

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101128; File No. SR-ISE-2024-03)

September 20, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, to Permit the Listing and Trading of Options on the iShares Bitcoin Trust

I. Introduction

On January 9, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade options on exchange-traded product (“ETP”) shares that represent interests in the iShares Bitcoin Trust (“IBIT”).<sup>3</sup> On January 11, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On January 25, 2024, the proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register.<sup>4</sup> On March 6, 2024, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the Proposal, disapprove the Proposal, or institute proceedings to determine whether to disapprove the Proposal.<sup>6</sup> On April 24, 2024, the Commission

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

<sup>4</sup> See Securities Exchange Act Release No. 99396 (Jan. 19, 2024), 89 FR 5047 (Jan. 25, 2024) (“Notice” or “Proposal”).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 99681 (Mar. 6, 2024), 89 FR 17886 (Mar. 12, 2024).

instituted proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the Proposal.<sup>8</sup> On July 19, 2024, the Commission designated a longer time for Commission action on the Proposal.<sup>9</sup> The Commission received comments addressing the proposed rule change.<sup>10</sup> On May 23, 2024, ISE submitted a letter providing additional information regarding IBIT and other bitcoin-based ETPs.<sup>11</sup> On August 21, 2024, ISE submitted a second letter that provides additional analysis supporting the proposed position limit of 25,000 contracts for IBIT options.<sup>12</sup> The Exchange filed Amendment Nos. 2 and 3 to the Proposal on August 29, 2024, and September 12, 2024, respectively. On September 12, 2024, the Exchange withdrew Amendment Nos. 2 and 3 and filed Amendment No. 4 to the Proposal.<sup>13</sup> The Exchange filed Amendment No. 5 to the Proposal on September 19, 2024.<sup>14</sup> The Commission is publishing this notice to solicit comments on Amendment Nos. 4 and 5 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1, 4, and 5, on an accelerated basis.

## II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5

As described in detail in the Notice, the Exchange proposed to amend its rules to permit the listing and trading of options on IBIT.<sup>15</sup> The Exchange stated that options on IBIT would provide

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<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 100024 (Apr. 24, 2024), 89 FR 34290 (Apr. 30, 2024) (“Order Instituting Proceedings”).

<sup>9</sup> See Securities Exchange Act Release No. 100567 (Jul. 19, 2024), 89 FR 60482 (Jul. 25, 2024).

<sup>10</sup> Comment letters on the Proposal are available at <https://www.sec.gov/comments/sr-ise-2024-03/srise202403.htm>.

<sup>11</sup> See letter from Greg Ferrari, Vice President, U.S. Options, ISE, dated May 23, 2024 (“ISE Letter I”).

<sup>12</sup> See letter from Angela Dunn, Nasdaq ISE, LLC, dated Aug. 21, 2024 (“ISE Letter II”).

<sup>13</sup> Amendment No. 4 amends ISE Options 9, Section 13, Supplementary Material .01 and ISE Options 9, Section 15, Supplementary Material .01, respectively, to establish position and exercise limits of 25,000 contracts for the proposed IBIT options.

<sup>14</sup> Amendment No. 5 amends the Proposal to describe in greater detail the surveillance procedures that will apply to the trading of options on IBIT. The full text of Amendment Nos. 4 and 5 is available at the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ISE/rulefilings>.

<sup>15</sup> See supra note 4.

investors with a hedging and risk management tool to manage exposure to the price of bitcoin and bitcoin-related products and positions.<sup>16</sup>

Options on IBIT will be physically settled with American-style exercise.<sup>17</sup> The Exchange stated that options on IBIT will be subject to the Exchange’s respective initial and continued listing standards.<sup>18</sup> The Exchange’s initial listing standards require, among other things, that the security underlying a listed option be “characterized by a substantial number of outstanding shares that are widely held and actively traded.”<sup>19</sup> The Exchange stated that options on IBIT will trade in the same manner as other exchange-traded fund (“ETF”) options, and that options on IBIT will be subject to the Exchange rules that currently apply to the listing and trading of all ETF options on the Exchange, including, for example, Exchange rules governing listing criteria, expiration and exercise prices, minimum increments, margin requirements, customer accounts, and trading halt procedures.<sup>20</sup>

As initially proposed, the position and exercise limits for options on IBIT would have been determined pursuant to the Exchange’s existing rules.<sup>21</sup> Under these rules, the position and exercise limits applicable to an options class depend upon the trading volume and outstanding shares of the underlying security. Thus, position and exercise limits of 250,000, 200,000, 75,000, 50,000 or 25,000 contracts on the same side of the market would have applied to options on IBIT depending on the six-month trading volume and number of shares outstanding for IBIT.<sup>22</sup>

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<sup>16</sup> See Notice, 89 FR at 5051.

