exchange would not expect any of the NYSE Ethereum Funds to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

Further, given that the issuer of each NYSE Ethereum Fund may create and redeem shares that represent an interest in ether, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the ether market. As of

November 29, 2024, based on data presented in the NYSE American Approval,<sup>42</sup> the global supply of ether was approximately 120.44 million, and the price of one ether was approximately \$3,593.49,<sup>43</sup> which equates to a market capitalization of approximately \$439.78 billion. Consider the proposed position and exercise limit of 25,000 option contracts for each NYSE Ethereum 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 ETHE, ETH, and ETHW, as applicable (if that market participant exercised all its options). The following table from the NYSE American Approval<sup>44</sup> shows the share price of each NYSE Ethereum Fund on November 29, 2024, the value of 2,500,000 shares of the NYSE Ethereum Fund at that price, and the approximate percentage of that value of the size of the ether market:

<b>NYSE Ethereum Fund</b>	<b>Nov. 29th Share Price (\$)</b>	<b>Value of 2,500,000 Shares</b>	<b>Percentage of Ether Market</b>
ETHE	\$30.15	\$75,250,000	0.017%
ETH	\$33.84	\$84,600,000	0.020%
ETHW	\$25.80	\$64,500,000	0.015%

Therefore, if a market participant with the maximum 25,000 same side contracts in options on any of ETHE, ETH, ETHW exercised all positions at one time, such an event would have no practical impact on the ether market. The Exchange also reviewed data presented in the NYSE American Approval<sup>45</sup> regarding the market capitalization of

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<sup>42</sup> See supra note 6.

<sup>43</sup> See <https://finance.yahoo.com/quote/ETH-USD/history>.

<sup>44</sup> See supra note 6.

<sup>45</sup> See supra note 6.

each of the NYSE Ethereum Funds relative to the market capitalization of the entire ether market, as of November 29, 2024:

	<b>Ether/Shares Outstanding</b>	<b>Market Capitalization (\$) (11/29/2024)</b>	<b>% of Total Ether Market</b>
<b>Total Ethereum Market</b>	120,440,000	\$432,799,935,600	100%
ETHE	177,838,500	\$5,425,852,635	1.25%
ETH	45,220,787	\$1,547,003,157	0.36%
ETHW	16,600,000	\$430,886,200	0.10%

As this data gathered by NYSE American demonstrates, the NYSE Ethereum Funds collectively represent approximately 1.71% of the global supply of ether (120,440,000).<sup>46</sup> Based on the \$30.15 price of an ETHE share on November 29, 2024, a market participant could have redeemed one ether for approximately 119 ETHE shares. Another 14,354,890,070 ETHE shares could be created before the supply of ether was exhausted. As a result, 5,742 market participants would have to simultaneously exercise 25,000 same side positions in ETHE options to receive shares of the ETHE holding the entire global supply of ether. Similarly, based on the \$33.84 price of an ETH share on November 29, 2024, a market participant could have redeemed one ether for approximately 106 ETH shares. Another 12,789,596,206 ETH shares could be created before the supply of ether was exhausted. As a result, 5,116 market participants would have to simultaneously exercise 25,000 same side positions in ETH options to receive shares of ETH holding the entire global supply of ether. Similarly, based on the \$25.80 price of an ETHW share on November 29, 2024, a market participant could have redeemed one ether for approximately 139 ETHW shares. Another 16,775,191,302

<sup>46</sup> See <https://finance.yahoo.com/quote/ETH-USD/history>.

ETHW shares could be created before the supply of ether was exhausted. As a result, 6,710 market participants would have to simultaneously exercise 25,000 same side positions in ETHW options to receive shares of ETHW holding the entire global supply of ether. Unlike the NYSE Ethereum 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 NYSE Ethereum Funds may create, redeem, or split shares in response to demand. The supply of ether is larger than the available supply of most securities.<sup>47</sup> Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the NYSE Ethereum 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 ether.

The Exchange also believes the proposed limits are appropriate given position limits for ether futures. The NYSE American Approval presented data<sup>48</sup> that compared the proposed position limits to the position limit of Chicago Mercantile Exchange (“CME”) Ethereum futures. CME imposes a position limit of 8,000 futures (for the initial spot month) on its ether futures contract.<sup>49</sup> On November 29, 2024, CME Jan 25 ether futures settled at \$3,629.69. A position of 8,000 CME Ethereum futures, therefore, would have a notional value of \$1,451,876,000. The following table, as presented in the NYSE

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<sup>47</sup> The market capitalization of ether would rank in the top 20 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

<sup>48</sup> See *supra* note 6.

<sup>49</sup> See CME Rulebook Chapter 349 (description of CME ether futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME ether futures contract is valued at fifty ethers as defined by the CME CF Ether Reference Rate (“ERR”). See CME Rulebook Chapter 349.

American Approval<sup>50</sup> shows the share price of each NYSE Ethereum Fund on November 29, 2024, and the approximate number of option contracts that equates to that notional value:

<b>NYSE Ether Fund</b>	<b>Nov. 29th Share Price (\$)</b>	<b>Number of Option Contracts</b>
ETHE	\$30.15	481,551
ETH	\$33.84	429,041
ETHW	\$25.80	562,743

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

The Exchange notes, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).<sup>51</sup> Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.<sup>52</sup> If a position exceeds position limits because of an option

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<sup>50</sup> See supra note 6.

<sup>51</sup> See supra note 6.

<sup>52</sup> See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

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 ether, the Exchange believes that that the proposed same side position limits are more than appropriate for the NYSE Ethereum Fund options.

Consistent with its position regarding the irrelevance of bitcoin supply to position limits for options on bitcoin ETPs, the Exchange likewise believes the available supply of ether is not relevant to the determination of position and exercise limits for Ethereum Fund options.<sup>53</sup> 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.<sup>54</sup> “Since the inception of

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<sup>53</sup> See BTC Approval Order, 89 FR at 105148, n. 33 (asserting that, outside of the bitcoin context, the Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits). See, e.g., Securities Exchange Act Release No. 57894 May 30, 2008, 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the “listing and trading of Gold Trust Options will be subject to the exchanges’ rules pertaining to position and exercise limits and margin”). The Exchange notes the position limits in Exchange Rule 18.7 are the same as when the Commission approved this filing. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF (“GLD”) and options on iShares Silver Trust (“SLV”) are 250,000 contracts, or 10 times that proposed position and exercise limit for the Ethereum Fund options.

<sup>54</sup> 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

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.”<sup>55</sup> Position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”<sup>56</sup>

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each NYSE Ethereum Fund, each of which described the supply of ether as being unlimited.<sup>57</sup> Each Registration Statement permits an unlimited number of shares of the applicable NYSE Ethereum Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each NYSE Ethereum Fund, which approval did not comment on the sufficient supply of ether or address whether there was a risk that permitting an unlimited number of shares for a

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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.

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

<sup>56</sup> Id.

<sup>57</sup> See, e.g., ETHE Form S-1 Registration Statement, at p. 77, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524106957/d756153ds1.htm>; ETH Amendment No. 5 to Form S-1 Registration Statement, at p. 79, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524181081/d756153ds1a.htm>; and ETHW Form S-1 Registration Statement 1, at p. 17, [https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a\\_061824.htm](https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a_061824.htm) (“Ether Funds Reg. Stmts.”).

