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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 34

Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Amend ISE Options 4, Section 3.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq ISE, LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 07/22/2024


(Title *)

By John Zecca

EVP and Chief Legal Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2024.07.22 12:23:09 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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SR-ISE-2024-34 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-ISE-2024-34 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-ISE-2024-34 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 4, Section 3, Criteria for Underlying Securities.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) The proposed rule change amends The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq Phlx LLC (“Phlx”), Nasdaq BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”) Options 4, Section 3. Nasdaq, Phlx, BX, GEMX and MRX incorporate ISE Options 4, Section 3 by reference.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors (the “Board”) on June 12, 2024. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
(215) 496-5692

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend Options 4, Section 3, Criteria for Underlying Securities. Specifically, the Exchange proposes to amend Options 4, Section 3(h) to allow the Exchange to list and trade options on units that represent interests in a trust that hold ether (“Ether ETPs”), designating them as Exchange-Traded Fund Shares (“ETFs”) deemed appropriate for options trading on the Exchange. Options 4, Section 3(h) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include ETFs that represent certain types of interests,³ including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).⁴

Ether ETPs are ether-backed commodity ETPs structured as trusts.⁵ Similar to any ETF currently deemed appropriate for options trading under Options 4, Section 3(h), the investment objective of an Ether ETP trust is to reflect generally the performance of the price of ether (before payment of the trust’s expenses and liabilities), offering investors an opportunity to gain exposure to ether without the complexities of ether

³ Options 4, Section 3(h) provides that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares” or “ETFs”) that are traded on a national securities exchange and are defined as an “NMS” stock under Rule 600 of Regulation NMS, and that meet certain criteria specified in Options 4, Section 3(h), including that they:...(iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, or the ETFS Gold Trust...”. In addition to the aforementioned requirements, Options 4, Section 3(h)(1) and (2) must be met to list options on ETFs.

⁴ The Commission recently approved a rule change to list and trade shares of the Trust pursuant to Rule 5711(d) of The Nasdaq Stock Exchange LLC (“Commodity-Based Trust Shares”). See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NASDAQ-2023-045) (hereinafter “SR-NASDAQ-2023-045”). The Exchange represents it would not list options on a trust unless it satisfied all applicable criteria in Options 4, Section 3.

⁵ Pursuant to Options 4, Section 3(a), the Exchange would only have authority to list and trade ETFs that are trading as NMS stocks.

delivery. As is the case for ETFs currently deemed appropriate for options trading, a Ether ETP's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of ether and are designed to track ether or the performance of the price of ether and offer access to the ether market.⁶ Ether ETPs provide investors with cost-efficient alternatives that allow a level of participation in the ether market through the securities market. The primary substantive difference between Ether ETPs and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are commodities), while Ether ETPs hold ether (which is also deemed a commodity).

The Exchange's initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to the Ether ETPs. The Exchange expects Ether ETPs to satisfy the initial listing standards as set forth in Options 4, Section 3(a) and Options 4, Section 3(h). Pursuant to Options 4, Section 3(a), a security (which includes an ETF) on which options may be listed and traded on the Exchange must be a security registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act), and the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.⁷ Options 4, Section 3(h)(1) requires that ETFs must either meet the criteria and guidelines set forth in Options 4, Section 3(a) and (b)⁸ or the ETFs are available for creation or redemption each business day from or through the issuing trust, investment company, commodity

⁶ The trust may include minimal cash.

⁷ The Exchange represents it would not list options on a Ether ETP unless it satisfied the criteria in Options 4, Section 3(a), the proposed listing criteria, and any other applicable listing criteria.

⁸ Options 4, Section 3(h)(1) provides criteria and guidelines when evaluating potential underlying securities for the listing of options.

pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them 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 of the ETFs, all as described in the ETFs' prospectus or the Exchange-Traded Fund Shares must be based on international or global indexes, or portfolios that include non-U.S. securities, and meet other criteria. The Exchange expects that Ether ETFS would satisfy Options 4, Section 3(h)(1)(ii).

