

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100862; File No. SR-CBOE-2024-036)

August 28, 2024

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 4.3 to List and Trade Options on Ethereum Exchange-Traded Funds

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 19, 2024, Cboe Exchange, Inc. (“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 Exchange. 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 4.3. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 4.3 regarding the criteria for underlying securities. Specifically, the Exchange proposes to amend Rule 4.3, Interpretation and Policy .06(a)(4) to allow the Exchange to list and trade options on Units³ that represent interests in the following exchange-traded products: the Fidelity Ethereum Fund (the “Fidelity Fund”), the 21Shares Core Ethereum ETF (the “21Shares Fund”), the Invesco Galaxy Ethereum ETF (the “Invesco Fund”), the Franklin Ethereum ETF (the “Franklin Fund”), the VanEck Ethereum Trust (the “VanEck Fund”), the Grayscale Ethereum Trust (the “Grayscale Fund”), the Grayscale Mini Ethereum Trust (the “Grayscale Mini Fund”), the Bitwise Ethereum ETF (the “Bitwise Fund”), and the iShares Ethereum Trust ETF (the “iShares Fund and, collectively, the “Ethereum Funds”), designating them as “Units” deemed appropriate for options trading on the Exchange. Current Rule 4.3, Interpretation and Policy .06 provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include Units that represent certain types of interests,⁴ including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

³ Rule 1.1 defines a “Unit” (which may also be referred to as an exchange-traded fund (“ETF”)) as a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Rule 4.3.

⁴ See Rule 4.3, Interpretation and Policy .06(a), which permits options trading on Units that represent (1) 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 no limited to, U.S. government securities and repurchase agreements (the “Money Market

The Ethereum Funds are Ethereum-backed commodity ETFs structured as trusts. Similar to any Unit currently deemed appropriate for options trading under Rule 4.3, Interpretation and Policy .06, the investment objective of each Ethereum Fund trust 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 Units 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.⁵ The Ethereum Funds provide investors with cost-efficient alternatives that allow a level of participation in the Ethereum market through the securities market. The primary substantive difference between Ethereum Funds and Units currently deemed appropriate for options trading are that Units may hold securities, certain financial instruments, and specified precious metals

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); (2) 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 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”); (3) 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”); (4) interests in the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the Aberdeen Standard Physical Silver Trust, the Aberdeen Standard Physical Gold Trust, the Aberdeen Standard Physical Palladium Trust, the Aberdeen Standard Physical Platinum Trust, the Sprott Physical Gold Trust or the Goldman Sachs Physical Gold ETF; or (5) 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”).

⁵ The trust may include minimal cash.

(which are deemed commodities), while Ethereum Funds hold Ethereum (which is also deemed a commodity).

The Exchange believes the Ethereum Funds satisfy the Exchange’s initial listing standards for Units on which the Exchange may list options. Specifically, the Ethereum Funds satisfy the initial listing standards set forth in Rule 4.3, Interpretation and Policy .06(b), as is the case for other Units on which the Exchange lists options (including trusts that hold commodities). Rule 4.3, Interpretation and Policy .06 requires that Units must either (1) meet the criteria and standards set forth in Rule 4.3, Interpretation and Policy .01(a),⁶ 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 Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus. The Ethereum Funds satisfy Rule 4.3, Interpretation and Policy .06(b)(2), 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 Ethereum Funds satisfy the criteria and guidelines set forth in Rule 4.3, Interpretation and Policy .01. Pursuant to Rule 4.3(a), a security (which includes a Unit) 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 Securities Exchange Act of 1934, as amended (the “Act”)), and be

⁶ Rule 4.3, Interpretation and Policy .01 provides for guidelines to be by the Exchange when evaluating potential underlying securities for Exchange option transactions.

characterized by a substantial number of outstanding shares that are widely held and actively traded.⁷ Each of the Ethereum Funds is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act.⁸ The Exchange believes each Ethereum Fund is characterized by a substantial number of outstanding shares that are widely held and actively traded.

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

<u>Ethereum Fund</u>	<u>Shares Outstanding</u>
Fidelity Fund	10,850,000
21Shares Fund	760,000
Invesco Fund	468,000
Franklin Fund	1,500,000
VanEck Fund	1,725,000
Grayscale Fund	228,468,500
Grayscale Mini Fund	380,898,500
Bitwise Fund	12,370,000
iShares Fund	37,200,000

Despite the fact that these Ethereum Funds are in only their third week of trading (they began trading on July 23, 2024), five of these funds already have 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 4.3, Interpretation and Policy .01(a)(1). However, the Exchange

⁷ The criteria and guidelines for a security to be considered widely held and actively traded are set forth in Rule 4.3, Interpretation and Policy .01, subject to exceptions.

⁸ 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”).

believes shares outstanding (i.e., free float⁹), 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.¹⁰ As evidenced during their brief time in market, the gross value of daily shares created or redeemed for each Ethereum Fund approximates its assets under management (“AUM”) as of July 24, 2024, which was as follows:

<u>Ethereum Fund</u>	<u>AUM</u>
Fidelity Fund	9,481,360
21Shares Fund	148,080,600
Invesco Fund	37,197,280
Franklin Fund	19,301,340
VanEck Fund	9,013,556
Grayscale Fund	8,040,436,000
Grayscale Mini Fund	1,043,203,000
Bitwise Fund	230,788,700
iShares Fund	287,328,200

⁹ 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.