NYSE Ethereum Fund would impact the supply of ether.<sup>58</sup> Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of ether was sufficient to permit the creation of unlimited NYSE Ethereum 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 ether supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the foregoing, the Exchange believes the proposal to list options on the NYSE Ethereum Funds with position and exercise limits of 25,000 on the same side, the lowest position limit available in the options industry, is conservative and appropriate given the market capitalization, ADV, and high number of outstanding shares for each of the NYSE Ethereum Funds. The proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying NYSE Ethereum Funds as well as the ether market.

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 Ethereum Funds that it applies to the Exchange's other options products, including options on Fund Shares.<sup>59</sup> The Exchange's market surveillance staff would have access to

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<sup>58</sup> See Ethereum ETP Approval Order.

<sup>59</sup> 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).

the surveillances conducted by the Exchange's affiliated equities exchange, MEMX, LLC, with respect to the Ethereum Funds and would review activity in the underlying Ethereum Funds when conducting surveillances for market abuse or manipulation in the options on the Ethereum 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 Ethereum Funds from their primary listing markets and from other markets that trade shares of the Ethereum 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.<sup>60</sup>

The underlying shares of spot Ethereum ETPs, including the Ethereum 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

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<sup>60</sup> 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.

shares of spot Ethereum-based ETPs,<sup>61</sup> “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the [CME] via their common membership in ISG. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME Ether futures market.”<sup>62</sup> The Exchange states that, given the consistently high correlation between the CME Ethereum futures market and the spot Ethereum market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Ethereum ETPs].”<sup>63</sup>

In light of surveillance measures related to both options and futures as well as the underlying Ethereum Funds,<sup>64</sup> the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Ethereum Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ethereum Funds.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association (“CTA”) high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on the Ethereum

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<sup>61</sup> See Ethereum ETP Approval Order.

<sup>62</sup> See Ethereum ETP Approval Order, at 46938 (footnotes excluded).

<sup>63</sup> See Ethereum ETP Approval Order, at 46941 (footnote excluded).

<sup>64</sup> See Ethereum ETP Approval Order.

Funds will be available via Options Price Reporting Authority (“OPRA”) and major market data vendors. 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 the Ethereum Funds up to the number of expirations currently permissible under the Rules.

The Exchange believes that offering options on Ethereum Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Ethereum and hedging vehicle to meet their investment needs in connection with Ethereum-related products and positions. The Exchange expects investors will transact in options on the Ethereum Funds in the unregulated over-the-counter (“OTC”) options market,<sup>65</sup> 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 Ethereum 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, precious metal commodities, or Bitcoin on which the Exchange may already list and trade options are trusts structured in substantially the same manner as the

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<sup>65</sup> 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.

Ethereum 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 and Bitcoin) that it currently lists and trades on the Exchange.

Finally, the Exchange notes that applicable Exchange rules will require that customers receive appropriate disclosure before trading options in Ethereum Funds.<sup>66</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>67</sup>

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>68</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>69</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, 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

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<sup>66</sup> See Rules 26.2(b) and (e).

<sup>67</sup> See Rule 26.4.

<sup>68</sup> 15 U.S.C. 78f(b).

<sup>69</sup> 15 U.S.C. 78f(b)(5).

proposed rule change is consistent with the Section 6(b)(5)<sup>70</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange believes that offering options on a competitively priced ETF based on spot Ethereum 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 Ethereum. Today, the Exchange lists options on other commodity (including Ethereum) ETFs structured as trusts, 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 Ethereum Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system, because options on the Ethereum Funds will comply with current Exchange Rules as discussed herein. Options on the Ethereum Funds must satisfy the initial listing standards and continued listing standards currently in the Rules, applicable

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<sup>70</sup> Id.

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 Ethereum 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 Ethereum Funds.

The proposed position and exercise limits for options on each of the Ethereum 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 each Ethereum Fund's market capitalization, ADV, number of beneficial holders, and high number of outstanding shares as described herein. The proposed position and exercise limits are consistent with the Act as they address concerns related to manipulation and protection of investors because, as demonstrated above, the position and exercise limits are extremely conservative and more than appropriate given the Ethereum Funds are actively traded.

The Exchange represents that it has the necessary systems capacity to support the new Ethereum 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 Ethereum Fund options. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious

metal-commodity backed ETP options as well as the proposed options on the Ethereum Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on the Ethereum Funds in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange's market surveillance staff will have access to surveillances that it and its affiliated equities market conduct, as well as those which FINRA conducts on its behalf, with respect to the Ethereum Funds and, as appropriate, would review activity in the underlying Ethereum Funds when conducting surveillances for market abuse or manipulation in the options on the Ethereum Funds. Additionally, the Exchange is a member of the ISG under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition, the Exchange has a Regulatory Services Agreement with the FINRA and as noted herein, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ethereum Funds.

The underlying shares of spot Ethereum ETPs, including the Ethereum 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 Ethereum-based ETPs, "[e]ach Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of

the CME ether futures market.”<sup>71</sup> The Exchange states that, given the consistently high correlation between the CME Ethereum futures market and the spot Ethereum market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Ether ETPs].”<sup>72</sup> In light of the foregoing, 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 Ethereum Funds.

Finally, the Exchange notes that this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because applicable Exchange rules will require that customers receive appropriate disclosure before trading options in the Ethereum Funds<sup>73</sup> and will require that brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>74</sup>

#### 4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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

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<sup>71</sup> See Ethereum ETP Approval Order, 89 FR at 46938

<sup>72</sup> See Ethereum ETP Approval Order, 89 FR at 46941.

<sup>73</sup> See Rules 26.2(b) and (e).

<sup>74</sup> See Rule 26.4.

the purposes of the Act as Ethereum 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 the Ethereum Fund 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).<sup>75</sup> Further, the Ethereum 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 the Ethereum 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 the Ethereum Funds 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 Exchange notes that listing and trading Ethereum 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.

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<sup>75</sup> See Rule 19.3(i).

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 Ethereum 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 Ethereum prices and Ethereum-related products and positions on a listed options exchange.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>76</sup> and Rule 19b-4(f)(6)<sup>77</sup> thereunder. The Exchange has designated this proposal as one that effects a change that rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

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<sup>76</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>77</sup> 17 CFR 240.19b-4(f)(6).

competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change to permit the Exchange to list and trade options on the Ethereum Funds would not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition because the proposal is substantively similar to proposals by Cboe and NYSE American that were recently approved by the Commission.<sup>78</sup> The Cboe Approval Order and NYSE American Approval provide that Cboe and NYSE American may list and trade options on the same Ethereum Funds as proposed by the Exchange herein on substantively similar terms and conditions (i.e., 25,000 position and exercise limits). Accordingly, the Exchange believes this proposal does not raise any new, unique or novel substantive issues from those raised by Cboe and NYSE American to list and trade options on the Ethereum Funds, which proposals were approved by the Commission.

Therefore, the Exchange believes that the proposed rule change is well-suited for, and meets the standards applicable to, the Commission's treatment of non-controversial proposals under Section 19(b)(3)(A) of the Act<sup>79</sup> and Rule 19b-4(f)(6) thereunder.<sup>80</sup> Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6)

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<sup>78</sup> See supra note 6.