Options on Ether ETFS will also be subject to the Exchange's continued listing standards for options on ETFs set forth in Options 4, Section 4(g) for ETFs deemed appropriate for options trading pursuant to Options 4, Section 3(h). Specifically, options approved for trading pursuant to Options 4, Section 3(h) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such ETFs if the ETFs are delisted from trading as provided in subparagraph (b)(5) of Options 4, Section 4⁹ or the ETFs are halted or suspended from trading on their primary market.¹⁰ Additionally,

⁹ Options 4, Section 4(b)(5) provides, if an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including 'when-issued' trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied. Options 4, Section 4(b)(3) provides, "The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months."

¹⁰ See Options 4, Section 4(g).

options on ETFs may be subject to the suspension of opening transactions in any series of options of the class covering ETFs in any of the following circumstances:

(1) in the case of options covering Exchange-Traded Fund Shares approved pursuant to Options 4, Section 3(h)(A)(i), in accordance with the terms of subparagraphs (b)(1), (2), (3) and (4) of Options 4, Section 4;¹¹

(2) in the case of options covering Fund Shares approved pursuant to Options 4, Section 3(h)(A)(ii),¹² following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days;

(3) the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments, on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or

(4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on a Ether ETP would be physically settled contracts with American-style exercise.¹³ Consistent with current Options 4, Section 5, which governs the

¹¹ Options 4, Section 4(b)(5)(1) through (4) provides, if: (1) there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Act, (2) there are fewer than 1,600 holders of the underlying security, (3) the trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months, or (4) the underlying security ceases to be an ‘NMS stock’ as defined in Rule 600 of Regulation NMS under the Exchange Act.

¹² Options 4, Section 3(h)(ii) refers to Currency Trust Shares.

¹³ See Options 4, Section 2, Rights and Obligations of Holders and Writers, which provides that the rights and obligations of holders and writers shall be as set forth in the Rules of the Clearing Corporation. See also The Options Clearing Corporation (“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

opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on each Ether ETP¹⁴ and may also list series of options on a Ether ETP for trading on a weekly¹⁵ or quarterly¹⁶ basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from twelve to thirty-nine months from the time they are listed.¹⁷

Pursuant to Options 4, Section 5(d), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Ether ETPS approved for options trading pursuant to Section 3(h) of Options 4 will be \$1 or greater when the strike price is \$200 or less and \$5 or greater when the strike price is greater than \$200.¹⁸ With respect to the Short Term Options Series or Weekly Program, during

Rules can be located at: https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

¹⁴ See Options 4, Section 5(b). At the commencement of trading on the Exchange of a particular class of options, the Exchange will open a minimum of one (1) series of options in that class. The exercise price of that series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on the Exchange. The monthly expirations are subject to certain listing criteria for underlying securities described within Options 4, Section 5. 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 Options 4, Section 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. The opening of a new series of options shall not affect the series of options of the same class previously opened. 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 the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the second business day prior to expiration.

¹⁵ See Supplementary .03 to Options 4, Section 5.

¹⁶ See Supplementary .04 to Options 4, Section 5.

¹⁷ See Options 4, Section 8.

¹⁸ See Options 5, Section 5(d). The interval between strike prices of series of options on Exchange-Traded Fund Shares approved for options trading pursuant to Section 3(h) of this Options 4 may

the month prior to expiration of an option class that is selected for the Short Term Option Series Program, the strike price intervals for the related non-Short Term Option (“Related non-Short Term Option”) shall be the same as the strike price intervals for the Short Term Option.¹⁹ Specifically, the Exchange may open for trading Short Term Option Series at strike price intervals of (i) \$0.50 or greater where the strike price is less than \$100, and \$1 or greater where the strike price is between \$100 and \$150 for all option classes that participate in the Short Term Options Series Program; (ii) \$0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) \$2.50 or greater where the strike price is above \$150.²⁰ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,²¹ the \$0.50 Strike Program,²² the \$2.50 Strike Price Program,²³ and the \$5 Strike Program.²⁴ Pursuant to Options 3, Section 3, where the price of a series of a Ether ETP options 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 \$0.10.²⁵ Any and all new