<sup>17</sup> See *id.* at 5050.

<sup>18</sup> See Notice, 89 FR at 5049. See also ISE Options 4, Section 3(a).

<sup>19</sup> See Notice, 89 FR at 5049.

<sup>20</sup> See *id.* at 5050.

<sup>21</sup> See *id.*

<sup>22</sup> 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

In Amendment No. 4, the Exchange proposes to set the position and exercise limits for options on IBIT at 25,000 contracts regardless of the trading volume and shares outstanding for IBIT.<sup>23</sup> According to the Exchange, “this position limit is the lowest position limit available in the options industry, is extremely conservative and more than appropriate given the IBIT’s market capitalization, average daily volume, and high number of outstanding shares.”<sup>24</sup>

The Exchange represents that the surveillance procedures that it applies to other ETF options will apply to options on IBIT, and that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior that might arise from listing and trading options on ETFs.<sup>25</sup> In Amendment No. 5, the Exchange more fully describes the surveillance procedures that will apply to options on IBIT. The Exchange states that it has an adequate surveillance program in place for options, and that the Exchange intends to apply the same program procedures to options on IBIT that it applies to the Exchange’s other options products.<sup>26</sup> The Exchange states that its market surveillance staff would have access to the surveillances conducted by The Nasdaq Stock Market LLC (“Nasdaq”) with respect to IBIT and would review activity in IBIT when conducting surveillances for market abuse or manipulation in the options on the IBIT.<sup>27</sup> Additionally, the Exchange states that it is a member of the Intermarket

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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 ISE Options 9, Section 13. In addition, ISE Options 9, Section 13, Supplementary Material .01 establishes higher position limits for options on certain ETFs.

<sup>23</sup> See Amendment 4.

<sup>24</sup> See *id.*

<sup>25</sup> See Notice, 89 FR at 5050.

<sup>26</sup> The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). See Amendment No. 5.

<sup>27</sup> See *id.*

Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement, and that ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.<sup>28</sup> The Exchange further states that it has a Regulatory Services Agreement with the Financial Industry Regulatory Authority (“FINRA”) and that, pursuant to a multi-party 17d-2 joint plan, all of the options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillance that are common to rules of all options exchanges.<sup>29</sup>

The Exchange states that underlying shares of spot bitcoin ETPs, including IBIT, are also subject to safeguards related to addressing market abuse and manipulation.<sup>30</sup> The Exchange notes that the Commission stated in its order approving proposals by several exchanges to list and trade shares of spot bitcoin-based exchange-traded products (“Bitcoin ETP Order”)<sup>31</sup> that:

Each Exchange has a comprehensive surveillance-sharing agreement with the CME via their common membership in the Intermarket Surveillance Group. This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME bitcoin futures market.<sup>32</sup>

The Exchange states that, given the consistently high correlation between the CME bitcoin futures market and the spot bitcoin market, as confirmed by the Commission through robust correlation analysis, the Commission was able to conclude that such surveillance sharing

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<sup>28</sup> See id.

<sup>29</sup> Section 19(g)(1) of the Act, among other things, requires every 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. See Amendment No. 5.

<sup>30</sup> See Amendment No. 5.

<sup>31</sup> See supra note 3.

<sup>32</sup> See Amendment No. 5 (citing the Bitcoin ETP Order, 89 FR at 3009).

agreements could reasonably be “expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Bitcoin ETPs].”<sup>33</sup>

In light of surveillance measures related to both options and futures, as well as the underlying Trust,<sup>34</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 IBIT options.<sup>35</sup>

The Exchange represents that it believes that both it and the Options Price Reporting Authority, LLC 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 IBIT.<sup>36</sup>

The Proposal also amends ISE Options 4, Section 3(h) to replace the reference to the “ETFS Gold Trust” with a reference to the Aberdeen Standard Physical Gold Trust, the current name of the trust. In addition, the Proposal replaces incorrect cross-references to “Options 4, Section 3(h)(A)(i)” in ISE Options 4, Section 4(g) with references to the correct citation, “Options 4, Section 3(h)(i).”

### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>37</sup> and, in particular, the requirements of Section 6 of the Act.<sup>38</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)

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<sup>33</sup> See Amendment No. 5 (citing the Bitcoin ETP Order, 89 FR at 3010-11).

<sup>34</sup> See Securities Exchange Act Release No. 99295 (Jan. 8, 2024), 89 FR 2321, 2334-35 (Jan.12, 2024) (notice of filing of Amendment No. 1 to SR-Nasdaq-2023-016).

<sup>35</sup> See Amendment No. 5.

<sup>36</sup> See Notice, 89 FR at 5050.

<sup>37</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>38</sup> 15 U.S.C. 78f.

of the Act,<sup>39</sup> which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Order Instituting Proceedings sought comment on several issues raised by the Proposal, including whether shares in the underlying bitcoin ETPs are “widely held and actively traded,” as required by ISE’s rules; whether the proposed bitcoin ETP options should be subject to the same position limits as stock options, and whether the available supply in the markets for bitcoin should be considered in establishing position limits for options on the bitcoin ETPs; and the potential impact on market quality and function that could result from listing bitcoin ETP options.<sup>40</sup> Several commenters supported the Proposal, generally stating that the proposed options would help investors to hedge their positions and manage crypto-related risk.<sup>41</sup> Other commenters raised concerns regarding the potential risks of the proposed options to individual investors and the financial system.<sup>42</sup>

A. Widely Held and Actively Traded

The Exchange’s initial listing standards require, among other things, that the security underlying a listed option be “characterized by a substantial number of outstanding shares that are widely held and actively traded.”<sup>43</sup> The Order Instituting Proceedings requested comment on whether the Proposal should include data demonstrating that the shares of the underlying ETP are

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<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> In addition to the Proposal, the Order Instituting Proceedings sought comment on several other proposals to list and trade options on bitcoin ETPs. See Order Instituting Proceedings, 89 FR at 34294. See also ISE Letter I.

<sup>41</sup> See letters from John C. Pickford, Susquehanna, dated Sept. 11, 2024; Steve Crutchfield, Head of Business Development, CTC, LLC, dated May 17, 2024; Congressman Mike Flood and Congressman Wiley Nickel, dated May 1, 2024; Joseph Ferrucci, dated Feb. 28, 2024; Benjamin Pincock, CIO, Method and Theory Capital Management, dated Feb. 19, 2024; Derek Jerina, dated Feb. 10, 2024; Xplorer Trading, dated Feb. 7, 2024; and an anonymous commenter, dated Jan. 21, 2024.

<sup>42</sup> See infra notes 45 - 49 and accompanying text.

<sup>43</sup> See ISE Options 4, Section 3(a)(2).

“widely held and actively traded,” as required by Exchange rules.<sup>44</sup>

One commenter stated that the Commission should wait and evaluate the market for spot bitcoin ETPs to determine the extent to which they are widely held and actively traded before approving options on the spot bitcoin ETPs.<sup>45</sup> The commenter stated that data indicated that, compared to when spot bitcoin ETPs were launched, investor demand for spot bitcoin ETPs had diminished, and that one market participant had expressed the view that the bitcoin ETP market should “settle and find its footing” before the Commission approves the listing of options on spot bitcoin ETPs.<sup>46</sup> In addition, the commenter urged the Commission to proceed cautiously because “options on spot bitcoin ETPs will expose retail investors to a tremendous amount of risk.”<sup>47</sup> The commenter also stated that the approval of options on spot bitcoin ETPs could pose risks to the broader financial system because the Commission’s approval of spot bitcoin ETPs had deepened the connection between “volatile” cryptocurrencies and the traditional finance system.<sup>48</sup> The commenter stated that options on spot bitcoin ETPs “would further entangle the crypto industry with traditional finance” and aggravate the risks associated with crypto assets.<sup>49</sup>

The Exchange has addressed comments regarding whether IBIT shares are widely held and

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<sup>44</sup> See Order Instituting Proceedings, 89 FR at 34294. See also ISE Options 4, Section 3(a).

<sup>45</sup> See letter from Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated May 21, 2024 (“Better Markets Letter I”) at 2.

<sup>46</sup> Better Markets Letter I at 2 and n. 17 (quoting Terrence Yang, managing director of Swan Bitcoin).