<sup>79</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>80</sup> 17 CFR 240.19b-4(f)(6).

under the Act<sup>81</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>82</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange respectfully requests that the Commission waive the five business day notice of the Exchange's intent to file this proposed rule change, as well as the 30-day operative delay, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder. Waiver of these periods will allow the Exchange to immediately implement the proposed rule change upon its filing with the Commission, allowing the Exchange to immediately provide investors an additional source of liquidity for the Ethereum Funds. The Exchange believes that waiver of both the operative delay and the requirement to provide five-days' written notice of the proposed rule change would be consistent with the protection of investors and the public interest because the Exchange believes that most, if not all, other competing exchanges filed to list (or plan to file to list) options on the Ethereum Funds subject to this proposal, effective immediately. The requested waivers would, therefore, allow the Exchange to immediately compete with other options exchanges for options order flow based on the Trust subject to this filing. Investors and the public interest will benefit by the trading of these option contracts on additional exchanges, via increased price competition. Accordingly, the proposed waivers do not give rise to any novel investor protection concerns, as the Exchange's listing rules for these products are substantially similar to the

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<sup>81</sup> Id.

<sup>82</sup> Id.

listing exchanges' rules for such products, which have been subject to Commission review and approval.<sup>83</sup>

The Exchange respectfully requests that the Commission waive the 30-day operative delay. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to list options on the Ethereum Funds at or near the same time as NYSE American, Cboe and other options exchanges.

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

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

The proposed rule change is based on the Cboe Approval Order and the NYSE American Approval.<sup>84</sup>

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

Not applicable.

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

Not applicable.

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<sup>83</sup> See supra note 6.

<sup>84</sup> See supra note 6.

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-2025-15]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Allow the Exchange to List and Trade Options on the Fidelity Ethereum Fund, the Grayscale Ethereum Trust ETF, the Grayscale Ethereum Mini Trust ETF, and the Bitwise Ethereum ETF

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

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

The Exchange is filing with the Commission a proposed rule change to amend Rule 19.3, Criteria for Underlying Securities to allow the Exchange to list and trade options on the Fidelity Ethereum Fund, the Grayscale Ethereum Trust ETF, the Grayscale Ethereum Mini Trust ETF, and the Bitwise Ethereum ETF as Fund Shares deemed

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

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

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

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

appropriate for options trading on the Exchange. The text of the proposed rule change is provided in Exhibit 5 and is available on the Exchange's website at

<https://info.memxtrading.com/regulation/rules-and-filings/>.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified 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 Fidelity Ethereum Fund (the "Fidelity Fund" or "FETH"), the Grayscale Ethereum Trust ETF (the "Grayscale Fund" or "ETHE"), the Grayscale Ethereum Mini Trust ETF (the "Grayscale Mini Fund" or "ETH"), and the Bitwise Ethereum ETF (the "Bitwise Fund" or "ETHW" and, collectively, the "Ethereum Funds").<sup>5</sup> Options on each Ethereum Fund were

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<sup>5</sup> See Securities Exchange Act Release Nos. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NYSEArca-2023-70; SR-NYSEArca-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; and SR-

approved for trading on other options exchanges.<sup>6</sup>

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,<sup>7</sup> including interests in certain specific trusts that hold financial instruments, money market instruments, precious metals (which are deemed commodities), or Bitcoin (which is another crypto currency and deemed a commodity). In

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CboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (“Ethereum ETP Approval Order”); and 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (SR-NYSEArca-2024-44; and SR-NYSEArca-2024- 53) (Order Granting Approval of Proposed Rule Changes To List and Trade Shares of the Grayscale Ethereum Mini Trust and ProShares Ethereum ETF).

<sup>6</sup> See Securities Exchange Act Release Nos. 102797 (April 9, 2025), 90 FR 15746 (Order Approving SR-Cboe-2024-036, as modified by Amendment No. 1) (“Cboe Approval Order”); Securities Exchange Act Release No. 102799 (April 9, 2025), (Order Approving SR-NYSEAMER-2024-45, as modified by Amendment No. 2), 90 FR 15764 (“NYSE American Approval”).

<sup>7</sup> See Rule 19.3(i), which permits options trading on Fund Shares that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (“Funds”) and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and /or non-U.S. currency (“Commodity Pool ETFs”) or (3) represent interests in a trust or similar entity that holds a specified non- U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”), or (4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust, the iShares Silver Trust, abrdn Standard Physical Silver Trust, abrdn Standard Physical Gold Trust, abrdn Standard Physical Palladium Trust, abrdn Standard Physical Platinum Trust, Sprott Physical Gold Trust, Goldman Sachs Physical Gold ETF, Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, iShares Bitcoin Trust, Grayscale Bitcoin Trust, Grayscale Bitcoin Mini Trust, Bitwise Bitcoin ETF, or iShares Ethereum Trust.

addition, Rule 19.3(i) requires that Fund Shares (1) meet the criteria and standards set forth in Rule 19.3(a) and (b),<sup>8</sup> 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 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 Exchange proposes to expand the list of Funds that are appropriate for options trading on the Exchange in Rule 19.3(i) to include the Ethereum Funds.<sup>9</sup>

The Ethereum Funds are Ethereum-backed commodity 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 Ethereum Fund is for its shares to reflect the performance of Ethereum (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to Ethereum without the complexities of Ethereum delivery. As is the case for Fund Shares currently deemed appropriate for options trading, an Ethereum Fund's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Ethereum and are designed to track Ethereum or the performance of the price of Ethereum and offer access to the Ethereum

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<sup>8</sup> 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.

<sup>9</sup> Specifically, the Exchange proposes to amend Rule 19.3(i) to include the name of each Ethereum Fund to enable options to be listed on the Ethereum Funds on the Exchange.

market.<sup>10</sup> The Ethereum Funds provide investors with cost-efficient alternatives that allow a level of participation in the Ethereum market through the securities market.

The Exchange's initial listing standards for Fund Shares on which options may be listed and traded on the Exchange will apply to the Ethereum 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 Securities Exchange Act of 1934, as amended (the "Act")), and be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>11</sup> Additionally, 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),<sup>12</sup> 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 Ethereum Fund satisfies Rule 19.3(i)(1)(B), as each is subject to this

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

<sup>11</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 19.3(b), subject to exceptions.

<sup>12</sup> 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.

creation and redemption process.

While not required by the Rules for purposes of options listings, the Exchange believes the Ethereum Funds satisfy the criteria and guidelines set forth in Rule 19.3(a) and (b). Pursuant to Rule 19.3(a), a security (which includes a Fund Share) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act, and be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>13</sup> Each of the Ethereum Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.<sup>14</sup> Further, the Exchange believes each Ethereum Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

#### Fidelity Fund

Based on data in the Cboe Approval Order, as of December 23, 2024, the Fidelity Fund had 41,700,000 shares outstanding, which is nearly six times more than the minimum number of shares of a corporate stock (i.e., 7,000,000 shares) that is generally required to list options on that stock pursuant to Rule 19.3(b)(1). The Cboe Approval Order noted that it believed that this demonstrates that the Fidelity Fund is characterized by a substantial number of outstanding shares. Further, the Cboe Approval Order noted that as of November 26, 2024, there were 38,170 beneficial holders of shares of the

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<sup>13</sup> The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 19.3(b), subject to exceptions.

<sup>14</sup> An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR § 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

Fidelity Fund, which is significantly more than 2,000 beneficial holders (approximately 19 times more), which is the minimum number of holders generally required for corporate stock in order to list options on that stock pursuant to Rule 19.3(b)(2).