also be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange. See also Options 4, Section 5(h). The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Quarterly Options Series Program, and the Monthly Options Series Program, Supplementary Material .03, .04 and .08 to Options 4, Section 5 specifically sets forth intervals between strike prices on Short Term Option Series, Quarterly Options Series, and Monthly Options Series, respectively.

¹⁹ See Supplementary Material .03(e) to Options 4, Section 5.

²⁰ Id.

²¹ See Supplementary Material .01 to Options 4, Section 5.

²² See Supplementary Material .05 to Options 4, Section 5.

²³ See Supplementary Material .02 to Options 4, Section 5.

²⁴ See Supplementary Material .06 to Options 4, Section 5.

²⁵ If options on a Ether ETP 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

series of Ether ETP options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Options 4, Section 5 and Options 3, Section 3, as applicable.

Ether ETP options will trade in the same manner as options on other ETFs on the Exchange. Exchange Rules that currently apply to the listing and trading of all options on ETFs on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Ether ETPS on the Exchange in the same manner as they apply to other options on all other ETFs that are listed and traded on the Exchange, including the precious-metal backed commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Options 4, Section 3(h)(iv).

Position and exercise limits for options on ETFs, including options on Ether ETPS, are determined pursuant to Options 9, Sections 13 and 15, respectively. Position and exercise limits for ETFs options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise 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

above \$3.00. See Supplementary Material .01 to Options 3, Section 3 (which describes the requirements for the Penny Interval Program).

splits, re-capitalizations, etc.) on the same side of the market.²⁶ Further, Options 6C, Section 3, 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 the Ether ETP options.

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 Ether ETPs, 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 options on ETFs, including precious metal-commodity backed ETF 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 ether, as applicable.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority or "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 Ether ETPs up to the number of expirations currently permissible under the Exchange Rules. Because the proposal is limited to ETFs on a single commodity, the Exchange believes any additional traffic that may be generated from the introduction of Ether ETP options will be manageable.

²⁶ As Ether ETPs do not currently trade, options on Ether ETPs would be subject to the 25,000 option contract limit.

The Exchange believes that offering options on Ether ETPS will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of ether and hedging vehicle to meet their investment needs in connection with ether-related products and positions. The Exchange expects investors will transact in options on Ether ETPS in the unregulated over-the-counter (“OTC”) options market (if the Commission approves Ether ETPS for exchange-trading),²⁷ 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 contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Ether ETP 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 Ether ETPS 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.

²⁷ 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.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁹ in particular, in that it is 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)³⁰ 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 Ether ETPS 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 Ether ETPS will provide investors with a greater opportunity to realize the benefits of utilizing options on a ether-based ETP, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Ether ETP 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 ether and with ether-

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78(f)(b)(5).

related products and positions. Additionally, the Exchange's offering of Ether ETP 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,³¹ which, as described above, are trusts structured in substantially the same manner as Ether ETPS and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., ether 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 Ether ETPS must 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. Ether ETP 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 Ether ETPS in the same manner.

³¹ See Options 4, Section 3(h)(iv).

The Exchange represents that it has the necessary systems capacity to support the new ETF option series. 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 Ether ETP options.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as Ether ETPS 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, Ether ETP 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 Ether ETPS. Also, and as stated above, the Exchange already lists options on other commodity-based ETFs.³²

The Exchange does not believe that the proposal to list and trade options on Ether ETPS 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 Ether ETP options trading on the Exchange may make the Exchange a more attractive

³² See Options 4, Section 3(h)(iv).