<sup>47</sup> Better Markets Letter I at 1. See also letter from Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated September 13, 2024 (“Better Markets Letter II”). Better Markets Letter II reiterated the concerns that the commenter raised in Better Markets I and provided additional information regarding the volatility of bitcoin. Better Markets Letter II stated, for example, that in August 2024, bitcoin dropped 15% in a 24-hour period, a decline that, according to the commenter, affected more investors because of the Commission’s approval of bitcoin-based ETPs. See Better Markets Letter II at 2. The commenter stated that the risks to retail investors associated with options trading would be “compounded exponentially” because of the volatility of the crypto market and, further, that options on spot bitcoin-based exchange-traded products exacerbate the risks to retail investors of investing in bitcoin. See Better Markets Letter II at 3.

<sup>48</sup> See Better Markets Letter I at 4.

<sup>49</sup> Better Markets Letter I at 5. See also letter from anonymous commenter dated Apr. 15, 2024 (stating that the introduction of derivatives tied to the price of bitcoin would “spell disaster for the financial system and for global markets”).



actively traded.<sup>50</sup> In particular, the Exchange represented that “on May 13, 2024, IBIT’s total shares outstanding equaled 482,480,000. On May 13, 2024, IBIT’s total shares comprised approximately 4% of total underlying spot BTC liquidity. IBIT is the most liquid spot Bitcoin ETF and the 11th most liquid ETF in the U.S. by average volume (34,825,921 shares) and 18th largest by average notional (\$1,246,060,738). Of note, as of May 22, 2023, IBIT had approximately 193,956 shareholders.”<sup>51</sup>

ISE further represented that “the market capitalization for IBIT was 19,789,068 billion [sic], with an average daily volume (‘ADV’), for the preceding three months prior to August 7, 2024, of greater than 26 million shares.”<sup>52</sup> In addition, ISE represented that on August 12, 2024, IBIT had 611,040,000 shares outstanding.<sup>53</sup> The Commission has reviewed the Exchange’s analysis and publicly available data regarding IBIT. Based on this review of information provided by the Exchange and publicly available information—including information regarding the number of IBIT shareholders, the number of IBIT shares outstanding, the ADV of IBIT, and the net assets of IBIT—the Commission concludes that it is reasonable for the Exchange to determine that IBIT satisfies the requirement of ISE Options 4, Section 3(a)(2) that an underlying be widely held and actively traded. As stated above, one commenter suggested that fund outflows could indicate waning investor demand for spot bitcoin-based ETPs.<sup>54</sup> The Commission agrees that investor interest in IBIT may vary over time.<sup>55</sup> Nonetheless, the data discussed above indicate that it is

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<sup>50</sup> See ISE Letters I and II.

<sup>51</sup> See ISE Letter I at 2. ISE stated that it obtained information regarding the number of shareholders by contacting broker-dealers and combining their reported shareholder counts. See ISE Letter I at notes 3 and 4.

<sup>52</sup> ISE Letter II at 3. As of September 6, 2024, IBIT had net assets of \$20,083,776,594. See <https://www.ishares.com/us/products/333011/ishares-bitcoin-trust>.

<sup>53</sup> See ISE Letter II at 5.

<sup>54</sup> See Better Markets Letter I at 2.

<sup>55</sup> For example, IBIT had net assets of \$20,083,776,594 as of September 6, 2024, and net assets of \$22,672,544,214 as of September 19, 2024. See *supra* note 52 and <https://www.ishares.com/us/products/333011/ishares-bitcoin-trust>.

reasonable to conclude that IBIT shares are widely held and actively traded.<sup>56</sup>

With regard to comments regarding the Proposal’s potential risks to retail investors, including concerns regarding the volatility of bitcoin,<sup>57</sup> existing rules governing broker-dealer conduct when dealing with retail customers would apply to the proposed IBIT options. For example, the Exchange’s rules require its members to “exercise due diligence to learn the essential facts as to the Customer and his investment objectives and financial situation.”<sup>58</sup> In fulfilling this obligation, the member must consider, among other things, a customer’s investment objectives; employment status; estimated annual income; estimated net worth; and investment experience and knowledge.<sup>59</sup> Further, FINRA’s heightened suitability requirements for options trading accounts require that a person recommending an opening position in any option contract have “a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract.”<sup>60</sup>

The Commission acknowledges the comments regarding the potential impact of bitcoin ETP options on the traditional financial system. Pursuant to Section 19(b)(2) of the Exchange Act, however, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act.<sup>61</sup> For the reasons discussed herein, the Commission finds that the proposed rule change satisfies the requirements of the Exchange Act, including the requirements in Section

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<sup>56</sup> See supra notes 51 - 53 and accompanying text.