Therefore, the Cboe Approval Order noted that it believed the shares of the Fidelity Fund were widely held and actively traded. Further, the Cboe Approval Order noted that as of December 23, 2024, the total trading volume (by shares) and the approximate average daily volume (“ADV”) (in shares and notional) from July 23, 2024 (the date on which shares of the Fidelity Fund began trading) to December 23, 2024 for the Fidelity Fund was as follows:

<b>Trading Volume (Shares)</b>	<b>ADV (Shares)</b>	<b>ADV (Notional \$)</b>
115,589,047	1,070,269	33,864,193

The Cboe Approval Order noted that, as demonstrated above, despite the fact that the Fidelity Fund has been trading for approximately five months as of December 23, 2024, its total trading volume as of that date was substantially higher than 2,400,000 shares (more than 48 times that amount), which is the minimum 12-month volume generally required for a corporate stock in order to list options on that security as set forth in Exchange Rule 19.3(b). Additionally, as of December 23, 2024, the trading volume for the Fidelity Fund was in the top 5% of all ETFs that are currently trading. The Cboe Approval Order noted that this data demonstrates the Fidelity Fund is characterized as having shares that are actively traded.

Grayscale Fund, Grayscale Mini Fund, or Bitwise Fund ("NYSE Ethereum Funds")

With respect to the NYSE Ethereum Funds, the Exchange reviewed the data

presented by NYSE American in its filing with respect to shares outstanding (and corresponding market capitalization), number of beneficial holders, and trading volume.

As of November 29, 2024, the NYSE Ethereum Funds had the following number of shares outstanding (and corresponding market capitalization):

<b>NYSE Ethereum Fund</b>	<b>Shares Outstanding</b>	<b>Market Value (11/29/24)</b>
Grayscale Fund	177,838,500	\$5,425,852,635
Grayscale Mini Fund	45,220,787	\$1,547,003,157
Bitwise Fund	16,600,000	\$430,886,200

As shown above, each of the NYSE Ethereum Funds had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b).<sup>15</sup> The Exchange believes this demonstrates that each NYSE Ethereum Fund is characterized by a substantial number of outstanding shares. Further, the below table contains information regarding the number of beneficial holders of the NYSE Ethereum Funds as of December 31, 2024.

<b>NYSE Ethereum Fund</b>	<b>Beneficial Holders (as of 12/31/24)</b>
Grayscale Fund	112,320
Grayscale Mini Fund	17,396
Bitwise Fund	5,992

As this table shows, each NYSE Ethereum Fund has significantly more than 2,000 beneficial holders (approximately 56, 9, and 3 times more, respectively), which is the minimum number of holders the Exchange generally requires for corporate stock in order

<sup>15</sup> The Exchange notes that on November 19, 2024, the Grayscale Mini Fund underwent a reverse stock split, reducing the number of shares outstanding -- and increasing the share price -- tenfold.

to list options on that stock pursuant to Rule 19.3(b).<sup>16</sup> Therefore, the Exchange believes the shares of each NYSE Ethereum Fund are widely held.

The Exchange also believes that, based on trading volume since the NYSE Ethereum Funds began trading on July 23, 2024, shares of the NYSE Ethereum Funds are actively traded. In particular, the table below sets forth the total trading volume (by shares and notional) from the inception of trading through either November 29, 2024 (for the Grayscale Fund and the Grayscale Mini Fund) or December 31, 2024 (for the Bitwise Fund). In addition, the below table illustrates the ADV over the 30-day period of either October 29, 2024 - through November 29, 2024 (for the Grayscale Fund and the Grayscale Mini Fund) or November 29, 2024 - through December 31, 2024 (for the Bitwise Fund).<sup>17</sup>

<b>NYSE Ethereum Fund</b>	<b>Trading Volume (Shares)</b>	<b>Trading Volume (Notional \$)</b>	<b>ADV (Shares)</b>
Grayscale Fund	427,312,540	\$10,289,781,199	4,237,811
Grayscale Mini Fund	172,400,020	\$4,614,428,230	3,065,796
Bitwise Fund	44,477,060	\$959,491,343	291,627

As demonstrated above, even though the NYSE Ethereum Funds have been trading for less than one year, the trading volume for each NYSE Ethereum Fund is substantially higher than 2,400,000 shares (roughly 178, 72, and 16 times that amount), which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 19.3(b). The Exchange believes this data demonstrates each NYSE Ethereum Fund is characterized by a substantial

<sup>16</sup> The number of beneficial holders of the Grayscale Mini Fund may have been impacted by the 10:1 reverse stock split, as investors with fewer than 10 shares would have received a cash payout. See id.

<sup>17</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>.

number of outstanding shares that are actively traded.

Options on the Ethereum 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)(1)(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)(1)(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 Ethereum Fund will be physically settled contracts with American-style exercise.<sup>18</sup> 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 Ethereum Funds<sup>19</sup> at the commencement of trading on the Exchange and may also list series of options on any Ethereum Fund for trading on a weekly,<sup>20</sup> monthly,<sup>21</sup> or quarterly<sup>22</sup> basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from 12 to 39 months from the time they are listed.<sup>23</sup>

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

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<sup>18</sup> 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).

<sup>19</sup> See Rule 19.5(b) and (c). 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.

<sup>20</sup> See Rule 19.5, Interpretation and Policy .05.

<sup>21</sup> See Rule 19.5, Interpretation and Policy .08.

<sup>22</sup> See Rule 19.5, Interpretation and Policy .04.

<sup>23</sup> See Rule 19.7.

where the strike price is over \$200.<sup>24</sup> Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,<sup>25</sup> the \$0.50 Strike Program,<sup>26</sup> the \$2.50 Strike Price Program,<sup>27</sup> and the \$5 Strike Program.<sup>28</sup> Pursuant to Rule 21.5, where the price of a series of a Trust option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.<sup>29</sup> Any and all new series of Ethereum 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.

The Ethereum 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 Ethereum 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 and Bitcoin-backed commodity Fund Shares already

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<sup>24</sup> The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, 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.

<sup>25</sup> See Rule 19.5, Interpretations and Policies .01 and .02.

<sup>26</sup> See Rule 19.5, Interpretation and Policy .06.

<sup>27</sup> See Rule 19.5, Interpretation and Policy .03.

<sup>28</sup> See Rule 19.5(d)(5).

<sup>29</sup> If options on an Ethereum 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).

deemed appropriate for options trading on the Exchange pursuant to current Rule 19.3(i).