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 Ether ETPS. Additionally, the Exchange notes that listing and trading Ether ETP 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 Ether ETP 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 ether prices and ether-related products and positions on a listed options exchange.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

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

The Exchange requests accelerated effectiveness pursuant to Section 19(b)(2) of the Act.³³ As a national securities exchange, ISE is required under Section 6(b)(1) of the Act³⁴ to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules with respect to the proposed product. In addition, brokers that trade options on Ether ETPS will be subject to best execution obligations³⁵ and FINRA rules. Applicable Exchange rules will require that customers receive appropriate disclosure before trading options on Ether ETPS.³⁶ Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.³⁷ Options on Ether ETPS must also satisfy Exchange initial listing and continued listing standards³⁸ applicable to options on all ETFs, including other commodity ETFs already approved for options trading on the Exchange. In addition to including options on Ether ETPS in Options 4, Section 3(h)(iv), options on Ether ETPS must also be duly registered and be an “NMS stock” as defined under Rule 600 of Regulation NMS³⁹ and be characterized by a substantial number of outstanding shares which are widely held and actively traded.⁴⁰ Exchange rules that currently govern the

³³ 15 U.S.C. 78s(b)(2).

³⁴ 15 U.S.C. 78f(b)(1).

³⁵ See FINRA Rule 5310.

³⁶ See Options 10, Sections 6(e) and 20.

³⁷ See Options 10, Section 8.

³⁸ See Options 4, Sections 3 and 4.

³⁹ See Options 4, Section 3(a).

⁴⁰ See Options 4, Section 3(b).

listing and trading of options on other ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits, and margin requirements, will govern the listing and trading of options on Ether ETFS.

The Exchange's existing surveillance and reporting safeguards, which are designed to deter and detect possible manipulative behavior which might arise from listing and trading ETFs options, will apply to options on Ether ETFS. The Exchange also represents that it has the necessary systems capacity to support the new ETFs option series. Additionally, options on Ether ETFS will trade in the same manner as any other options on all other ETFs listed on the Exchange.⁴¹

Accordingly, the Exchange believes that no regulatory purpose would be served by delaying implementation of the proposal beyond the close of the period for public comment on the proposed rule change. The proposed product does not raise any novel issues. Today, the Exchange lists options on other commodity ETFs structured as a trust.⁴² This product would be listed, traded, and surveilled in exactly the same fashion as other options on ETFs listed on the Exchange.

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

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

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

Not applicable.

⁴¹ See Options 3 Rules.

⁴² The Commission has previously approved the listing and trading of options on other commodity ETFs structured as a trust on ISE, such as SPDR® Gold Trust, the iShares COMEX Gold Trust the iShares Silver Trust, the ETFS Gold Trust, and the ETFS Silver Trust.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

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

July __, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change to Amend ISE Options 4, Section 3

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 July 22, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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

The Exchange to amend Options 4, Section 3, Criteria for Underlying Securities.

The text of the proposed rule change is available on the Exchange’s Website at

<https://listingcenter.nasdaq.com/rulebook/ise/rules>, 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 4, Section 3, Criteria for Underlying Securities. Specifically, the Exchange proposes to amend Options 4, Section 3(h) to allow the Exchange to list and trade options on units that represent interests in a trust that hold ether (“Ether ETPs”), designating them as Exchange-Traded Fund Shares (“ETFs”) deemed appropriate for options trading on the Exchange. Options 4, Section 3(h) provides that, subject to certain other criteria set forth in that Rule, securities deemed appropriate for options trading include ETFs that represent certain types of interests,³ including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).⁴

Ether ETPs are ether-backed commodity ETPs structured as trusts.⁵ Similar to any ETF currently deemed appropriate for options trading under Options 4, Section 3(h), the investment objective of an Ether ETP trust is to reflect generally the performance of

³ Options 4, Section 3(h) provides that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares” or “ETFs”) that are traded on a national securities exchange and are defined as an “NMS” stock under Rule 600 of Regulation NMS, and that meet certain criteria specified in Options 4, Section 3(h), including that they:...(iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, or the ETFS Gold Trust...”. In addition to the aforementioned requirements, Options 4, Section 3(h)(1) and (2) must be met to list options on ETFs.

