

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 39

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

File No. \* SR 2024 - \* 72

Amendment No. (req. for Amendments \*)

Filing by Nasdaq PHLX 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

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| <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 \*).

Permit FLEX Trading in the iShares Bitcoin Trust ETF

**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 PHLX LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/19/2024 (Title \*)

By John Zecca EVP and Chief Legal Officer  
(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: 2024.12.19  
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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-Phlx-2024-72 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-Phlx-2024-72 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**

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SR-Phlx-2024-72 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 Phlx LLC (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule to amend Options 8, Section 34, FLEX Trading, to permit FLEX Trading in the iShares Bitcoin Trust ETF.

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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

<sup>2</sup> 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 8, Section 34, FLEX Trading, to permit iShares Bitcoin Trust ETF (“IBIT”) options to trade as both cash-settled and physically settled FLEX Equity Options as described herein.

IBIT is an Exchange-Traded Fund (“ETF”) that holds bitcoin and is listed on The Nasdaq Stock Market LLC (“Nasdaq”).<sup>3</sup> On September 20, 2024, ISE received approval to list options on IBIT.<sup>4</sup> The position and exercise limits for IBIT options are 25,000 contracts as stated in Options 9, Sections 13 and 15, the lowest limit available in options.<sup>5</sup> Today, pursuant to Options 3A, Section 3(a), IBIT options are not approved for FLEX trading.<sup>6</sup> Today, FLEX Equity Options are physically delivered and have no position limits pursuant to Options 8, Section 34(e)(2).<sup>7</sup> Therefore, the 25,000 contract position

<sup>3</sup> Nasdaq received approval to list and trade Bitcoin-Based Commodity-Based Trust Shares in IBIT pursuant to Rule 5711(d) of Nasdaq. See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR-NASDAQ-2023-016) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The Exchange represents it would not list options on the Trust unless it satisfied all applicable criteria in Options 4, Section 3. IBIT started trading on January 11, 2024.

<sup>4</sup> See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (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) (“IBIT Approval Order”). The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq Phlx LLC (“Phlx”), Nasdaq BX, Inc. (“BX”), GEMX Options 4, Section 3, and MRX Options 4, Section 3 incorporate ISE Options 4, Section 3 by reference. Phlx Options 4 rules are incorporated by reference to ISE Options 4 rules. ISE began trading IBIT options on November 19, 2024.

<sup>5</sup> Options on Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, Grayscale Bitcoin Trust (BTC), Grayscale Bitcoin Mini Trust BTC, and Bitwise Bitcoin ETF are also subject to a 25,000 contract position and exercise limit.

<sup>6</sup> Options 8, Section 34(a) also does not permit FLEX trading on options on Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, Grayscale Bitcoin Trust (BTC), Grayscale Bitcoin Mini Trust BTC, and Bitwise Bitcoin ETF.

<sup>7</sup> Pursuant to Options 8, Section 32(g), a FLEX Option is as described in Options 8, Section 34. FLEX Options are not eligible for entry by a member for execution through FBMS. Phlx offers

limit in Options 9, Section 13 and exercise limit in Options 9, Section 15 for IBIT options currently applies to non-FLEX IBIT options.

At this time, the Exchange proposes to permit IBIT options to transact as FLEX Equity Options subject to a position and exercise limits of 25,000 contracts which would be aggregated with non-FLEX IBIT options position and exercise limits in Options 9, Sections 13 and 15.

Per the Commission, “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 positions.”<sup>8</sup> For this reason, the Commission requires 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>9</sup> Based on its review of the data and analysis provided by the Exchange, the Commission concluded that the 25,000 contract position limit for non-FLEX IBIT options satisfied these objectives.<sup>10</sup>

As proposed, the Exchange will aggregate position (and exercise) limits for all IBIT options, thus limiting positions for options on all IBIT options -- FLEX and non-FLEX -- to 25,000 contracts. This proposed aggregated limit effectively restricts a market participant from holding positions that could result in the receipt of more than

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FLEX Options which are customized equity, index or currency options that allow investors to tailor contract terms for exchange-listed equity and index options on its trading floor. See Options 8, Section 34.

<sup>8</sup> See supra note 4, IBIT Approval Order, 89 FR 78946.

<sup>9</sup> See id.

<sup>10</sup> See id.

2,500,000 shares, aggregated for FLEX IBIT and non-FLEX IBIT (if that market participant exercised all its IBIT options). The Exchange believes that capping the aggregated position limit at 25,000 contracts, the lowest limit available in options, would be sufficient to address concerns related to manipulation and the protection of investors. The Exchange notes that this number is conservative for IBIT and therefore appropriate given its liquidity.

While the Exchange proposed an aggregated 25,000 contract position limit for IBIT options in its IBIT Approval Order, it nonetheless believed that evidence existed to support a much higher position limit. 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>11</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>12</sup> Based on the Commission's review of this information and analysis, the Commission concluded that the proposed position and exercise limits were 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 might create incentives to manipulate or disrupt the underlying market so as to benefit the

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<sup>11</sup> See id.