Position and exercise limits for options on ETFs, including options on the Ethereum Funds, are determined pursuant to Exchange Rules 18.7 and 18.9, respectively. Position and exercise limits for ETF options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise limits of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization ETFs have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.<sup>30</sup>

Position limits are designed to limit the number of options contracts traded on the Exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control. The purpose of position limits, which are set forth in Exchange Rule 18.7, is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. As such, position limits must balance concerns regarding

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<sup>30</sup> See Exchange Rule 18.7. For an option to be eligible for the 50,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 20,000,000 shares, or most recent six-month trading volume of at least 15,000,000 shares and at least 40,000,000 shares currently outstanding. For an option to be eligible for the 75,000-contract limit, the underlying security must have most recent six-month trading volume of at least 40,000,000 shares, or most recent six-month trading volume of at least 30,000,000 shares and at least 120,000,000 shares currently outstanding. For an option to be eligible for the 200,000-contract limit, the underlying security must have most recent six-month trading volume of at least 80,000,000 shares, or most recent six-month trading volume of at least 60,000,000 shares and at least 240,000,000 shares currently outstanding. For an option to be eligible for the 250,000-contract limit, the security underlying the option must have most recent six-month trading volume of at least 100,000,000 shares, or most recent six-month trading volume of at least 75,000,000 shares and at least 300,000,000 shares currently outstanding. The 25,000-contract limit applies to options on underlying securities that do not qualify for a higher contract limit. See Exchange Rule 18.7. In addition, Interpretation and Policy .01 to Exchange Rule 18.7 establishes higher position limits for options on certain ETFs.

mitigating potential manipulation and the cost of inhibiting potential hedging activity that investors may use for legitimate economic purposes. To achieve this balance, the Exchange proposes to set the position and exercise limits for the options on the Ethereum Funds at 25,000 contracts. Capping the position limit at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative for the Ethereum Funds and therefore appropriate given their liquidity. While the Exchange believes that the proposed 25,000-contract position limit is conservative for options on the Ethereum Funds, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.<sup>31</sup>

#### Fidelity Fund

As provided in the Cboe Approval Order, the proposed position and exercise limits were determined considering, among other things, the ADV (since trading of the Fidelity Fund began on July 23, 2024) and outstanding shares of the Fidelity Fund (which as discussed above demonstrate that the Fidelity Fund is widely held and actively traded and thus justify these conservatively proposed position limits), as set forth below, along with market capitalization (as of December 23, 2024):

<b>ADV (shares)</b>	<b>Outstanding Shares</b>	<b>Market Capitalization (\$)</b>
1,070,269	41,700,000	1,433,229,000

As provided in the Cboe Approval Order, the number of outstanding shares of the

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<sup>31</sup> The Exchange may file a subsequent rule change to amend the position and exercise limit for options on any or all the Ethereum Funds based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position limit would allow institutional investors to utilize options on the Ethereum Funds for prudent risk management purposes.

Fidelity Fund were compared to those of other ETFs. The approximate average position (and exercise limit) of ETF options with similar outstanding shares (as of December 31, 2024) was approximately 102,703 contracts, which is significantly higher (approximately 4 times) than the proposed position and exercise limit of 25,000 contracts for Fidelity Fund options.<sup>32</sup> As discussed above, shares of the Fidelity Fund are actively held and widely traded: (1) the Fidelity Fund (as of December 23, 2024) had significantly more than 7,000,000 shares outstanding, which is the minimum number of shares of a corporate stock that the Exchange generally requires to list options on that stock pursuant to Rule 19.3(b)(1); (2) the Fidelity Fund (as of November 26, 2024) had significantly more than 2,000 beneficial holders, which is the minimum number of holders the Exchange generally requires for corporate stock in order to list options on that stock pursuant to Rule 19.3(b)(2); and (3) the Fidelity Fund had a trading volume in the approximately five-month time period since it began trading substantially higher than 2,400,000 shares, which is the minimum 12-month volume the Exchange generally requires for a security in order to list options on that security as set forth in Rule 19.3(b)(4).

As provided in the Cboe Approval Order, if a market participant held the maximum number of positions possible pursuant to the proposed position and exercise limits, the equivalent shares represented by the proposed position/exercise limit would represent approximately 6.0% of the 41,700,000 current outstanding shares of the Fidelity Fund. Therefore, if a market participant held the maximum permissible options positions

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<sup>32</sup> The position limits for those ETF options for which the underlying ETFs had similar outstanding shares were all 50,000 or above, and nearly half of them had position limits of 200,000 or 250,000 contracts.

in Fidelity 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 Fidelity Fund.

Rule 18.7(d) provides two methods of qualifying for a position limit tier above 25,000 option contracts. The first method is based on six-month trading volume in the underlying security, and the second method is based on slightly lower six-month trading volume and number of shares outstanding in the underlying security. An underlying stock or ETF that qualifies for method two based on trading volume and number of shares outstanding would be required to have the minimum number of outstanding shares as shown in middle column of the table below. The table below, which provides the equivalent shares of the position limits applicable to equity options, including ETFs, further represents the percentages of the minimum number of outstanding shares that an underlying stock or ETF must have to qualify for that position limit (under the second method described above).

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

The equivalent shares represented by the proposed position and exercise limits for the Fidelity Fund as a percentage of outstanding shares of the Fidelity Fund is significantly lower than the percentage for the lowest possible position limit for equity options of 25,000, which is the position limit the Exchange is proposing for Fidelity Fund

options.<sup>33</sup>

Further, the proposed position and exercise limits for Fidelity Fund options are equal to the lowest position and exercise limits available in the options industry for equity options, are extremely conservative and more than appropriate given the market capitalization, average daily volume, and high number of outstanding shares of the Fidelity Fund.

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

#### NYSE Ethereum Funds

As noted above, the Exchange believes that the trading volume in each NYSE Ethereum Fund is sufficient to qualify each Fund for position limits in excess of the

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<sup>33</sup> As these percentages are based on the minimum number of outstanding shares an underlying security must have to qualify for the applicable position limit, these are the highest possible percentages that would apply to any option subject to that position and exercise limit. 6,300,000 is the minimum number of outstanding shares an underlying security must have for the Exchange to continue to list options on that security, so this would be the smallest number of outstanding shares permissible for any corporate option that would have a position limit of 25,000 contract. See Rule 19.4(b)(1). This rule applies to corporate stock options but not ETF options, which currently have no requirement regarding outstanding shares of the underlying ETF for the Exchange to continue listing options on that ETF. Therefore, there may be ETF options trading for which the 25,000 contract position limit represents an even larger percentage of outstanding shares of the underlying ETF than set forth above.

proposed 25,000-contract limit,<sup>34</sup> as shown in the table below, provided in the NYSE American Approval.<sup>35</sup>

<b>NYSE Ethereum Fund</b>	<b>Total Volume</b>
ETHE	427,312,540 (7/23/24 - 11/29/24)
ETH	172,400,020 (7/23/24 - 11/29/24)
ETHW	44,477,060 (7/23/24 - 12/31/24)

Specifically, the trading volume referenced in the table above in ETHE and ETH well exceeds the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000-contract position and exercise limits.<sup>36</sup> By comparison, other options symbols with less trading volume for six months than ETHE and ETH are eligible for position and exercise limits of at least 250,000.<sup>37</sup> Further, the trading volume referenced in the table above for ETHW well exceeded the requisite minimum of 40,000,000 shares necessary to qualify for the 75,000- contract position (and exercise) limit, which is three times the proposed 25,000- contract limit.<sup>38</sup> Finally, the proposed 25,000-contract position limit is the default for options that do not otherwise qualify for a higher limit and is therefore an

<sup>34</sup> See FactSet, 11/29/2024 and 12/31/24, <https://www.factset.com/data-attribution>.

<sup>35</sup> See *supra* note 6.

<sup>36</sup> Exchange Rule 18.7(d)(5) states that 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.

<sup>37</sup> See <https://www.theocc.com/Market-Data/Market-Data-Reports/Series-and-Trading-Data/Series-Search> (including the following symbols that have a position limit of 250,000: GLD, IAU, SLV, SIVR, SGOL).

