

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100863; File No. SR–NYSEAMER–2024–49]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend Rule 915 to Permit the Listing and Trading of Options on Bitcoin ETFs

August 28, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on August 15, 2024, NYSE American LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 915 regarding the criteria for underlying securities. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 915 (Criteria for Underlying Securities). Specifically, the Exchange

proposes to amend Rule 915, Commentary .10 to allow the Exchange to list and trade options on the following Exchange-Traded Fund Shares (“ETFs”)⁴: the Fidelity Wise Origin Bitcoin Fund (the “Fidelity Fund”), the ARK21Shares Bitcoin ETF (the “ARK 21Shares Fund”), the Invesco Galaxy Bitcoin ETF (the “Invesco Fund”), the Franklin Bitcoin ETF (the “Franklin Fund”), the VanEck Bitcoin Trust (the “VanEck Fund”), and the WisdomTree Bitcoin Fund (the “WisdomTree Fund”), the Grayscale Bitcoin Trust BTC (the “Grayscale Fund”), the Grayscale Bitcoin Mini Trust (the “Grayscale Mini Fund”), the Bitwise Bitcoin ETF (the “Bitwise Fund”), the iShares Bitcoin Trust ETF (the “iShares Fund”), and the Valkyrie Bitcoin Fund (the “Valkyrie Fund” and, collectively, the “Bitcoin Funds”).

The Exchange notes that this is a competitive filing as at least one other options exchange has filed similar a rule proposal that is currently pending with the Commission to allow the listing and trading of options on Bitcoin Funds.⁵

Commentary .06 to Rule 915 (hereinafter “Commentary .06”) provides that, subject to certain other criteria set forth in Rule 915, securities deemed appropriate for options trading include ETFs that represent certain types of interests,⁶ including interests in

⁴ Rule 900.2NYP defines the term “Exchange-Traded Fund Share” as Exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities (including fixed income securities) based on an index or a portfolio of securities.

⁵ See SR–CBOE–2024–035, filed on August 8, 2024, by Cboe Exchange, Inc. (“Cboe”). Unlike Cboe, the Exchange proposes to include as a Bitcoin Fund the Grayscale Bitcoin Mini Trust, which was listed on NYSE Arca, Inc. on July 31, 2024.

⁶ See Commentary .06, which permits options trading on ETFs that are traded on a national securities exchange and are defined as an “NMS stock” in Rule 600(b)(55) of Regulation NMS, that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments 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 purchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum

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

The Bitcoin Funds are Bitcoin-backed commodity ETFs structured as trusts. Like any ETF currently deemed appropriate for options trading under Commentary .06, the investment objective of each Bitcoin Fund trust is for its shares to reflect the performance of Bitcoin (less the expenses of the trust’s operations), offering investors an opportunity to gain exposure to Bitcoin without the complexities of Bitcoin delivery. As is the case for ETFs currently deemed appropriate for options trading, a Bitcoin Fund’s shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of Bitcoin and are designed to track Bitcoin or the performance of the price of Bitcoin and offer access to the Bitcoin market.⁷ The Bitcoin Funds provide investors with cost-efficient alternatives that allow a level of participation in the Bitcoin market through the securities market. The primary substantive difference between Bitcoin Funds and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are deemed commodities), while Bitcoin Funds hold bitcoin (which is also deemed a commodity).

The Exchange believes the Bitcoin Funds satisfy the Exchange’s initial listing standards for ETFs on which the Exchange may list options. Specifically, the Bitcoin Funds satisfy the initial listing standards set forth in

number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (“Currency Trust Shares”); 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 Units”); or represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”); provided that all of the conditions listed in Rules 915 and 916 are met.

⁷ The trust may include minimal cash.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

Commentary .06, as is the case for other ETFs on which the Exchange lists options (including trusts that hold commodities). Commentary .06 requires that ETFs must either (1) meet the criteria and standards set forth in Commentary .01 to Rule 915,⁸ or (2) the ETFs are available for creation and redemption each business day as set forth in Commentary .06(a)(ii).⁹ The Bitcoin Funds satisfy Commentary .06(a)(ii), as they are all subject to this creation and redemption process.