<sup>12</sup> See id.

options position.<sup>13</sup> IBIT currently qualifies for a 250,000 contract position limit pursuant to the criteria in Options 9, Section 13(g), which requires that, for the most recent six-month period, trading volume for the underlying security be at least 100,000,000 shares.<sup>14</sup> As of November 26, 2024, the market capitalization for IBIT was \$46,783,480,800<sup>15</sup> with an ADV, for the preceding three months prior to November 26, 2024, of 39,421,877 shares. IBIT is well above the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000 contract position limit. Also, as of November 25, 2024, there are 19,787,762 bitcoins in circulation.<sup>16</sup> At a price of \$94,830,<sup>17</sup> that equates to a market capitalization of greater than \$1.876 trillion US. If a position limit of 250,000 contracts were considered, the exercisable risk would represent 2.89%<sup>18</sup> of the outstanding shares outstanding of IBIT. The current 25,000 position limit is extremely conservative for IBIT which is very liquid.<sup>19</sup>

Despite the addition of FLEX trading in IBIT options, the Exchange would

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<sup>13</sup> See *id.*

<sup>14</sup> Options 9, Section 13(g), Equity Option Position Limits, provides at subparagraph (i) that the position limit shall be 250,000 contracts for options: (a) on an underlying stock or Exchange-Traded Fund Share which had trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (b) on an underlying stock or Exchange-Traded Fund Share which had trading volume of at least 75,000,000 shares during the most recent six-month trading period and has at least 300,000,000 shares currently outstanding.

<sup>15</sup> The market capitalization was determined by multiplying a settlement price of (\$54.02) by the number of shares outstanding (866,040,000). This figure was acquired as of November 26, 2024. See <https://www.ishares.com/us/products/333011/ishares-bitcoin-trust-etf>.

<sup>16</sup> See <https://www.coingecko.com/en/coins/bitcoin>.

<sup>17</sup> This is the approximate price of bitcoin from 4:00pm ET on November 25, 2024.

<sup>18</sup> This percentage is arrived at with this equation: (250,000 contract limit \* 100 shares per option / 866,040,000 shares outstanding).

<sup>19</sup> The Exchange plans to file a rule change to increase the position and exercise limit for options on IBIT based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position limit would allow institutional investors to utilize IBIT options for prudent risk management purposes.

continue to limit the number of IBIT options contracts traded on the exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control and thereby mitigate potential manipulation. The Exchange believes that it is consistent with the Act to permit FLEX trading in IBIT given FLEX trading is permitted today in other ETFs overlying a commodity such as SPDR Gold Shares (“GLD”), iShares Silver Trust (“SLV”), and ProShares Bitcoin ETF (“BITO”).<sup>20</sup> Additionally, FLEX trading is permitted today in Cboe Bitcoin U.S. ETF Index Options (CBTX) and the Cboe Mini Bitcoin U.S. ETF Index Options (MBTX),<sup>21</sup> which is comprised of multiple bitcoin ETFS of which IBIT is the highest weighted ETF in the index composition at 20%.<sup>22</sup> CBTX (and MBTX) are permitted to trade as FLEX Index Options with a 24,000 contract position limit<sup>23</sup> which limits are aggregated between FLEX and non-FLEX index options in CBTX and MBTX pursuant to Cboe Rule 8.35(a).<sup>24</sup>

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<sup>20</sup> GLD, SLV and BITO each hold one asset in trust similar to IBIT.

<sup>21</sup> MBTX is based on 1/10th the value of the Cboe Bitcoin U.S. ETF Index.

<sup>22</sup> See [https://www.cboe.com/tradable\\_products/bitcoin-etf-index-options?utm\\_source=mcae&utm\\_medium=email&utm\\_campaign=bitcoin\\_eft\\_options\\_launch](https://www.cboe.com/tradable_products/bitcoin-etf-index-options?utm_source=mcae&utm_medium=email&utm_campaign=bitcoin_eft_options_launch). Cboe’s website provides a product comparison chart indicating that CBTX and MBTX are permitted to trade FLEX as compared to spot bitcoin ETF options. See [https://cdn.cboe.com/resources/membership/Cboe\\_Bitcoin\\_US ETF Options Comparative Overview.pdf?\\_gl=1\\*\\_1xmm04c\\*\\_up\\*MQ..\\*\\_ga\\*MTc0MjU1NzU1Ni4xNzM0NTU2NTky\\*\\_ga\\_5Q99WB9X71\\*MTczNDU1NjU5MC4xLjAuMTczNDU1NjU5MC4wLjAuMA](https://cdn.cboe.com/resources/membership/Cboe_Bitcoin_US ETF Options Comparative Overview.pdf?_gl=1*_1xmm04c*_up*MQ..*_ga*MTc0MjU1NzU1Ni4xNzM0NTU2NTky*_ga_5Q99WB9X71*MTczNDU1NjU5MC4xLjAuMTczNDU1NjU5MC4wLjAuMA).

<sup>23</sup> See Cboe Rule 8.32(a). See also Cboe Rule 8.35(a)(7) that states that for purposes of determining compliance with the position limits under this Rule 8.35, if a FLEX Index Option has a multiplier of one, 100 contracts for that class equal one contract for a FLEX Index Option with a multiplier of 100 with the same underlying index. The Exchange notes that given the multiplier and notional value of CBTX, the index has a position and exercise limit that equates to 1,000,000 contracts of in kind exposure to IBIT, which is more than 40 times greater than the exposure for options on IBIT at the current 25,000 contract position and exercise limit.