<sup>57</sup> See Better Markets Letter II at 2-3.

<sup>58</sup> See ISE Options 10, Section 6(b).

<sup>59</sup> See ISE Options 10, Section 6(b)(1).

<sup>60</sup> See FINRA Rule 2360(b)(19).

<sup>61</sup> See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Position and Exercise Limits

The Order Instituting Proceedings also requested comment on whether the Proposal demonstrated that options on the bitcoin ETPs should be subject to the same position limits as options on stock, and whether the available supply in the markets for bitcoin should be considered in establishing position limits for options on the bitcoin ETPs.<sup>62</sup>

Position and exercise limits serve as a regulatory tool designed to deter manipulative schemes and adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise. Options position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market to benefit the options position.<sup>63</sup> In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid classes.<sup>64</sup> As the Commission has previously recognized, markets with active and deep trading interest, as well as with broad public ownership, are more difficult to manipulate or disrupt than less active and deep markets with smaller public floats.<sup>65</sup> The Commission also has recognized that position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume

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<sup>62</sup> See Order Instituting Proceedings, 89 FR at 34294.

<sup>63</sup> See Securities Exchange Act Release No. 39489 (Dec. 24, 1997), 63 FR 276, 279 (Jan 5, 1998) (order approving File No. SR-Cboe-97-11).

<sup>64</sup> Id.

<sup>65</sup> Id.

of the underlying security.<sup>66</sup> At the same time, the Commission has recognized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.<sup>67</sup>

The Exchange initially proposed to subject options on IBIT to the same position and exercise limit levels as other ETF options currently trading.<sup>68</sup> In Amendment No. 4, however, the Exchange proposed to provide position and exercise limits of 25,000 contracts for options on IBIT,<sup>69</sup> which are the lowest position and exercise limits to which other ETF options are subject. In proposing these position and exercise limits, the Exchange considered IBIT's market capitalization and ADV, and its prospective position and exercise limits in relation to other securities.<sup>70</sup> The Exchange stated that this analysis shows that options symbols with similar market capitalization and ADV to IBIT have a position and exercise limits in excess of 400,000 options. Thus, according to the Exchange, this demonstrates that "the proposed 25,000 same side position limit for options on IBIT is extremely conservative relative to these options symbols which are a

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<sup>66</sup> See, e.g., Securities Exchange Act Release Nos. 21907 (Mar. 29, 1985), 50 FR 13440, 13441 (Apr. 4, 1985) (order approving File Nos. SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1); and 40875 (Dec. 31, 1998), 64 FR 1842, 1843 (Jan. 12, 1999) (order approving File Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and Phlx-98-36).

<sup>67</sup> See *id.*

<sup>68</sup> See Notice, 89 FR at 5050.

<sup>69</sup> In Amendment No.4, the Exchange also clarified that its analysis in ISE Letter II applies to exercise limits as well as position limits.

<sup>70</sup> The Exchange represented that it aggregated market capitalization and volume data for securities that have defined position limits utilizing data from The Options Clearing Corporation. This pool of data took into consideration 3,984 options on single stock securities, excluding broad based ETFs. ISE aggregated the data based on market capitalization and ADV and grouped option symbols by position limit utilizing statistical thresholds for ADV and market capitalization that were one standard deviation above the mean for each position limit category (i.e., 25,000, 50,000 to 65,000, 75,000, 100,000 to less than 250,000, 250,000 to 400,000, 450,000 to 1,000,000, and greater than or equal to 1,000,000). See ISE Letter II at 3-4. ISE Options 9, Section 13(d) establishes position limits for various options. For example, a 25,000-contract limit applies to options having an underlying security that does not meet the trading volume and outstanding shares requirements for a higher position limit. See *supra* note 22.