While not required by the Rules for purposes of options listings, the majority of the Bitcoin Funds satisfy the criteria and guidelines set forth in Rule 915(a). Pursuant to Rule 915(a), a security (which includes ETFs) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held

and actively traded.¹⁰ Each of the Bitcoin Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.¹¹ The Exchange believes each Bitcoin Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

As of August 7, 2024, the Bitcoin Funds had the following number of shares outstanding:

Bitcoin fund	Shares outstanding
Fidelity Fund	201,100,100
ARK 21Shares Fund	45,495,000
Invesco Fund	7,965,000
Franklin Fund	11,100,000
VanEck Fund	9,600,000
WisdomTree Fund	1,420,000
Grayscale Fund	296,930,100
Grayscale Mini Fund	353,580,100
Bitwise Fund	69,910,000
iShares Fund	606,120,000
Valkyrie Fund	31,335,000

All but one Bitcoin Fund had 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 Commentary .01(1) to Rule 915. However, the Exchange believes shares outstanding (*i.e.*, free float¹²), while commonly used to determine investable capacities of corporate stocks, the figure has little

utility with respect to ETFs due to the market structure of ETFs. Proofing of ETF baskets, in addition to the efficiency of creation/redemption mechanisms, decouple concepts of “floating” ETF shares against the impacts of ETF liquidity to the liquidity of ETF constituents. While ETF Market Makers may often limit the amount of floating ETF shares, primary market mechanisms enable virtually limitless

capacity to create and redeem ETF shares on a daily basis.¹³ As evidenced during their time in market since beginning trading in January of 2024, the gross value of daily shares created or redeemed for each Bitcoin Fund exceeds the assets under management (“AUM”) of each fund as of August 7, 2024, which was as follows:

Bitcoin fund	AUM
Fidelity Fund	10,240,420,000
ARK 21Shares Fund	2,887,759,000
Invesco Fund	405,628,500
Franklin Fund	339,882,800
VanEck Fund	617,779,500
WisdomTree Fund	81,690,950
Grayscale Fund	20,117,590,000
Grayscale Mini Fund	1,908,524,806
Bitwise Fund	2,266,633,000
iShares Fund	18,274,490,000
Valkyrie Fund	527,831,700

⁸ Commentary .01 to Rule 915 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

⁹ Commentary .06(a)(ii) requires that ETFs must 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 ETFs in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as

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

¹⁰ The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Commentary .01 to Rule 915, subject to exceptions.

¹¹ An “NMS stock” means any NMS security other than an option, and an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction

reporting plan (or an effective national market system plan for reporting transaction in listed options). See 17 CFR 242.600(b)(64) (definition of “NMS security”) and (65) (definition of “NMS stock”).

¹² All outstanding ETF shares are considered free float, as there are no restricted ETF shares or shares held by insiders, as is the case with respect to corporate stocks.

¹³ This is the primary reasoning for why the Exchange may list options on ETFs as long as they are subject to the creation and redemption process and generally do not need to satisfy the criteria set forth in Commentary .01 to Rule 915.

As a result, the Exchange believes this demonstrates that each Bitcoin Fund is

characterized by a substantial number of outstanding shares.

beneficial holders of certain Bitcoin Funds as of the specified dates:

Further, the below table contains information regarding the number of

Bitcoin fund	Beneficial holders	Date
Fidelity Fund	279,656	6/27/2024
ARK 21Shares Fund	69,425	6/26/2024
Invesco Fund	13,420	6/25/2024
Franklin Fund	12,224	6/27/2024
VanEck Fund	19,061	6/28/2024
WisdomTree Fund	3,509	7/2/2024

As this table shows, each of these six Bitcoin Funds has 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 Commentary .01(2) to Rule 915. Given that the other four Bitcoin Funds have significant

trading volumes similar to the trading volumes of the Bitcoin Funds listed in the table above (as discussed below), the Exchange believes it is reasonable to expect that shares of all of the Bitcoin Funds are characterized by a substantial number of outstanding shares that are widely held.

The Exchange also believes each Bitcoin Fund is characterized by a

substantial number of outstanding shares that are actively traded. As of August 7, 2024, the total trading volume (by shares and notional) for each fund since they began trading on January 11, 2024, and the average daily volume (“ADV”) over the 30-day period of July 9 through August 7, 2024 for each Bitcoin Fund was as follows:

Bitcoin fund	Trading volume (shares)	Trading volume (notional \$)	ADV (shares)
Fidelity Fund	1,490,261,825	78,936,647,100.20	6,014,335.50
ARK 21Shares Fund	413,159,977	24,787,148,013.81	1,893,335.00
Invesco Fund	78,609,595	4,578,462,838.89	299,372.94
Franklin Fund	58,954,975	2,063,321,834.88	338,901.56
VanEck Fund	59,991,039	4,195,401,686.66	265,605.84
WisdomTree Fund	39,977,866	2,546,889,570.58	209,501.33
Grayscale Fund	2,074,101,826	95,371,791,353.17	4,794,193.00
Bitwise Fund	455,817,104	14,926,192,896.43	2,250,989.25
iShares Fund	5,209,443,211	185,451,676,432.50	28,406,964.00
Valkyrie Fund	100,580,329	1,762,278,782.37	349,587.41

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As demonstrated above, despite the Bitcoin Funds have been trading for approximately seven months, the trading volume for each is substantially higher than 2,400,000 shares (between 16 and 620 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 Commentary .01 to Rule 915. Additionally, as of August 7, 2024, the six-month ADV for each Bitcoin Fund is in the top 20% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Bitcoin Fund is characterized by a substantial number of outstanding shares that are actively traded.