<sup>24</sup> Cboe Rule 8.35(a)(3) provides that in no event shall the position limits for an industry-based FLEX Index Option class exceed one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the put class and the call class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 8.32 provided, however, the position limits for an industry-based FLEX Index Option class shall not exceed four



Further, the Exchange believes that the share creation and redemption process unique to ETFs would mitigate any potential risk of manipulation in FLEX trading in IBIT options. The creation and redemption process is designed to ensure that an ETF's price closely tracks the value of its underlying asset(s). For example, if a market participant exercised a long call position for 25,000 contracts and purchased 2,500,000 shares of IBIT and this purchase resulted in the value of IBIT shares to trade at a premium to the value of the (underlying) bitcoin held by IBIT, the Exchange believes that other market participants would attempt to arbitrage this price difference by selling short IBIT shares while concurrently purchasing bitcoin. Those market participants (arbitrageurs) would then deliver cash to IBIT and receive shares of IBIT, which would be used to close out any previously established short position in IBIT. Thus, this creation and redemptions process would significantly reduce the potential risk of price dislocation between the value of IBIT shares and the value of bitcoin holdings. The Exchange understands that FLEX Options on ETFs are currently traded in the over-the-counter ("OTC") market by a variety of market participants, e.g., hedge funds, proprietary trading firms, and pension funds. The Exchange believes there is room for significant growth if a comparable FLEX product were introduced for trading on a regulated market. The Exchange expects that users of these OTC products would be among the primary users of FLEX IBIT options. The Exchange also believes that the trading of FLEX IBIT options

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times the applicable position limits established pursuant to Rule 8.32, instead of one times as provided above, for: (1) the Dow Jones Transportation Average or the Dow Jones Utility Average; or (2) an underlying industry-based index that is not a "narrow-based security index," as defined under Section 3(a)(55)(B) of the Exchange Act. See also Cboe Rule 8.35(a)(4) that provides that in no event shall the position limits for a micro narrow-based FLEX Index Option class exceed one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 8.33.

would allow these same market participants to better manage the risk associated with the volatility of IBIT (the underlying ETF) positions given the enhanced liquidity that an exchange-traded product would bring. Additionally, the Exchange believes that FLEX IBIT options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater fungibility, exchange-traded contracts should develop more liquidity because each FLEX contract can be closed with a liquidating transaction as compared to OTC FLEX contracts which must be held until expiration. Second, counterparty credit risk would be mitigated by the fact that the exchange-traded contracts are issued and guaranteed by The Options Clearing Corporation (“OCC”). Finally, the price discovery and dissemination provided by the Exchange and its member organizations would lead to more transparent markets. The Exchange believes that its ability to offer FLEX IBIT options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers. Additionally, FLEX options serve two primary client types in the capital markets: (1) ETF and structured return issuers who seek European-style<sup>25</sup> options with bespoke strike and expirations, such that they can tailor their returns more precisely than they could with standard American-style options;<sup>26</sup> and (2) with

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<sup>25</sup> The term “European-style option” means an options contract that, subject to the provisions of Options 6B, Section 1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date. See Options 1, Section 1(a)(15).

<sup>26</sup> The term “American-style option” means an options contract that, subject to the provisions of Options 6B, Section 1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised on any business day prior to its expiration date and on its

respect to stock lending, certain investors (e.g. banks and hedge funds) may seek to align their contract durations for calls and puts, and thereby prefer European-style exercise, which can be exercised only on its expiration date, as compared to American-style, which can be exercised on any business day prior to its expiration date and on its expiration date.

The Exchange has analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of FLEX IBIT options. The Exchange believes any additional traffic that would be generated from the trading of FLEX IBIT options would be manageable. The Exchange believes member organizations will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems. The Exchange represents that the same surveillance procedures applicable to the Exchange’s other options products listed and traded on the Exchange, including non-FLEX IBIT options, will apply to FLEX IBIT options, and that it has the necessary systems capacity to support such options. FLEX options products (and their respective symbols) are integrated into the Exchange’s existing surveillance system architecture and are thus subject to the relevant surveillance processes.<sup>27</sup> The Exchange’s

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expiration date. Today, non-FLEX equity options settle American-style. See Options 1, Section 1(a)(3).

<sup>27</sup> Phlx FLEX trading occurs on Phlx’s trading floor, in an open outcry environment. Surveillance staff monitors FLEX trading in open outcry. Negotiated FLEX trades are submitted into the

market surveillance staff (including staff of the Financial Industry Regulatory Authority (“FINRA”) who perform surveillance and investigative work on behalf of the Exchange pursuant a regulatory services agreement) conducts surveillances with respect to IBIT (the underlying ETF) and, as appropriate, would review activity in IBIT when conducting surveillances for market abuse or manipulation in IBIT options.<sup>28</sup> The Exchange does not believe that allowing FLEX IBIT options would render the marketplace for non-FLEX IBIT options, or equity options in general, more susceptible to manipulative practices.