full standard deviation above the mean in comparison.”<sup>71</sup>

The Exchange also stated that it reviewed IBIT’s data relative to the market capitalization of the entire bitcoin market in terms of exercise risk and availability of deliverables.<sup>72</sup> Utilizing data as of August 3, 2024, there were 19,737,193 bitcoins in circulation.<sup>73</sup> Using a price of \$57,000 per bitcoin, the market capitalization of bitcoin would be greater than \$1.125 trillion.<sup>74</sup> According to the Exchange, if a position limit of 400,000 options were considered, “the exercisable risk would represent only 6.6% of the outstanding shares of IBIT.”<sup>75</sup> The Exchange also stated that, with the proposed 25,000 position limit, the exercisable risk “only represents 0.4% of the outstanding shares of IBIT.”<sup>76</sup> Further, according to the Exchange, because IBIT has a creation and redemption process managed through the issuer, the exercisable risk for options on IBIT would be less than 0.01% of the market capitalization of all outstanding bitcoin.<sup>77</sup> The Exchange stated that, assuming a scenario where all options on IBIT shares were exercised given the proposed 25,000 per same side position limit, this would have a virtually unnoticed impact on the entire bitcoin market.<sup>78</sup> The Exchange also stated that “[t]his analysis demonstrates that the proposed 25,000 per same side position limit is also “extremely conservative and more than appropriate for options on IBIT.”<sup>79</sup>

In addition, the Exchange compared the proposed position limit to position limits for derivative products regulated by the Commodity Futures Trading Commission (“CFTC”).

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<sup>71</sup> See ISE Letter II at 4.

<sup>72</sup> See id.

<sup>73</sup> See id.

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> See id.

<sup>77</sup> See id.

<sup>78</sup> See id.

<sup>79</sup> Id.

Specifically, the Exchange examined the equivalent bitcoin futures position limits, and, specifically, the CME bitcoin futures contract, which has a position limit of 2,000 futures.<sup>80</sup> Based on this analysis, the Exchange believes that a position limit of 176,338 contracts for IBIT options would be equivalent to the 2,000-contract notional position limit for CME bitcoin futures.<sup>81</sup> Stated another way, the Commission estimates that the proposed position limit of 25,000 contracts for IBIT options is roughly equivalent to a position limit of 280 bitcoin futures contracts. In analyzing the proposed position and exercise limits, ISE also considered the supply of IBIT and the number of market participants that would be required to exercise their positions in unison to place the underlying asset under stress.<sup>82</sup> ISE concluded that with a position limit of 25,000 contracts on the same side of the market and 611,040,000 shares of IBIT outstanding, 244 market participants would have to simultaneously exercise their positions to place IBIT under stress.<sup>83</sup> ISE further stated that, historically, from observation, it appears that no more than five market participants holding positions in a security have exercised their options at the same time.<sup>84</sup>

Option position limits are determined based on six-month trading volume in the underlying security or six-month trading volume and number of shares outstanding of the underlying security.<sup>85</sup> The Exchange stated that position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes, and to achieve such balance, options on IBIT would be subject to the 25,000-option contract limit.<sup>86</sup> The Commission finds that the proposed position and exercise

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<sup>80</sup> See id.

<sup>81</sup> The Exchange multiplied the 2,000-contract limit by a multiplier of five, resulting in \$550 million of notional value for bitcoin futures. See ISE Letter II for a detailed description of the Exchange's methodology.

<sup>82</sup> See id. at 5.

<sup>83</sup> See id.

<sup>84</sup> See id.

<sup>85</sup> See supra note 19 and accompanying text.

<sup>86</sup> See ISE Letter II at 3.

limits are consistent with the Act, and in particular, with the requirements in Section 6(b)(5) that the rules of a national securities exchange designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As discussed above, the Commission has recognized that position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security.<sup>87</sup> In addition, the Commission has stated previously that rules regarding position and exercise limits 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.<sup>88</sup> Based on its review of the data and analysis provided by the Exchange, the Commission concludes that the proposed position and exercise limits satisfy these objectives. Specifically, the Commission has considered and reviewed the Exchange's analysis that the exercisable risk associated with a position limit of 25,000 contracts represented only 0.4% of the outstanding shares of IBIT.<sup>89</sup> The Commission also has considered and reviewed the Exchange's statement that with a position limit of 25,000 contracts on the same side of the market and 611,040,00 shares of IBIT outstanding, 244 market participants would have to simultaneously exercise their positions to place IBIT under stress.<sup>90</sup> Based on the Commission's review of this information and analysis, the Commission concludes that the proposed position and exercise limits are designed to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security, and to prevent the establishment of options positions that can be used or

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<sup>87</sup> See supra note 66 and accompanying text.

<sup>88</sup> See Securities Exchange Act Release No. 57352 (Feb.19, 2008), 73 FR 10076, 10080 (Feb. 25, 2008) (order approving File No. SR-Cboe-2008-07).

<sup>89</sup> See ISE Letter II at 4.