<sup>38</sup> Exchange Rule 18.7(d)(3) states that to be eligible for the 75,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least forty (40) million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least thirty (30) million shares and the underlying security must have at least 120 million shares currently outstanding

adequate limit for each NYSE Ethereum Fund.<sup>39</sup> With respect to the outstanding shares of each NYSE Ethereum Fund, if a market participant held the maximum number of contracts possible pursuant to the proposed position and exercise limits (25,000 contracts), the equivalent shares represented by the proposed position/exercise limit (2,500,000 shares) would represent the following approximate percentage of current outstanding shares according to the data presented in the NYSE American Approval:<sup>40</sup>

<b>NYSE Ethereum Fund</b>	<b>Proposed Position/Exercise Limits in Equivalent Shares</b>	<b>Outstanding Shares</b>	<b>Percentage of Outstanding Shares</b>
ETHE	2,500,000	177,838,500	1.4%
ETH	2,500,000	45,220,787	5.5%
ETHW	2,500,000	16,600,000	15.1%

As this table demonstrates, if a market participant held the maximum permissible options positions in one of the NYSE Ethereum 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 NYSE Ethereum 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 NYSE Ethereum Fund (if that market participant exercised all its options). Based on the number of shares outstanding for each NYSE Ethereum Fund as of November 29, 2024, as presented in the NYSE American Approval,<sup>41</sup> the table below sets forth the approximate number of market participants that

<sup>39</sup> Exchange Rule 18.7(d)(1) states that a 25,000 contract limit applies to those options having an underlying security that does not meet the requirements for a higher option contract limit.

<sup>40</sup> See supra note 6.

<sup>41</sup> See supra note 6.

could hold the maximum of 25,000 same side positions in each NYSE Ethereum Fund that would equate to the number of shares outstanding of that NYSE Ethereum Fund:

<b>NYSE Ethereum Fund</b>	<b>Outstanding Shares</b>	<b>Number of Market Participants with 25,000 Same Side Positions</b>
ETHE	177,838,500	71
ETH	45,220,787	18
ETHW	16,600,000	7

This means if 71 market participants had 25,000 same side positions in options on ETHE, each of them would have to simultaneously exercise all of those options to create a scenario that may put the underlying security under stress. Similarly, this means if 18 market participants had 25,000 same side positions in options on the ETH, 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 7 market participants had 25,000 same side positions in options on ETHW, 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 for any of these scenarios; however, even if such event did occur, the Exchange would not expect any of the NYSE Ethereum Funds to be under stress because such an event would merely induce the creation of more shares through the trust's creation and redemption process.

Further, given that the issuer of each NYSE Ethereum Fund may create and redeem shares that represent an interest in ether, the Exchange believes it is relevant to compare the size of a position limit to the market capitalization of the ether market. As of

November 29, 2024, based on data presented in the NYSE American Approval,<sup>42</sup> the global supply of ether was approximately 120.44 million, and the price of one ether was approximately \$3,593.49,<sup>43</sup> which equates to a market capitalization of approximately \$439.78 billion. Consider the proposed position and exercise limit of 25,000 option contracts for each NYSE Ethereum 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 ETHE, ETH, and ETHW, as applicable (if that market participant exercised all its options). The following table from the NYSE American Approval<sup>44</sup> shows the share price of each NYSE Ethereum Fund on November 29, 2024, the value of 2,500,000 shares of the NYSE Ethereum Fund at that price, and the approximate percentage of that value of the size of the ether market:

<b>NYSE Ethereum Fund</b>	<b>Nov. 29th Share Price (\$)</b>	<b>Value of 2,500,000 Shares</b>	<b>Percentage of Ether Market</b>
ETHE	\$30.15	\$75,250,000	0.017%
ETH	\$33.84	\$84,600,000	0.020%
ETHW	\$25.80	\$64,500,000	0.015%

Therefore, if a market participant with the maximum 25,000 same side contracts in options on any of ETHE, ETH, ETHW exercised all positions at one time, such an event would have no practical impact on the ether market. The Exchange also reviewed data presented in the NYSE American Approval<sup>45</sup> regarding the market capitalization of each of the NYSE Ethereum Funds relative to the market capitalization of the entire ether

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<sup>42</sup> See supra note 6.

<sup>43</sup> See <https://finance.yahoo.com/quote/ETH-USD/history>.

<sup>44</sup> See supra note 6.

<sup>45</sup> See supra note 6.

market, as of November 29, 2024:

	<b>Ether/Shares Outstanding</b>	<b>Market Capitalization (\$) (11/29/2024)</b>	<b>% of Total Ether Market</b>
<b>Total Ethereum Market</b>	120,440,000	\$432,799,935,600	100%
ETHE	177,838,500	\$5,425,852,635	1.25%
ETH	45,220,787	\$1,547,003,157	0.36%
ETHW	16,600,000	\$430,886,200	0.10%

As this data gathered by NYSE American demonstrates, the NYSE Ethereum Funds collectively represent approximately 1.71% of the global supply of ether (120,440,000).<sup>46</sup> Based on the \$30.15 price of an ETHE share on November 29, 2024, a market participant could have redeemed one ether for approximately 119 ETHE shares. Another 14,354,890,070 ETHE shares could be created before the supply of ether was exhausted. As a result, 5,742 market participants would have to simultaneously exercise 25,000 same side positions in ETHE options to receive shares of the ETHE holding the entire global supply of ether. Similarly, based on the \$33.84 price of an ETH share on November 29, 2024, a market participant could have redeemed one ether for approximately 106 ETH shares. Another 12,789,596,206 ETH shares could be created before the supply of ether was exhausted. As a result, 5,116 market participants would have to simultaneously exercise 25,000 same side positions in ETH options to receive shares of ETH holding the entire global supply of ether. Similarly, based on the \$25.80 price of an ETHW share on November 29, 2024, a market participant could have redeemed one ether for approximately 139 ETHW shares. Another 16,775,191,302 ETHW shares could be created before the supply of ether was exhausted. As a result,

<sup>46</sup> See <https://finance.yahoo.com/quote/ETH-USD/history>.

6,710 market participants would have to simultaneously exercise 25,000 same side positions in ETHW options to receive shares of ETHW holding the entire global supply of ether. Unlike the NYSE Ethereum 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 NYSE Ethereum Funds may create, redeem, or split shares in response to demand. The supply of ether is larger than the available supply of most securities.<sup>47</sup> Given the significant unlikelihood of any of these events ever occurring, the Exchange does not believe options on the NYSE Ethereum 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 ether.

The Exchange also believes the proposed limits are appropriate given position limits for ether futures. The NYSE American Approval presented data<sup>48</sup> that compared the proposed position limits to the position limit of Chicago Mercantile Exchange (“CME”) Ethereum futures. CME imposes a position limit of 8,000 futures (for the initial spot month) on its ether futures contract.<sup>49</sup> On November 29, 2024, CME Jan 25 ether futures settled at \$3,629.69. A position of 8,000 CME Ethereum futures, therefore, would have a notional value of \$1,451,876,000. The following table, as presented in the NYSE

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<sup>47</sup> The market capitalization of ether would rank in the top 20 among securities. See <https://companiesmarketcap.com/usa/largest-companies-in-the-usa-by-market-cap/>.

<sup>48</sup> See *supra* note 6.

<sup>49</sup> See CME Rulebook Chapter 349 (description of CME ether futures) and Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices. Each CME ether futures contract is valued at fifty ethers as defined by the CME CF Ether Reference Rate (“ERR”). See CME Rulebook Chapter 349.