The Exchange represents that its existing trading surveillances are adequate to monitor the trading in IBIT (as well as FLEX IBIT) on the Exchange. Additionally, the Exchange is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities. In addition, and as referenced above, the Exchange has a regulatory services agreement with FINRA, pursuant to which FINRA conducts certain surveillances on behalf of the Exchange. Further, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market

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Exchange’s Options Floor Based Management System where they are executed and then captured in the System’s electronic audit trail.

<sup>28</sup> See IBIT Approval Order, 89 FR at 78947.

surveillances.<sup>29</sup> The Exchange will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of IBIT options.

The proposed rule change is designed to allow investors seeking to trade options on IBIT to utilize FLEX IBIT options. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to member's evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX IBIT options. The Exchange believes that introducing FLEX IBIT options would further broaden the base of investors that use FLEX Options (and options on IBIT in general) to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market on the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow.

Finally, as discussed herein, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX IBIT options at the (most conservative) 25,000 contract position limit,

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<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. 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.

which currently applies solely to non-FLEX IBIT options, should provide an adequate safeguard.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>30</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>31</sup> 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)<sup>32</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that introducing FLEX IBIT options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk. The proposed rule change is designed to allow investors seeking to trade options on IBIT to utilize FLEX IBIT options.

The Exchange believes that the proposal to permit FLEX IBIT options would remove impediments to and perfect the mechanism of a free and open market. The Exchange believes that offering FLEX IBIT options will benefit investors by providing

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<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> 15 U.S.C. 78(f)(b)(5).

them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and provide a hedging vehicle to meet their investment needs in connection with a bitcoin-related product. Moreover, the proposal would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that offering FLEX IBIT options may open up the market for options on IBIT to more retail investors. Additionally, offering FLEX would serve two primary client types in the capital markets by permitting ETF and structured return issuers to more precisely tailor their settlement style and allow other investors to align their contract durations for calls and puts, as well as settlement-style.

Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer

and guarantor of FLEX IBIT options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX IBIT options at the (most conservative) 25,000 contract limit should provide an adequate safeguard. The purpose of position limits is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The Exchange believes the proposal will benefit investors and public interest because the aggregated position limit for all options on IBIT (FLEX and non-FLEX) at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative for IBIT and therefore appropriate given its liquidity.

The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to evolving needs in the market by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX IBIT options. The Exchange does not believe that allowing FLEX IBIT options would render the marketplace for equity options more susceptible to manipulative practices.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in FLEX IBIT options. Regarding the proposed FLEX IBIT options, the Exchange would use the same surveillance procedures currently



utilized for FLEX Options listed on the Exchange (as well as for non-FLEX IBIT options). For surveillance purposes, the Exchange would have access to information regarding trading activity in IBIT (the underlying ETF).<sup>33</sup> In light of surveillance measures related to both options and IBIT (the underlying ETF), 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 FLEX IBIT 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 its proposed rule change will impose any burden on intra-market competition as all market participants would have the option of utilizing the FLEX IBIT options. The proposed rule change is designed to allow investors seeking option exposure to bitcoin to trade FLEX IBIT options. Moreover, the Exchange believes that the proposal to permit FLEX IBIT options would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options.

The Exchange does not believe that its proposed rule change will impose any burden on intermarket competition as all market participants would have the option of utilizing the FLEX IBIT options. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to

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<sup>33</sup> See IBIT Approval Order, 89 FR at 78947.

competing venues. The proposed rule change would support that intermarket competition by allowing the Exchange to offer additional functionality to member organizations. The Exchange believes that the proposed FLEX IBIT options will increase the variety of options products available for trading in general and bitcoin-related products in particular and, as such, will provide a valuable tool for investors to manage risk.

5. 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.

6. Extension of Time Period for Commission Action

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

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

The Exchange requests accelerated effectiveness pursuant to Section 19(b)(2) of the Act.<sup>34</sup> Accelerated approval would allow the Exchange to offer FLEX trading on IBIT options, without delay, to investors seeking a customized option. The proposal would aggregate position (and exercise) limits for all IBIT options, thus limiting positions for options on all IBIT options -- FLEX and non-FLEX -- to 25,000 contracts, effectively restricting the number of contracts an investor, acting alone or in concert with others directly or indirectly, may control and thereby mitigate potential manipulation. Capping the aggregated position limit at 25,000 contracts, the lowest limit available in options, would be sufficient to address concerns related to manipulation and the protection of investors given the amount of liquidity in IBIT. This proposal is not

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<sup>34</sup> 15 U.S.C. 78s(b)(2).

otherwise amending the position or exercise limits for IBIT options, rather the proposal allows the 25,000 contract limit to apply to trading in IBIT non-FLEX options or IBIT FLEX options. The 25,000 contract limit, the lowest position and exercise limit in the industry, would continue to assure fair and orderly trading for this product. ISE believes that there is good cause to grant accelerated approval of this proposal given IBIT's liquidity. Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in FLEX IBIT options. Regarding the proposed FLEX IBIT options, the Exchange would use the same surveillance procedures currently utilized for FLEX Options listed on the Exchange (as well as for non-FLEX IBIT options). For surveillance purposes, the Exchange would have access to information regarding trading activity in IBIT (the underlying ETF).<sup>35</sup> In light of surveillance measures related to both options and IBIT (the underlying ETF), 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 FLEX IBIT options. 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.