⁴ The Commission recently approved a rule change to list and trade shares of the Trust pursuant to Rule 5711(d) of The Nasdaq Stock Exchange LLC (“Commodity-Based Trust Shares”). See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR-NASDAQ-2023-045) (hereinafter “SR-NASDAQ-2023-045”). The Exchange represents it would not list options on a trust unless it satisfied all applicable criteria in Options 4, Section 3.

⁵ Pursuant to Options 4, Section 3(a), the Exchange would only have authority to list and trade ETFs that are trading as NMS stocks.

the price of ether (before payment of the trust's expenses and liabilities), offering investors an opportunity to gain exposure to ether without the complexities of ether delivery. As is the case for ETFs currently deemed appropriate for options trading, a Ether ETP's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of ether and are designed to track ether or the performance of the price of ether and offer access to the ether market.⁶ Ether ETPs provide investors with cost-efficient alternatives that allow a level of participation in the ether market through the securities market. The primary substantive difference between Ether ETPs and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are commodities), while Ether ETPs hold ether (which is also deemed a commodity).

The Exchange's initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to the Ether ETPs. The Exchange expects Ether ETPs to satisfy the initial listing standards as set forth in Options 4, Section 3(a) and Options 4, Section 3(h). Pursuant to Options 4, Section 3(a), a security (which includes an ETF) on which options may be listed and traded on the Exchange must be a security registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act), and the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.⁷ Options 4, Section 3(h)(1) requires that ETFs must either meet the criteria and guidelines set forth in

⁶ The trust may include minimal cash.

⁷ The Exchange represents it would not list options on a Ether ETP unless it satisfied the criteria in Options 4, Section 3(a), the proposed listing criteria, and any other applicable listing criteria.

Options 4, Section 3(a) and (b)⁸ or the ETFs are available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue ETFs in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them 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 of the ETFs, all as described in the ETFs' prospectus or the Exchange-Traded Fund Shares must be based on international or global indexes, or portfolios that include non-U.S. securities, and meet other criteria. The Exchange expects that Ether ETPS would satisfy Options 4, Section 3(h)(1)(ii).

Options on Ether ETPS will also be subject to the Exchange's continued listing standards for options on ETFs set forth in Options 4, Section 4(g) for ETFs deemed appropriate for options trading pursuant to Options 4, Section 3(h). Specifically, options approved for trading pursuant to Options 4, Section 3(h) will not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such ETFs if the ETFs are delisted from trading as provided in subparagraph (b)(5) of Options 4, Section 4⁹ or the

⁸ Options 4, Section 3(h)(1) provides criteria and guidelines when evaluating potential underlying securities for the listing of options.

⁹ Options 4, Section 4(b)(5) provides, if an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including 'when-issued' trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied.

ETFs are halted or suspended from trading on their primary market.¹⁰ Additionally, options on ETFs may be subject to the suspension of opening transactions in any series of options of the class covering ETFs in any of the following circumstances:

(1) in the case of options covering Exchange-Traded Fund Shares approved pursuant to Options 4, Section 3(h)(A)(i), in accordance with the terms of subparagraphs (b)(1), (2), (3) and (4) of Options 4, Section 4;¹¹

(2) in the case of options covering Fund Shares approved pursuant to Options 4, Section 3(h)(A)(ii),¹² following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS, there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days;

(3) the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments, on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or

(4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on a Ether ETP would be physically settled contracts with American-style exercise.¹³ Consistent with current Options 4, Section 5, which governs the opening

Options 4, Section 4(b)(3) provides, “The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months.”