Like all ETFs deemed appropriate for options trading, options on Bitcoin Funds will be subject to the Exchange’s continued listing standards as set forth in Commentary .07 to Rule 916. Pursuant to Commentary .07 to Rule 916, the Exchange will not open for trading any additional series of option

contracts covering an ETF if such ETF ceases to be an “NMS stock” as provided for Commentary .01(5) to Rule 915 or the ETF is halted from trading on its primary market.¹⁴ Additionally, options on ETFs may be subject to the suspension of opening transactions as follows: (1) the ETFs no longer meets the terms of Commentary .01 to Rule 916; (2) following the initial twelve-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs for 30 or more consecutive trading days; (3) the value of the underlying commodity is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

¹⁴ See Commentary .07 to Rule 916. For avoidance of doubt and consistent with this proposal, the Exchange proposes to amend Rule 916 to include in the Bitcoin Funds in the list of ETFs subject to the continued listing standards. See proposed Commentary .11 to Rule 916.

Options on each Bitcoin Fund will be physically settled contracts with American-style exercise.¹⁵ Consistent with Rule 903, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on each Bitcoin Fund¹⁶ at the commencement of

¹⁵ See Rule 902 (Rights and Obligations of Holders and Writers), which provides that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation. See also OCC Rules, Chapter VIII, which governs exercise and assignment, and Chapter IX, which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts. OCC Rules can be located at: <https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occrules.pdf>.

¹⁶ See Rule 903(c), Commentary .03. The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 915. 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

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trading on the Exchange and may also list series of options on Bitcoin Funds for trading on a weekly,¹⁷ monthly,¹⁸ or quarterly¹⁹ basis. The Exchange may also list long-term equity option series ("LEAPS")²⁰ that expire from twelve to thirty-nine months from the time they are listed.

Pursuant to Rule 903, Commentary .05(a), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Bitcoin Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.²¹ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price sup [sic].

Bitcoin Fund options will trade in the same manner as any other ETF options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all ETF options on the Exchange, including, for example, Rules that govern listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Bitcoin Funds on the Exchange in the same manner as they apply to other options on all other ETF that are listed and traded on the Exchange, including the precious-metal backed commodity ETF already deemed appropriate for options trading on the Exchange pursuant to current Commentary .10 to Rule 915.

Position and exercise limits for options on ETFs, including options on Bitcoin Funds, pursuant to Rules 904 and 905, respectively. Position and exercise limits for ETF options vary

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 903(d), 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.

¹⁷ See Rule 903(h).

¹⁸ See Rule 903, Commentary .11.

¹⁹ See Rule 903, Commentary .09.

²⁰ See Rule 903, Commentary .03.

²¹ 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, Rules 903(h) and Commentaries .09 and .03 to Rule 903, specifically set forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

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 limit 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.²² The Exchange further notes that Rule 462, which governs margin requirements applicable to the trading of all options on the Exchange, including options on ETFs, will also apply to the trading of Bitcoin Fund options.

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The Exchange notes that options on Bitcoin Funds would not be available for trading until The Options Clearing Corporation ("OCC") represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing of options on Bitcoin Funds. The Exchange believes any additional traffic that would be generated from the trading of options on Bitcoin Funds would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on Bitcoin Funds, and that it has the necessary systems capacity to support the new option series. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs, such as (existing) precious metal-commodity backed ETF options as well as the proposed options on Bitcoin Funds. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Bitcoin Funds in all trading sessions and to deter and detect violations of Exchange rules. In addition, the Exchange will implement any new surveillance procedures it deems

²² As Bitcoin Funds do not currently trade, options on Bitcoin Funds would be subject to the 25,000 option contract limit.

necessary to effectively monitor the trading of options on Bitcoin Funds. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG, or from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement ("CSSA"). The Exchange will enter into new CSSAs with other exchanges as necessary to effectively monitor the trading of options on Bitcoin Funds. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on Bitcoin Funds and to deter and detect violations of Exchange rules.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association ("CTA") high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on Bitcoin Funds will be available via OPRA and major market data vendors.