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

Not applicable.

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

Not applicable.

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<sup>35</sup> See IBIT Approval Order, 89 FR at 78947.

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-Phlx-2024-72)

December \_\_, 2024

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change to Permit FLEX Trading in the iShares Bitcoin Trust ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 2024, Nasdaq PHLX LLC (“Phlx” 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 proposes to amend Options 8, Section 34, FLEX Trading, to permit FLEX Trading in the iShares Bitcoin Trust ETF.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/phlx/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

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 8, Section 34, FLEX Trading, to permit iShares Bitcoin Trust ETF ("IBIT") options to trade as both cash-settled and physically settled FLEX Equity Options as described herein.

IBIT is an Exchange-Traded Fund ("ETF") that holds bitcoin and is listed on The Nasdaq Stock Market LLC ("Nasdaq").<sup>3</sup> On September 20, 2024, ISE received approval to list options on IBIT.<sup>4</sup> The position and exercise limits for IBIT options are 25,000 contracts as stated in Options 9, Sections 13 and 15, the lowest limit available in options.<sup>5</sup> Today, pursuant to Options 3A, Section 3(a), IBIT options are not approved for FLEX

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<sup>3</sup> Nasdaq received approval to list and trade Bitcoin-Based Commodity-Based Trust Shares in IBIT pursuant to Rule 5711(d) of Nasdaq. See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR-NASDAQ-2023-016) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The Exchange represents it would not list options on the Trust unless it satisfied all applicable criteria in Options 4, Section 3. IBIT started trading on January 11, 2024.

<sup>4</sup> See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (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) ("IBIT Approval Order"). The Nasdaq Stock Market LLC ("Nasdaq"), Nasdaq Phlx LLC ("Phlx"), Nasdaq BX, Inc. ("BX"), GEMX Options 4, Section 3, and MRX Options 4, Section 3 incorporate ISE Options 4, Section 3 by reference. Phlx Options 4 rules are incorporated by reference to ISE Options 4 rules. ISE began trading IBIT options on November 19, 2024.

<sup>5</sup> Options on Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, Grayscale Bitcoin Trust (BTC), Grayscale Bitcoin Mini Trust BTC, and Bitwise Bitcoin ETF are also subject to a 25,000 contract position and exercise limit.

trading.<sup>6</sup> Today, FLEX Equity Options are physically delivered and have no position limits pursuant to Options 8, Section 34(e)(2).<sup>7</sup> Therefore, the 25,000 contract position limit in Options 9, Section 13 and exercise limit in Options 9, Section 15 for IBIT options currently applies to non-FLEX IBIT options.

At this time, the Exchange proposes to permit IBIT options to transact as FLEX Equity Options subject to a position and exercise limits of 25,000 contracts which would be aggregated with non-FLEX IBIT options position and exercise limits in Options 9, Sections 13 and 15.

Per the Commission, “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 positions.”<sup>8</sup> For this reason, the Commission requires 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>9</sup> Based on its review of the data and analysis provided by the Exchange, the Commission concluded that the 25,000 contract position limit for non-FLEX IBIT options satisfied these objectives.<sup>10</sup>

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<sup>6</sup> Options 8, Section 34(a) also does not permit FLEX trading on options on Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, Grayscale Bitcoin Trust (BTC), Grayscale Bitcoin Mini Trust BTC, and Bitwise Bitcoin ETF.

<sup>7</sup> Pursuant to Options 8, Section 32(g), a FLEX Option is as described in Options 8, Section 34. FLEX Options are not eligible for entry by a member for execution through FBMS. Phlx offers FLEX Options which are customized equity, index or currency options that allow investors to tailor contract terms for exchange-listed equity and index options on its trading floor. See Options 8, Section 34.

<sup>8</sup> See supra note 4, IBIT Approval Order, 89 FR 78946.

<sup>9</sup> See id.

<sup>10</sup> See id.

As proposed, the Exchange will aggregate position (and exercise) limits for all IBIT options, thus limiting positions for options on all IBIT options -- FLEX and non-FLEX -- to 25,000 contracts. This proposed aggregated limit effectively restricts a market participant from holding positions that could result in the receipt of more than 2,500,000 shares, aggregated for FLEX IBIT and non-FLEX IBIT (if that market participant exercised all its IBIT options). The Exchange believes that capping the aggregated position limit at 25,000 contracts, the lowest limit available in options, would be sufficient to address concerns related to manipulation and the protection of investors. The Exchange notes that this number is conservative for IBIT and therefore appropriate given its liquidity.

While the Exchange proposed an aggregated 25,000 contract position limit for IBIT options in its IBIT Approval Order, it nonetheless believed that evidence existed to support a much higher position limit. 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>11</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>12</sup> Based on the Commission's review of this information and analysis, the Commission concluded that the proposed position and exercise limits were designed to prevent investors from disrupting the market for the

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<sup>11</sup> See id.

<sup>12</sup> See id.