¹⁰ See Options 4, Section 4(g).

¹¹ Options 4, Section 4(b)(5)(1) through (4) provides, if: (1) there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Act, (2) there are fewer than 1,600 holders of the underlying security, (3) the trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months, or (4) the underlying security ceases to be an ‘NMS stock’ as defined in Rule 600 of Regulation NMS under the Exchange Act.

¹² Options 4, Section 3(h)(ii) refers to Currency Trust Shares.

¹³ See Options 4, Section 2, Rights and Obligations of Holders and Writers, which provides that the rights and obligations of holders and writers shall be as set forth in the Rules of the Clearing

of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on each Ether ETP¹⁴ and may also list series of options on a Ether ETP for trading on a weekly¹⁵ or quarterly¹⁶ basis. The Exchange may also list long-term equity option series (“LEAPS”) that expire from twelve to thirty-nine months from the time they are listed.¹⁷

Pursuant to Options 4, Section 5(d), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on Ether ETFS approved for options trading pursuant to Section 3(h) of Options 4 will be \$1 or greater when the strike price is \$200 or less and \$5 or greater when the strike price is greater than

Corporation. See also The Options Clearing Corporation (“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/occ_rules.pdf.

¹⁴ See Options 4, Section 5(b). At the commencement of trading on the Exchange of a particular class of options, the Exchange will open a minimum of one (1) series of options in that class. The exercise price of that series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on the Exchange. The monthly expirations are subject to certain listing criteria for underlying securities described within Options 4, Section 5. 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 Options 4, Section 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. The opening of a new series of options shall not affect the series of options of the same class previously opened. 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 the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the second business day prior to expiration.

¹⁵ See Supplementary .03 to Options 4, Section 5.

¹⁶ See Supplementary .04 to Options 4, Section 5.

¹⁷ See Options 4, Section 8.

\$200.¹⁸ With respect to the Short Term Options Series or Weekly Program, during the month prior to expiration of an option class that is selected for the Short Term Option Series Program, the strike price intervals for the related non-Short Term Option (“Related non-Short Term Option”) shall be the same as the strike price intervals for the Short Term Option.¹⁹ Specifically, the Exchange may open for trading Short Term Option Series at strike price intervals of (i) \$0.50 or greater where the strike price is less than \$100, and \$1 or greater where the strike price is between \$100 and \$150 for all option classes that participate in the Short Term Options Series Program; (ii) \$0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) \$2.50 or greater where the strike price is above \$150.²⁰ Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,²¹ the \$0.50 Strike Program,²² the \$2.50 Strike Price Program,²³ and the \$5 Strike Program.²⁴ Pursuant to Options 3, Section 3, where the price of a series of a Ether ETP options is less than \$3.00, the minimum increment will be \$0.05, and where the

¹⁸ See Options 5, Section 5(d). The interval between strike prices of series of options on Exchange-Traded Fund Shares approved for options trading pursuant to Section 3(h) of this Options 4 may also be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange. See also Options 4, Section 5(h). The Exchange notes that for options listed pursuant to the Short Term Option Series Program, the Quarterly Options Series Program, and the Monthly Options Series Program, Supplementary Material .03, .04 and .08 to Options 4, Section 5 specifically sets forth intervals between strike prices on Short Term Option Series, Quarterly Options Series, and Monthly Options Series, respectively.

¹⁹ See Supplementary Material .03(e) to Options 4, Section 5.

²⁰ Id.

²¹ See Supplementary Material .01 to Options 4, Section 5.

²² See Supplementary Material .05 to Options 4, Section 5.

²³ See Supplementary Material .02 to Options 4, Section 5.

²⁴ See Supplementary Material .06 to Options 4, Section 5.

price is \$3.00 or higher, the minimum increment will be \$0.10.²⁵ Any and all new series of Ether ETP options that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Options 4, Section 5 and Options 3, Section 3, as applicable.