¹⁰ 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 Interpretation and Policy .01.

As a result, the Exchange believes this demonstrates that each Ethereum Fund is characterized by a substantial number of outstanding shares. Given how recently Ethereum Funds began trading, the Exchange does not have access to the number of beneficial holders of Ethereum Funds at this time. However, given the significant trading volumes the Ethereum Funds, the Exchange believes it is reasonable to expect that shares of all of the Ethereum Funds are characterized by a substantial number of outstanding shares that are widely held.

The Exchange also believes each Ethereum 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 July 23, 2024 and the average daily volume (“ADV”) over the five-day period of August 2 through August 7, 2024 for each Ethereum Fund was as follows:

<u>Ethereum Fund</u>	<u>Trading Volume (Shares)</u>	<u>Trading Volume (Notional \$)</u>	<u>ADV (Shares)</u>
Fidelity Fund	32,751,647	1,023,590,893.88	1,279,085.00
21Shares Fund	2,995,673	46,584,597.69	183,032.80
Invesco Fund	2,398,977	75,800,517.49	116,423.80
Franklin Fund	3,726,018	89,987,417.90	114,194.60
VanEck Fund	5,557,411	247,424,935.45	288,519.00
Grayscale Fund	221,839,519	5,934,238,584.03	7,429,260.00
Grayscale Mini Fund	387,753,619	1,117,121,565.01	24,800,550.00
Bitwise Fund	27,454,355	638,820,845.28	806,202.19
iShares Fund	124,839,230	2,896,601,784.35	6,720,303.00

As demonstrated above, despite the fact that Ethereum Funds have been trading for fewer than three weeks, the trading volume for each except one Ethereum Fund is higher (and several significantly

higher) than 2,400,000 shares (and that one is only 1,023 shares below that number), 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 4.3, Interpretation and Policy .01. Additionally, from July 23 (the first day the Ethereum Funds began trading) through August 7, 2024, the ADV for each Ethereum Fund is in the top 25% of all ETFs that are currently trading. The Exchange believes this data demonstrates each Ethereum Fund is characterized by a substantial number of outstanding shares that are actively traded.

Options on Ethereum Funds will be subject to the Exchange's continued listing standards set forth in Rule 4.4, Interpretation and Policy .06 for Units deemed appropriate for options trading pursuant to Rule 4.3, Interpretation and Policy .06. Specifically, Rule 4.4, Interpretation and Policy .06 provides that Units that were initially approved for options trading pursuant to Rule 4.3, Interpretation and Policy .06 shall be deemed not 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 that such Units, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market. Additionally, options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Units approved for trading under Rule 4.3, Interpretation and Policy .06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Rule 4.4, Interpretation and Policy .01; (2) in the case of options covering Units approved for trading under Rule 4.3 Interpretation and Policy .06(b)(2) (as is the case for the Ethereum Funds), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange and are defined as an NMS stock, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or

portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or financial instruments and money market instruments on which the Units are based is no longer calculated or available; or (4) such other event shall occur or condition exist 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.¹¹ Consistent with current Rule 4.5, which governs the opening of options series on a specific underlying security (including Units), the Exchange will open at least one expiration month for options on each Ethereum Fund¹² at the commencement of trading on the Exchange and may also list series of options on a Ethereum Fund for trading on a weekly,¹³ monthly,¹⁴ or quarterly¹⁵ basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from 12 to 180 months from the time they are listed.¹⁶

¹¹ See Rule 4.2, which provides that the rights and obligations of holders and writers are set forth in the Rules of the Options Clearing Corporation (“OCC”); and Equity Options Product Specifications January 3, 2024), available at [Equity Options Specifications \(cboe.com\)](https://www.cboe.com/equity-options/specifications); 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).

¹² See Rule 4.5(b). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 4.3. 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 4.5(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.

¹³ See Rule 4.5(d).

¹⁴ See Rule 4.5(g).

¹⁵ See Rule 4.5(e).

¹⁶ See Rule 4.5(f).

Pursuant to Rule 4.5, Interpretation and Policy .07, which governs strike prices of series of options on Units, the interval of strikes prices for series of options Ethereum Funds will be \$1 or greater when the strike price is \$200 or less and \$5 or greater where the strike price is over \$200.¹⁷ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,¹⁸ the \$0.50 Strike Program,¹⁹ the \$2.50 Strike Price Program,²⁰ and the \$5 Strike Program.²¹ Pursuant to Rule 5.4, where the price of a series of a Ethereum Fund option is less than \$3.00, the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.²² Any and all new series of Ethereum Fund options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 4.5 and 5.4, as applicable.