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 might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.<sup>13</sup> IBIT currently qualifies for a 250,000 contract position limit pursuant to the criteria in Options 9, Section 13(g), which requires that, for the most recent six-month period, trading volume for the underlying security be at least 100,000,000 shares.<sup>14</sup> As of November 26, 2024, the market capitalization for IBIT was \$46,783,480,800<sup>15</sup> with an ADV, for the preceding three months prior to November 26, 2024, of 39,421,877 shares. IBIT is well above the requisite minimum of 100,000,000 shares necessary to qualify for the 250,000 contract position limit. Also, as of November 25, 2024, there are 19,787,762 bitcoins in circulation.<sup>16</sup> At a price of \$94,830,<sup>17</sup> that equates to a market capitalization of greater than \$1.876 trillion US. If a position limit of 250,000 contracts were considered, the exercisable risk would represent 2.89%<sup>18</sup> of the outstanding shares outstanding of IBIT. The current 25,000 position limit is extremely

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<sup>13</sup> See id.

<sup>14</sup> Options 9, Section 13(g), Equity Option Position Limits, provides at subparagraph (i) that the position limit shall be 250,000 contracts for options: (a) on an underlying stock or Exchange-Traded Fund Share which had trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (b) on an underlying stock or Exchange-Traded Fund Share which had trading volume of at least 75,000,000 shares during the most recent six-month trading period and has at least 300,000,000 shares currently outstanding.

<sup>15</sup> The market capitalization was determined by multiplying a settlement price of (\$54.02) by the number of shares outstanding (866,040,000). This figure was acquired as of November 26, 2024. See <https://www.ishares.com/us/products/333011/ishares-bitcoin-trust-etf>.

<sup>16</sup> See <https://www.coingecko.com/en/coins/bitcoin>.

<sup>17</sup> This is the approximate price of bitcoin from 4:00pm ET on November 25, 2024.

<sup>18</sup> This percentage is arrived at with this equation: (250,000 contract limit \* 100 shares per option / 866,040,000 shares outstanding).

conservative for IBIT which is very liquid.<sup>19</sup>

Despite the addition of FLEX trading in IBIT options, the Exchange would continue to limit the number of IBIT options contracts traded on the exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control and thereby mitigate potential manipulation. The Exchange believes that it is consistent with the Act to permit FLEX trading in IBIT given FLEX trading is permitted today in other ETFs overlying a commodity such as SPDR Gold Shares (“GLD”), iShares Silver Trust (“SLV”), and ProShares Bitcoin ETF (“BITO”).<sup>20</sup> Additionally, FLEX trading is permitted today in Cboe Bitcoin U.S. ETF Index Options (CBTX) and the Cboe Mini Bitcoin U.S. ETF Index Options (MBTX),<sup>21</sup> which is comprised of multiple bitcoin ETFS of which IBIT is the highest weighted ETF in the index composition at 20%.<sup>22</sup> CBTX (and MBTX) are permitted to trade as FLEX Index Options with a 24,000 contract position limit<sup>23</sup> which limits are aggregated between

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<sup>19</sup> The Exchange plans to file a rule change to increase the position and exercise limit for options on IBIT based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position limit would allow institutional investors to utilize IBIT options for prudent risk management purposes.

<sup>20</sup> GLD, SLV and BITO each hold one asset in trust similar to IBIT.

<sup>21</sup> MBTX is based on 1/10th the value of the Cboe Bitcoin U.S. ETF Index.

<sup>22</sup> See [https://www.cboe.com/tradable\\_products/bitcoin-etf-index-options?utm\\_source=mcae&utm\\_medium=email&utm\\_campaign=bitcoin\\_etf\\_options\\_launch](https://www.cboe.com/tradable_products/bitcoin-etf-index-options?utm_source=mcae&utm_medium=email&utm_campaign=bitcoin_etf_options_launch). Cboe’s website provides a product comparison chart indicating that CBTX and MBTX are permitted to trade FLEX as compared to spot bitcoin ETF options. See [https://cdn.cboe.com/resources/membership/Cboe\\_Bitcoin\\_US ETF\\_Options\\_Comparative\\_Overview.pdf?\\_gl=1\\*1xmm04c\\*\\_up\\*MQ..\\*\\_ga\\*MTc0MjU1NzU1Ni4xNzM0NTU2NTky\\*\\_ga\\_5Q99WB9X71\\*MTczNDU1NjU5MC4xLjAuMTczNDU1NjU5MC4wLjAuMA](https://cdn.cboe.com/resources/membership/Cboe_Bitcoin_US ETF_Options_Comparative_Overview.pdf?_gl=1*1xmm04c*_up*MQ..*_ga*MTc0MjU1NzU1Ni4xNzM0NTU2NTky*_ga_5Q99WB9X71*MTczNDU1NjU5MC4xLjAuMTczNDU1NjU5MC4wLjAuMA).

<sup>23</sup> See Cboe Rule 8.32(a). See also Cboe Rule 8.35(a)(7) that states that for purposes of determining compliance with the position limits under this Rule 8.35, if a FLEX Index Option has a multiplier of one, 100 contracts for that class equal one contract for a FLEX Index Option with a multiplier of 100 with the same underlying index. The Exchange notes that given the multiplier and notional value of CBTX, the index has a position and exercise limit that equates to 1,000,000 contracts of in kind exposure to IBIT, which is more than 40 times greater than the exposure for options on IBIT at the current 25,000 contract position and exercise limit.