Ether ETP options will trade in the same manner as options on other ETFs on the Exchange. Exchange Rules that currently apply to the listing and trading of all options on ETFs on the Exchange, including, for example, Rules that govern listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures will apply to the listing and trading of Ether ETPs on the Exchange in the same manner as they apply to other options on all other ETFs that are listed and traded on the Exchange, including the precious-metal backed commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Options 4, Section 3(h)(iv).

Position and exercise limits for options on ETFs, including options on Ether ETPs, are determined pursuant to Options 9, Sections 13 and 15, respectively. Position and exercise limits for ETFs options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise 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-

²⁵ If options on a Ether ETP 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 Supplementary Material .01 to Options 3, Section 3 (which describes the requirements for the Penny Interval Program).

capitalizations, etc.) on the same side of the market.²⁶ Further, Options 6C, Section 3, 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 the Ether ETP options.

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 Ether ETPs, 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 options on ETFs, including precious metal-commodity backed ETF 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 ether, as applicable.

The Exchange has also analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority or "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 Ether ETPs up to the number of expirations currently permissible under the Exchange Rules. Because the proposal is limited to ETFs on a single commodity, the Exchange believes any additional traffic that may be generated from the introduction of Ether ETP options will be manageable.

²⁶ As Ether ETPs do not currently trade, options on Ether ETPs would be subject to the 25,000 option contract limit.

The Exchange believes that offering options on Ether ETPS will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of ether and hedging vehicle to meet their investment needs in connection with ether-related products and positions. The Exchange expects investors will transact in options on Ether ETPS in the unregulated over-the-counter (“OTC”) options market (if the Commission approves Ether ETPS for exchange-trading),²⁷ 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 contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes that listing Ether ETP 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 Ether ETPS 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 proposal is consistent with Section 6(b) of the

²⁷ 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.

Act,²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁹ in particular, in that it is 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)³⁰ 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 Ether ETPS 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 Ether ETPS will provide investors with a greater opportunity to realize the benefits of utilizing options on a ether-based ETP, including cost efficiencies and increased hedging strategies. The Exchange believes that offering Ether ETP 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 ether and with ether-related products and positions. Additionally, the Exchange's offering of Ether ETP options will provide investors with the ability to transact in such options in a listed market

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78(f)(b)(5).

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,³¹ which, as described above, are trusts structured in substantially the same manner as Ether ETPS and essentially offer the same objectives and benefits to investors, just with respect to a different commodity (i.e., ether 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 Ether ETPS must 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. Ether ETP 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 Ether ETPS in the same manner.

The Exchange represents that it has the necessary systems capacity to support the new ETF option series. The Exchange believes that its existing surveillance and

³¹ See Options 4, Section 3(h)(iv).

reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading ETF options, including Ether ETP 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 Ether ETPS 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, Ether ETP 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 Ether ETPS. Also, and as stated above, the Exchange already lists options on other commodity-based ETFs.³²

The Exchange does not believe that the proposal to list and trade options on Ether ETPS 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 Ether ETP 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

³² See Options 4, Section 3(h)(iv).

exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Ether ETPs. Additionally, the Exchange notes that listing and trading Ether ETP 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 Ether ETP 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 ether prices and ether-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 either solicited or received.

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 (i) as the Commission may designate up to 90 days of such date 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 shall: (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-ISE-2024-34 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-2024-34. 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-ISE-2024-34 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.³³

Sherry R. Haywood,

Assistant Secretary.

³³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq ISE, LLC Rules

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Options Rules

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Options 4 Options Listing Rules

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Section 3. Criteria for Underlying Securities

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(h) Securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares") that are traded on a national securities exchange and are defined as an "NMS" stock under Rule 600 of Regulation NMS, and that (i) 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 indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based 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) or (ii) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust or similar entity by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Currency Trust Shares") or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs") or (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, or the ETFS Gold Trust or a trust that holds ether (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management 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:

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