<sup>90</sup> See id. at 5.

might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.

C. Surveillance

Lastly, in the Order Instituting Proceedings, the Commission asked whether the Proposal should include information regarding how the Exchange would obtain information concerning trading in the bitcoin ETPs from the exchanges where the bitcoin ETPs trade. In its letter to the Commission, the Exchange represented that it “would implement any new surveillance procedures it deemed necessary to effectively monitor the trading of options on Bitcoin ETPs.”<sup>91</sup> In Amendment No. 5 to the Proposal, ISE provided additional detail regarding the surveillance procedures that will apply to IBIT options. As described more fully above, the Exchange will apply its existing options surveillance procedures to IBIT options.<sup>92</sup> The Exchange states that its market surveillance staff will have access to the surveillances conducted by Nasdaq with respect to IBIT and will review activity in IBIT when conducting surveillances for market abuse or manipulation in options on IBIT.<sup>93</sup> Additionally, the Exchange states that it is a member of ISG, whose members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets.<sup>94</sup> CME also is a member of ISG. In approving the Bitcoin ETPs, the Commission concluded that:

fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is highly correlated to spot bitcoin—can reasonably be expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of [the

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<sup>91</sup> ISE Letter I at 7.

<sup>92</sup> The Exchange states that its surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pingping, phishing). See Amendment No. 5.

<sup>93</sup> See id.

<sup>94</sup> See id.



Bitcoin ETPs].<sup>95</sup>

Together, these surveillance procedures should allow the Exchange to investigate suspected manipulations or other trading abuses in IBIT options.

D. Additional Changes

The proposed changes to update the name of the ETFS Gold Trust to the Aberdeen Standard Physical Gold Trust and to correct the cross-references in ISE Options 4, Section 4(g) will protect investors and the public interest by helping to ensure that the Exchange's rules remain accurate and up-to-date.

IV. Solicitation of Comments on Amendment Nos. 4 and 5 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 4 and 5 are 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-ISE-2024-03 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-ISE-2024-03. 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

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<sup>95</sup> See Bitcoin ETP Order, 89 FR at 3010-11.

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-ISE-2024-03 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Amendment Nos. 4 and 5

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment Nos. 4 and 5 prior to the 30<sup>th</sup> day after the date of publication of notice of Amendment No. 3 in the Federal Register. Amendment No. 4 amends the Proposal to establish position and exercise limits of 25,000 contract for the proposed IBIT options, instead of the same position and exercise limits as other options currently trading. The Exchange stated that some commodity-based ETPs currently have position and exercise limits of 250,000 contracts.<sup>96</sup> As described above, ISE provided data and analysis supporting the proposed position and exercise limits and stated, among other things, that the proposed position and exercise limits would represent 0.4% of the

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<sup>96</sup> See ISE Letter II at 6 (stating that the SPDR Gold Shares ETF and the iShares Silver Trust ETF have position limits of 250,000 contracts).

outstanding shares of IBIT.<sup>97</sup> The Commission concludes that proposed position and exercise limits are designed to minimize the potential for manipulations or disruptions of the underlying market.<sup>98</sup> Amendment No. 5 describes in greater detail the surveillance procedures that will apply to IBIT options. The additional information regarding these procedures assists the Commission in evaluating the Proposal and determining that the Proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, as discussed above. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>99</sup> to approve the proposed rule change, as modified by Amendment Nos. 4 and 5, on an accelerated basis.

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<sup>97</sup> See ISE Letter II at 4.

<sup>98</sup> The Commission recognizes that position limits should not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market. See, e.g., Securities Exchange Act Release Nos. 21907 (Mar. 29, 1985), 50 FR 13440 (Apr. 4, 1985) (order approving File Nos. SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1); 40875 (Dec. 31, 1998), 64 FR 1842, 1843 (Jan. 12, 1999) (order approving File Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and Phlx-98-36). The Commission finds that the proposed position and exercise limits are consistent with these objectives.

<sup>99</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 4, and 5, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>100</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>101</sup> that the proposed rule change (SR-ISE-2024-03), as modified by Amendment Nos. 1, 4, and 5, be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>102</sup>

**Vanessa A. Countryman,**

*Secretary.*

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<sup>100</sup> 15 U.S.C. 78f(b)(5).

<sup>101</sup> 15 U.S.C. 78s(b)(2)

<sup>102</sup> 17 CFR 200.30-3(a)(12).