FLEX and non-FLEX index options in CBTX and MBTX pursuant to Cboe Rule 8.35(a).<sup>24</sup>

Further, the Exchange believes that the share creation and redemption process unique to ETFs would mitigate any potential risk of manipulation in FLEX trading in IBIT options. The creation and redemption process is designed to ensure that an ETF's price closely tracks the value of its underlying asset(s). For example, if a market participant exercised a long call position for 25,000 contracts and purchased 2,500,000 shares of IBIT and this purchase resulted in the value of IBIT shares to trade at a premium to the value of the (underlying) bitcoin held by IBIT, the Exchange believes that other market participants would attempt to arbitrage this price difference by selling short IBIT shares while concurrently purchasing bitcoin. Those market participants (arbitrageurs) would then deliver cash to IBIT and receive shares of IBIT, which would be used to close out any previously established short position in IBIT. Thus, this creation and redemptions process would significantly reduce the potential risk of price dislocation between the value of IBIT shares and the value of bitcoin holdings. The Exchange understands that FLEX Options on ETFs are currently traded in the over-the-counter ("OTC") market by a variety of market participants, e.g., hedge funds, proprietary trading

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<sup>24</sup> Cboe Rule 8.35(a)(3) provides that in no event shall the position limits for an industry-based FLEX Index Option class exceed one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the put class and the call class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 8.32 provided, however, the position limits for an industry-based FLEX Index Option class shall not exceed four times the applicable position limits established pursuant to Rule 8.32, instead of one times as provided above, for: (1) the Dow Jones Transportation Average or the Dow Jones Utility Average; or (2) an underlying industry-based index that is not a "narrow-based security index," as defined under Section 3(a)(55)(B) of the Exchange Act. See also Cboe Rule 8.35(a)(4) that provides that in no event shall the position limits for a micro narrow-based FLEX Index Option class exceed one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 8.33.

firms, and pension funds. The Exchange believes there is room for significant growth if a comparable FLEX product were introduced for trading on a regulated market. The Exchange expects that users of these OTC products would be among the primary users of FLEX IBIT options. The Exchange also believes that the trading of FLEX IBIT options would allow these same market participants to better manage the risk associated with the volatility of IBIT (the underlying ETF) positions given the enhanced liquidity that an exchange-traded product would bring. Additionally, the Exchange believes that FLEX IBIT options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater fungibility, exchange-traded contracts should develop more liquidity because each FLEX contract can be closed with a liquidating transaction as compared to OTC FLEX contracts which must be held until expiration. Second, counterparty credit risk would be mitigated by the fact that the exchange-traded contracts are issued and guaranteed by The Options Clearing Corporation (“OCC”). Finally, the price discovery and dissemination provided by the Exchange and its member organizations would lead to more transparent markets. The Exchange believes that its ability to offer FLEX IBIT options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers. Additionally, FLEX options serve two primary client types in the capital markets: (1) ETF and structured return issuers who seek European-style<sup>25</sup> options with bespoke strike and expirations, such that they can tailor their returns

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<sup>25</sup> The term “European-style option” means an options contract that, subject to the provisions of Options 6B, Section 1 (relating to the cutoff time for exercise instructions) and to the Rules of the

more precisely than they could with standard American-style options;<sup>26</sup> and (2) with respect to stock lending, certain investors (e.g. banks and hedge funds) may seek to align their contract durations for calls and puts, and thereby prefer European-style exercise, which can be exercised only on its expiration date, as compared to American-style, which can be exercised on any business day prior to its expiration date and on its expiration date.

The Exchange has analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of FLEX IBIT options. The Exchange believes any additional traffic that would be generated from the trading of FLEX IBIT options would be manageable. The Exchange believes member organizations will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems. The Exchange represents that the same surveillance procedures applicable to the Exchange’s other options products listed and traded on the Exchange, including non-FLEX IBIT options, will apply to FLEX IBIT options, and that it has the

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Clearing Corporation, can be exercised only on its expiration date. See Options 1, Section 1(a)(15).

<sup>26</sup> The term “American-style option” means an options contract that, subject to the provisions of Options 6B, Section 1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised on any business day prior to its expiration date and on its expiration date. Today, non-FLEX equity options settle American-style. See Options 1, Section 1(a)(3).

necessary systems capacity to support such options. FLEX options products (and their respective symbols) are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes.<sup>27</sup> The Exchange's market surveillance staff (including staff of the Financial Industry Regulatory Authority ("FINRA") who perform surveillance and investigative work on behalf of the Exchange pursuant a regulatory services agreement) conducts surveillances with respect to IBIT (the underlying ETF) and, as appropriate, would review activity in IBIT when conducting surveillances for market abuse or manipulation in IBIT options.<sup>28</sup> The Exchange does not believe that allowing FLEX IBIT options would render the marketplace for non-FLEX IBIT options, or equity options in general, more susceptible to manipulative practices.