American Approval<sup>50</sup> shows the share price of each NYSE Ethereum Fund on November 29, 2024, and the approximate number of option contracts that equates to that notional value:

<b>NYSE Ether Fund</b>	<b>Nov. 29th Share Price (\$)</b>	<b>Number of Option Contracts</b>
ETHE	\$30.15	481,551
ETH	\$33.84	429,041
ETHW	\$25.80	562,743

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

The Exchange notes, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).<sup>51</sup> Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.<sup>52</sup> If a position exceeds position limits because of an option

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<sup>50</sup> See supra note 6.

<sup>51</sup> See supra note 6.

<sup>52</sup> See CME Rulebook Chapter 5, Position Limit, Position Accountability and Reportable Level Table in the Interpretations & Special Notices.

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 ether, the Exchange believes that that the proposed same side position limits are more than appropriate for the NYSE Ethereum Fund options.

Consistent with its position regarding the irrelevance of bitcoin supply to position limits for options on bitcoin ETPs, the Exchange likewise believes the available supply of ether is not relevant to the determination of position and exercise limits for Ethereum Fund options.<sup>53</sup> 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.<sup>54</sup> "Since the inception of

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<sup>53</sup> See BTC Approval Order, 89 FR at 105148, n. 33 (asserting that, outside of the bitcoin context, the Exchange is unaware of any proposed rule change related to position and exercise limits for any equity option (including commodity ETF options) for which the Commission required consideration of whether the available supply of an underlying (whether it be a corporate stock or an ETF) or the contents of an ETF (commodity or otherwise) should be considered when an exchange proposed to establish those limits). See, e.g., Securities Exchange Act Release No. 57894 May 30, 2008, 73 FR 32061 (June 5, 2008) (SR-CBOE-2005-11) (approval order in which the Commission stated that the "listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits and margin"). The Exchange notes the position limits in Exchange Rule 18.7 are the same as when the Commission approved this filing. For reference, the current position and exercise limits for options on SPDR Gold Shares ETF ("GLD") and options on iShares Silver Trust ("SLV") are 250,000 contracts, or 10 times that proposed position and exercise limit for the Ethereum Fund options.

<sup>54</sup> 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

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.”<sup>55</sup> Position and exercise limit rules are intended “to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition, such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.”<sup>56</sup>

The Exchange notes that a Registration Statement on Form S-1 was filed with the Commission for each NYSE Ethereum Fund, each of which described the supply of ether as being unlimited.<sup>57</sup> Each Registration Statement permits an unlimited number of shares of the applicable NYSE Ethereum Fund to be created. Further, the Commission approved proposed rule changes that permitted the listing and trading of shares of each NYSE Ethereum Fund, which approval did not comment on the sufficient supply of ether or address whether there was a risk that permitting an unlimited number of shares for a

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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.

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

<sup>56</sup> Id.

<sup>57</sup> See, e.g., ETHE Form S-1 Registration Statement, at p. 77, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524106957/d756153ds1.htm>; ETH Amendment No. 5 to Form S-1 Registration Statement, at p. 79, <https://www.sec.gov/Archives/edgar/data/2020455/000119312524181081/d756153ds1a.htm>; and ETHW Form S-1 Registration Statement 1, at p. 17, [https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a\\_061824.htm](https://www.sec.gov/Archives/edgar/data/2013744/000199937124007581/bitwise-s1a_061824.htm) (“Ether Funds Reg. Stmts.”).

NYSE Ethereum Fund would impact the supply of ether.<sup>58</sup> Therefore, the Exchange believes the Commission had ample time and opportunity to consider whether the supply of ether was sufficient to permit the creation of unlimited NYSE Ethereum 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 ether supply, the proposed positions limits are more than sufficient to protect investors and the market.

Based on the foregoing, the Exchange believes the proposal to list options on the NYSE Ethereum Funds with position and exercise limits of 25,000 on the same side, the lowest position limit available in the options industry, is conservative and appropriate given the market capitalization, ADV, and high number of outstanding shares for each of the NYSE Ethereum Funds. The proposed position and exercise limits reasonably and appropriately balance the liquidity provisioning in the market against the prevention of manipulation. The Exchange believes these proposed limits are effectively designed to prevent an individual customer or entity from establishing options positions that could be used to manipulate the market of the underlying NYSE Ethereum Funds as well as the ether market.

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 Ethereum Funds that it applies to the Exchange's other options products, including options on Fund Shares.<sup>59</sup> The Exchange's market surveillance staff would have access to

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<sup>58</sup> See Ethereum ETP Approval Order.

<sup>59</sup> 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).

the surveillances conducted by the Exchange's affiliated equities exchange, MEMX, LLC, with respect to the Ethereum Funds and would review activity in the underlying Ethereum Funds when conducting surveillances for market abuse or manipulation in the options on the Ethereum 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 Ethereum Funds from their primary listing markets and from other markets that trade shares of the Ethereum 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.<sup>60</sup>

The underlying shares of spot Ethereum ETPs, including the Ethereum 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

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<sup>60</sup> 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.

shares of spot Ethereum-based ETPs,<sup>61</sup> “[e]ach Exchange has a comprehensive surveillance-sharing agreement with the [CME] via their common membership in ISG. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME Ether futures market.”<sup>62</sup> The Exchange states that, given the consistently high correlation between the CME Ethereum futures market and the spot Ethereum market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Ethereum ETPs].”<sup>63</sup>

In light of surveillance measures related to both options and futures as well as the underlying Ethereum Funds,<sup>64</sup> the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed options on the Ethereum Funds. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ethereum Funds.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association (“CTA”) high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on the Ethereum

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<sup>61</sup> See Ethereum ETP Approval Order.

<sup>62</sup> See Ethereum ETP Approval Order, at 46938 (footnotes excluded).

<sup>63</sup> See Ethereum ETP Approval Order, at 46941 (footnote excluded).

<sup>64</sup> See Ethereum ETP Approval Order.

Funds will be available via Options Price Reporting Authority (“OPRA”) and major market data vendors. 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 the Ethereum Funds up to the number of expirations currently permissible under the Rules.

The Exchange believes that offering options on Ethereum Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Ethereum and hedging vehicle to meet their investment needs in connection with Ethereum-related products and positions. The Exchange expects investors will transact in options on the Ethereum Funds in the unregulated over-the-counter (“OTC”) options market,<sup>65</sup> 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 Ethereum 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, precious metal commodities, or Bitcoin on which the Exchange may already list and trade options are trusts structured in substantially the same manner as the

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<sup>65</sup> 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.

Ethereum 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 and Bitcoin) that it currently lists and trades on the Exchange.

Finally, the Exchange notes that applicable Exchange rules will require that customers receive appropriate disclosure before trading options in Ethereum Funds.<sup>66</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>67</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>68</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>69</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, 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

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<sup>66</sup> See Rules 26.2(b) and (e).

<sup>67</sup> See Rule 26.4.

<sup>68</sup> 15 U.S.C. 78f(b).

<sup>69</sup> 15 U.S.C. 78f(b)(5).

proposed rule change is consistent with the Section 6(b)(5)<sup>70</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange believes that offering options on a competitively priced ETF based on spot Ethereum 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 Ethereum. Today, the Exchange lists options on other commodity (including Ethereum) ETFs structured as trusts, 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 Ethereum Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system, because options on the Ethereum Funds will comply with current Exchange Rules as discussed herein. Options on the Ethereum Funds must satisfy the initial listing standards and continued listing standards currently in the Rules, applicable

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<sup>70</sup> Id.