Ethereum Fund options will trade in the same manner as any other Unit options on the Exchange. The Exchange Rules that currently apply to the listing and trading of all Unit 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 Ethereum Funds on the Exchange in the same manner as they apply to other options on all other Units that are listed and traded on the Exchange, including the precious-metal backed commodity Units already deemed

¹⁷ The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Monthly Options Series Program, and the Quarterly Options Series Program, Rules 4.5(d), (e), and (g) specifically sets forth intervals between strike prices on Quarterly Options Series, Short Term Option Series, and Monthly Options Series, respectively.

¹⁸ See Rule 4.5, Interpretation and Policy .01(a).

¹⁹ See Rule 4.5, Interpretation and Policy .01(b).

²⁰ See Rule 4.5, Interpretation and Policy .04.

²¹ See Rule 4.5, Interpretation and Policy .01(f).

²² If options on a 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 5.4(d) (which describes the requirements for the Penny Interval Program).

appropriate for options trading on the Exchange pursuant to current Rule 4.3, Interpretation and Policy .06(a)(4).

Position and exercise limits for options on Units, including options on Ethereum Funds, are determined pursuant to Rules 8.30 and 8.42, respectively. Position and exercise limits for Unit options vary according to the number of outstanding shares and the trading volumes of the underlying Unit over the past six months, where the largest in capitalization and the most frequently traded Units have an option position and exercise limit of 250,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market; and smaller capitalization Units have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market.²³ The Exchange further notes that Rule 10.3, which governs margin requirements applicable to the trading of all options on the Exchange, including options on Units, will also apply to the trading of Ethereum Fund options.

The Exchange represents that the same surveillance procedures applicable to all other options on Units currently listed and traded on the Exchange will apply to options on Ethereum Funds, and that it has the necessary systems capacity to support the new option series. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading Unit options, including precious metal-commodity backed Unit options, as proposed. Also, the Exchange may obtain information from CME Group Inc.'s designated contract markets that are members of the Intermarket Surveillance Group related to any financial instrument that is based, in whole or in part, upon an interest in or performance of Ethereum, as applicable.

²³ As Ethereum Funds do not currently trade, options on Ethereum Funds would be subject to the 25,000 option contract limit.

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 Ethereum Funds up to the number of expirations currently permissible under the Rules. Because the proposal is limited to Units on a single commodity, the Exchange believes any additional traffic that may be generated from the introduction of Ethereum Fund options will be manageable.

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 Ethereum Funds in the unregulated over-the-counter (“OTC”) options market (if the Commission approves Ethereum Funds for exchange-trading),²⁴ 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 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 Units 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 Ethereum Funds and essentially offer the same objectives and benefits to investors, just with

²⁴ The Exchange understands from customers that investors have historically transacted in options on Units in the OTC options market if such options were not available for trading in a listed environment.

respect to different assets. The Exchange notes that it has not identified any issues with the continued listing and trading of any Unit options, including Units that hold commodities (i.e., precious metals) that it currently lists and trades on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ 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 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 Ethereum Funds will provide investors with an opportunity to realize the benefits of utilizing options on a Ethereum Fund, including cost efficiencies and increased hedging strategies. The Exchange

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ Id.

believes that offering Ethereum 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 Ethereum and with Ethereum-related products and positions. Additionally, the Exchange's offering of Ethereum 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 Units,²⁸ which, as described above, are trusts structured in substantially the same manner as Ethereum Funds and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., Ethereum rather than precious metals) and for which the Exchange has not identified any issues with the continued listing and trading of commodity-backed Unit 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 Ethereum Funds satisfy the initial listing standards and continued listing standards currently in the Exchange Rules applicable to options on all Units, including Units that hold other commodities already deemed appropriate for options trading on the Exchange. Additionally, as demonstrated above, each Ethereum Fund is characterized by a substantial number of shares that are widely held and actively traded. Ethereum Fund options will trade in the same manner as any other Unit options — the same Exchange Rules that currently govern the listing and trading of all Unit

²⁸ See Rule 4.3, Interpretation and Policy .06(a)(4).

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 Ethereum Funds in the same manner.

The Exchange believes the proposed position and exercise limits for the Ethereum 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 Ethereum is not relevant when establishing position limits for options on the Ethereum 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.²⁹

²⁹ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-1997-11).

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.³⁰ 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 8.30 (and as proposed to be applicable to options on the Ethereum Funds).

The Exchange represents that it has the necessary systems capacity to support the new Ethereum 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 Unit options, including Ethereum 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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as Ethereum Funds would need to satisfy the initial listing standards set forth in the Exchange Rules in the same manner as any other Unit before the Exchange could list options on them. Additionally, Ethereum 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 Units on the Exchange will apply in the same manner to the listing and trading of all options

³⁰ 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”).

on Ethereum Funds. Also, and as stated above, the Exchange already lists options on other commodity-based Units.³¹

The Exchange does not believe that the proposal to list and trade options on 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 Ethereum Fund options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Ethereum Funds. 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, 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.

³¹ See Rule 4.3, Interpretation and Policy .06(a)(4).

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 written comments on 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 Exchange consents, the Commission will:

- A. by order approve or disapprove such 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-CBOE-2024-036 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-CBOE-2024-036. 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-CBOE-2024-036 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.³²

Sherry R. Haywood,

Assistant Secretary.

³² 17 CFR 200.30-3(a)(12).