The Exchange believes that offering options on Bitcoin Funds will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of Bitcoin and hedging vehicle to meet their investment needs in connection with Bitcoin-related products and positions. The Exchange expects investors will transact in options on Bitcoin Funds in the unregulated over-the-counter ("OTC") options market (if the Commission approves Bitcoin Funds for exchange-trading),²³ 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 position; (2) increased market transparency; and (3) heightened counterparty creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Bitcoin Fund options may cause investors to bring this liquidity to the Exchange, would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The ETFs that hold financial instruments, money market instruments, or precious metal commodities on which the Exchange may already list and trade options are trusts structured in substantially the same manner as

²³ The Exchange understands from customers that investors have historically transacted in options on ETFs in the OTC options market if such options were not available for trading in a listed environment.

Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any ETF options, including ETFs that hold commodities (*i.e.*, precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act²⁴ in general and furthers the objectives of Section 6(b)(5) of the Act²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the Exchange believes that the proposal to list and trade options on Bitcoin Funds will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Bitcoin Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Bitcoin Fund, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Bitcoin Fund options will benefit investors by providing them with a relatively lower-cost risk management tool, which will allow them to manage their positions and associated risk in their portfolios more easily in connection with exposure to the price of Bitcoin and with Bitcoin-related products and positions. Additionally, the Exchange's offering of Bitcoin Fund options will provide investors with the ability to transact in such options in a listed market environment as opposed to in the unregulated OTC options market, which would increase market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. The Exchange also notes that it already lists options on other commodity-based ETFs,²⁶ which, as described above, are trusts structured in substantially the same manner as Bitcoin Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (*i.e.*, Bitcoin rather than precious metals) and for which the Exchange has not identified any issues

with the continued listing and trading of commodity-backed ETF options it currently lists for trading.

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

The Exchange believes the proposed position and exercise limits for the Bitcoin Fund options are consistent with the Exchange Act, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because these position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The proposed position and exercise limits are the same limits that apply to other ETF options, including other commodity ETF options. The Exchange believes proposed position and exercise limits balance the liquidity provisioning in the market against the prevention of manipulation, as they currently do for other equity options (including commodity ETF options). The Exchange believes the available supply in the markets of Bitcoin is not relevant when establishing position limits for options on the Bitcoin Funds, as what is held by an ETF has historically not been a relevant factor considered by the Commission when it has considered rule filings to list options on ETFs, including commodity ETFs. The Commission has previously stated:

Since the inception of standardized options trading, the options exchanges

have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These 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.²⁷

As the Commission itself notes, the position limits are “intended to prevent the establishment of options positions that can be used . . . to manipulate or disrupt the *underlying market*” (emphasis added). When the Commission previously approved Rules to list options on other commodity ETFs, the Commission did not require consideration of whether the available supply of those commodities should be considered when the Exchange established those position limits.²⁸ The Exchange notes that position limits in the Exchange's Rules at that time were the same as they are today as set forth in Rule 904 (and as proposed to be applicable to options on the Bitcoin Funds).

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

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

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

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

²⁷ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

²⁸ 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”).

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Rule 915, Commentary .10.

as Bitcoin Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other ETF before the Exchange could list options on them.

Additionally, Bitcoin Fund options will be equally available to all market participants who wish to trade such options. The Exchange Rules currently applicable to the listing and trading of options on ETFs on the Exchange will apply in the same manner to the listing and trading of all options on Bitcoin Funds. Also, and as stated above, the Exchange already lists options on other commodity-based ETFs.²⁹

Intermarket Competition: The Exchange does not believe that the proposal to list and trade options on Bitcoin Funds will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that the advent of Bitcoin Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. As noted herein, this is a competitive filing as at least one other options exchange has filed similar a rule proposal that is currently pending with the Commission to allow the listing and trading of options on Bitcoin Funds.³⁰ Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin Funds. The Exchange notes that listing and trading Bitcoin Fund options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading such options in the OTC market.

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

relatively low-cost means to hedge their portfolios and meet their investment needs in connection with Bitcoin prices and Bitcoin-related products and positions on a listed options exchange.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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. Please include file number SR-NYSEAMER-2024-49 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-NYSEAMER-2024-49. 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-NYSEAMER-2024-49 and should be submitted on or before September 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-19773 Filed 9-3-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100856; File No. SR-PEARL-2024-38]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Describe the Access Methods to the MIAX Pearl Options Testing Systems Environment and Discontinue One Access Method

August 28, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 22, 2024, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁹ See Rule 915, Commentary .10.

³⁰ See SR-CBOE-2024-035, filed on August 8, 2024.