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 Ethereum 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 Ethereum Funds.

The proposed position and exercise limits for options on each of the Ethereum 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 each Ethereum Fund's market capitalization, ADV, number of beneficial holders, and high number of outstanding shares as described herein. The proposed position and exercise limits are consistent with the Act as they address concerns related to manipulation and protection of investors because, as demonstrated above, the position and exercise limits are extremely conservative and more than appropriate given the Ethereum Funds are actively traded.

The Exchange represents that it has the necessary systems capacity to support the new Ethereum 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 Ethereum Fund options. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs and ETPs, such as (existing) precious

metal-commodity backed ETP options as well as the proposed options on the Ethereum Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on the Ethereum Funds in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange's market surveillance staff will have access to surveillances that it and its affiliated equities market conduct, as well as those which FINRA conducts on its behalf, with respect to the Ethereum Funds and, as appropriate, would review activity in the underlying Ethereum Funds when conducting surveillances for market abuse or manipulation in the options on the Ethereum Funds. Additionally, the Exchange is a member of the ISG under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition, the Exchange has a Regulatory Services Agreement with the FINRA and as noted herein, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on the Ethereum Funds.

The underlying shares of spot Ethereum ETPs, including the Ethereum 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 Ethereum-based ETPs, "[e]ach Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of

the CME ether futures market.”<sup>71</sup> The Exchange states that, given the consistently high correlation between the CME Ethereum futures market and the spot Ethereum market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Ether ETPs].”<sup>72</sup> In light of the foregoing, 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 Ethereum Funds.

Finally, the Exchange notes that this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because applicable Exchange rules will require that customers receive appropriate disclosure before trading options in the Ethereum Funds<sup>73</sup> and will require that brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>74</sup>

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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

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<sup>71</sup> See Ethereum ETP Approval Order, 89 FR at 46938

<sup>72</sup> See Ethereum ETP Approval Order, 89 FR at 46941.

<sup>73</sup> See Rules 26.2(b) and (e).

<sup>74</sup> See Rule 26.4.

the purposes of the Act as Ethereum 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 the Ethereum Fund 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).<sup>75</sup> Further, the Ethereum 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 the Ethereum 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 the Ethereum Funds 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 Exchange notes that listing and trading Ethereum 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,

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<sup>75</sup> See Rule 19.3(i).

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 Ethereum 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 Ethereum prices and Ethereum-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 Act<sup>76</sup> and Rule 19b-4(f)(6)<sup>77</sup> thereunder. The Exchange has designated this proposal as one that effects a change that rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change to permit the Exchange to

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<sup>76</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>77</sup> 17 CFR 240.19b-4(f)(6).

list and trade options on the Ethereum Funds would not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition because the proposal is substantively similar to proposals by Cboe and NYSE American that were recently approved by the Commission.<sup>78</sup> The Cboe Approval Order and NYSE American Approval provide that Cboe and NYSE American may list and trade options on the same Ethereum Funds as proposed by the Exchange herein on substantively similar terms and conditions (i.e., 25,000 position and exercise limits). Accordingly, the Exchange believes this proposal does not raise any new, unique or novel substantive issues from those raised by Cboe and NYSE American to list and trade options on the Ethereum Funds, which proposals were approved by the Commission.

Therefore, the Exchange believes that the proposed rule change is well-suited for, and meets the standards applicable to, the Commission's treatment of non-controversial proposals under Section 19(b)(3)(A) of the Act<sup>79</sup> and Rule 19b-4(f)(6) thereunder.<sup>80</sup> Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>81</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>82</sup> permits the Commission to designate a shorter time if

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<sup>78</sup> See supra note 6.

<sup>79</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>80</sup> 17 CFR 240.19b-4(f)(6).

<sup>81</sup> Id.

<sup>82</sup> Id.

such action is consistent with the protection of investors and the public interest.

The Exchange respectfully requests that the Commission waive the five business day notice of the Exchange's intent to file this proposed rule change, as well as the 30-day operative delay, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder. Waiver of these periods will allow the Exchange to immediately implement the proposed rule change upon its filing with the Commission, allowing the Exchange to immediately provide investors an additional source of liquidity for the Ethereum Funds. The Exchange believes that waiver of both the operative delay and the requirement to provide five-days' written notice of the proposed rule change would be consistent with the protection of investors and the public interest because the Exchange believes that most, if not all, other competing exchanges filed to list (or plan to file to list) options on the Ethereum Funds subject to this proposal, effective immediately. The requested waivers would, therefore, allow the Exchange to immediately compete with other options exchanges for options order flow based on the Trust subject to this filing. Investors and the public interest will benefit by the trading of these option contracts on additional exchanges, via increased price competition. Accordingly, the proposed waivers do not give rise to any novel investor protection concerns, as the Exchange's listing rules for these products are substantially similar to the listing exchanges' rules for such products, which have been subject to Commission review and approval.<sup>83</sup>

The Exchange respectfully requests that the Commission waive the 30-day operative delay. Waiver of the operative delay is consistent with the protection of

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<sup>83</sup> See supra note 6.

investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to list options on the Ethereum Funds at or near the same time as NYSE American, Cboe and other options exchanges.

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

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2025-15 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-2025-15. This file number should be included on the subject line if email is used. To help the Commission

process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2025-15 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>84</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>84</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

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

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**CHAPTER 18. BUSINESS CONDUCT**

\* \* \* \* \*

Rule 18.7. Position Limits

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*Interpretations and Policies*

.01 The position limits applicable to option contracts on the securities listed in the chart below are as follows:

<b>Security Underlying Option</b>	<b>Position Limit</b>
* * * * *	
<u>Fidelity Ethereum Fund (FETH)</u>	<u>25,000 contracts</u>
<u>Grayscale Ethereum Trust ETF (ETHE)</u>	<u>25,000 contracts</u>
<u>Grayscale Ethereum Mini Trust ETF (ETH)</u>	<u>25,000 contracts</u>
<u>Bitwise Ethereum ETF (ETHW)</u>	<u>25,000 contracts</u>

\* \* \* \* \*

Rule 18.9 Exercise Limits

\* \* \* \* \*

*Interpretations and Policies*

.01 The exercise limits applicable to option contracts on the securities listed in the chart below are as follows:

<b>Security Underlying Option</b>	<b>Exercise Limit</b>
* * * * *	
<u>Fidelity Ethereum Fund</u>	<u>25,000 contracts</u>
<u>Grayscale Ethereum Trust ETF</u>	<u>25,000 contracts</u>
<u>Grayscale Ethereum Mini Trust ETF</u>	<u>25,000 contracts</u>
<u>Bitwise Ethereum ETF</u>	<u>25,000 contracts</u>

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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, the iShares Silver Trust, abrdn Standard Physical Silver Trust, abrdn Standard Physical Gold Trust, abrdn Standard Physical Palladium Trust, abrdn Standard Physical Platinum Trust, Sprott Physical Gold Trust, Goldman Sachs Physical Gold ETF, iShares Bitcoin Trust, Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, Grayscale Bitcoin Trust, Grayscale Bitcoin Mini Trust, Bitwise Bitcoin ETF, [or the iShares Ethereum Trust, Fidelity Ethereum Fund, Grayscale Ethereum Trust ETF, Grayscale Ethereum Mini Trust ETF, or the Bitwise Ethereum ETF]; provided that all of the following conditions are met:

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