The Exchange represents that its existing trading surveillances are adequate to monitor the trading in IBIT (as well as FLEX IBIT) on the Exchange. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities. In addition, and as referenced above, the Exchange has a regulatory services agreement with FINRA, pursuant to which FINRA conducts certain surveillances on behalf of the Exchange.

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<sup>27</sup> Phlx FLEX trading occurs on Phlx's trading floor, in an open outcry environment. Surveillance staff monitors FLEX trading in open outcry. Negotiated FLEX trades are submitted into the Exchange's Options Floor Based Management System where they are executed and then captured in the System's electronic audit trail.

<sup>28</sup> See IBIT Approval Order, 89 FR at 78947.

Further, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.<sup>29</sup> The Exchange will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of IBIT options.

The proposed rule change is designed to allow investors seeking to trade options on IBIT to utilize FLEX IBIT options. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to member's evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX IBIT options. The Exchange believes that introducing FLEX IBIT options would further broaden the base of investors that use FLEX Options (and options on IBIT in general) to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market on the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow.

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<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. 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.

Finally, as discussed herein, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX IBIT options at the (most conservative) 25,000 contract position limit, which currently applies solely to non-FLEX IBIT options, should provide an adequate safeguard.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>30</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>31</sup> 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)<sup>32</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that introducing FLEX IBIT options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk. The proposed rule change is designed to allow investors seeking to trade options on IBIT to utilize FLEX IBIT options.

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<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> 15 U.S.C. 78(f)(b)(5).



The Exchange believes that the proposal to permit FLEX IBIT options would remove impediments to and perfect the mechanism of a free and open market. The Exchange believes that offering FLEX IBIT options will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and provide a hedging vehicle to meet their investment needs in connection with a bitcoin-related product. Moreover, the proposal would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that offering FLEX IBIT options may open up the market for options on IBIT to more retail investors. Additionally, offering FLEX would serve two primary client types in the capital markets by permitting ETF and structured return issuers to more precisely tailor their settlement style and allow other investors to align their contract durations for calls and puts, as well as settlement-style.

Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that

it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX IBIT options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX IBIT options at the (most conservative) 25,000 contract limit should provide an adequate safeguard. The purpose of position limits is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The Exchange believes the proposal will benefit investors and public interest because the aggregated position limit for all options on IBIT (FLEX and non-FLEX) at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative for IBIT and therefore appropriate given its liquidity.

The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to evolving needs in the market by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX IBIT options. The Exchange does not believe that allowing FLEX IBIT options would render the marketplace for equity options more susceptible to manipulative practices.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in FLEX IBIT options. Regarding the proposed FLEX IBIT options, the Exchange would use the same surveillance procedures currently utilized for FLEX Options listed on the Exchange (as well as for non-FLEX IBIT options). For surveillance purposes, the Exchange would have access to information regarding trading activity in IBIT (the underlying ETF).<sup>33</sup> In light of surveillance measures related to both options and IBIT (the underlying ETF), 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 FLEX IBIT 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 its proposed rule change will impose any burden on intra-market competition as all market participants would have the option of utilizing the FLEX IBIT options. The proposed rule change is designed to allow investors seeking option exposure to bitcoin to trade FLEX IBIT options. Moreover, the Exchange believes that the proposal to permit FLEX IBIT options would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options.

The Exchange does not believe that its proposed rule change will impose any

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<sup>33</sup> See IBIT Approval Order, 89 FR at 78947.

burden on intermarket competition as all market participants would have the option of utilizing the FLEX IBIT options. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues. The proposed rule change would support that intermarket competition by allowing the Exchange to offer additional functionality to member organizations. The Exchange believes that the proposed FLEX IBIT options will increase the variety of options products available for trading in general and bitcoin-related products in particular and, as such, will provide a valuable tool for investors to manage risk.

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](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2024-72 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-Phlx-2024-72. 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-Phlx-2024-72 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>34</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

*New text is underlined; deleted text is in brackets.*

**Nasdaq PHLX LLC Rules**

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**Options Rules**

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**Options 8 Floor Trading**

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**Section 34. FLEX Trading**

(a) A Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the post of the non-FLEX option on the Exchange. The term “FLEX option” means a FLEX option contract that is traded subject to this Rule. Although FLEX options are generally subject to the Rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange Rules, this Rule takes precedence with respect to FLEX options. The Exchange will not authorize for trading a FLEX Option on [iShares Bitcoin Trust ETF (“IBIT”),] Fidelity Wise Origin Bitcoin Fund, ARK 21Shares Bitcoin ETF, Grayscale Bitcoin Trust (BTC), Grayscale Bitcoin Mini Trust BTC, and Bitwise Bitcoin ETF.

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**(e) Position Limits.**

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(2) FLEX equity options shall not be subject to a separate FLEX position limit. Except as provided in subsection (4) of this section (d), positions in FLEX equity options shall not be taken into account when calculating position limits for non-FLEX equity options, or FLEX or non-FLEX index options. Notwithstanding the foregoing, the position limit for FLEX equity options on the iShares Bitcoin Trust ETF shall be subject to the position limits set forth in Options 9, Section 13, and subject to the exercise limits set forth in Options 9, Section 15 and shall be aggregated with positions on the same non-FLEX underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13, and the exercise limits set forth in Options 9, Section 15.

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