

July 10, 2024

Via Email

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Securities Exchange Release No. 100023 (April 24, 2024), 89 FR 34295 (April 30, 2024) (SR-NYSEARCA-2024-06) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Exchange Rule 5.3–O To Permit the Listing and Trading of Options on Commodity-Based Trust Shares) (the “Order”)

Dear Ms. Countryman:

NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) respectfully submits this comment letter in response to the above-referenced Order, which the Commission issued to institute proceedings to determine whether to approve or disapprove the proposed rule change filed by the Exchange on January 16, 2024. The proposed rule change would amend NYSE Arca Rule 5.3–O(g) to expand the types of ETFs that may be approved for options trading to include Commodity-Based Trust Shares, as defined in Exchange Rule 8.201–E (“Commodity-Based Trust Shares”)(the “Proposed Rule Change”).¹

In the Order, the Commission questions “whether options on Commodity-Based Trust Shares should be subject to the same position and exercise limits as options on stock, and whether the available supply in the markets for the commodity on which the Commodity-Based Trust Shares are based is relevant in determining the position and exercise limits for options on Commodity-Based Trust Shares.” The Exchange strongly believes that options on Commodity-Based Trust Shares should be subject to the same position and exercise limits as options on stock. Pursuant to NYSE Arca Rule 6.8–O, Commentary .05 and .06, Commodity-Based Trust Shares are currently subject to the same position limits applicable to options on stocks and Exchange-Traded Fund Shares, and NYSE Arca Rule 6.9–O stipulates that exercise limits for options on stocks and other securities, including Commodity-Based Trust Shares, shall be the same as the position limits applicable under NYSE Arca Rule 6.8–O.” The Exchange believes its longstanding rules governing position and exercise limits for the underlying Commodity-Based Trust Shares should also apply to options on the Commodity-Based Trust Shares. The

¹ See Securities Exchange Release No. 99398 (January 19, 2024), 89 FR 5029 (January 25, 2024) (SR-NYSEARCA-2024-06) (Notice of Filing of a Proposed Rule Change To Amend Rule 5.3–O To Permit the Listing and Trading of Options on Commodity-Based Trust Shares).

Exchange notes that the Commission has previously approved a proposed rule change permitting cash-settled FLEX ETF Options to have the same position and exercise limits as the underlying ETF.²

Additionally, the Exchange notes that options on Commodity-Based Trust Shares are not dependent on nor subject to available supply in the markets for the commodity on which the Commodity-Based Trust Shares are based, because each option is only convertible into units of the Trust it overlays. While there is not an infinite supply of any underlying commodity, there similarly is not an infinite supply of futures contracts on that commodity for which ETF options are already written, nor is there even an infinite supply of shares of an underlying stock for which options are written. Any constraints on the underlying commodity are already considered by the Commission and issuers of Commodity-Based Trust Shares in establishing its creation and redemption processes. Furthermore, the Exchange does not believe that options on Commodity-Based Trust Shares heightens scarcity. Conversely, tradable options provide additional tools for which market participants can hedge risk without forcing delivery of the linked asset. The Exchange notes that market participants are currently permitted to trade the underlying Commodity-Based ETF. However, the only mechanism available to these participants to fully hedge their position is to trade the actual underlying commodity. Options would provide these participants the ability to hedge their positions like any other UTP security while simultaneously lessening the current demand on the underlying commodity.

In the Order, the Commission also questions “whether the listing of options on Commodity-Based Trust Shares for certain commodities should be subject to scrutiny on a product-by-product basis because of the potential differences in the underlying spot markets, such as deliverable supply, trading volumes, and the involvement of commercial or financial participants.” The Exchange does not believe that the listing of options on Commodity-Based Trust Shares needs to be scrutinized on a product-by-product basis. Under the Proposed Rule Change, options on Commodity-Based Trust Shares may only be listed and traded on the Exchange if the underlying security has been reviewed and approved by the Commission under Section 19(b)(2) of the Act or noticed for immediate effectiveness under Section 19(b)(3)(A) of the Act. The Exchange believes any concerns the Commission may have with respect to the functioning of the underlying spot market for the commodity would presumably have been addressed during the review process prior to the Commission granting approval of the underlying Commodity-Based Trust Share. The Exchange does not believe it is necessary for the Commission to undergo another review and to separately approve the listing of options on a Commodity-Based Trust Share where the underlying security has already undergone a thorough review by the Commission.

The Exchange believes that, in the interests of promoting fair and equitable markets, it is important to give investors looking to hedge broad market exposure the benefits of being able to do so via options on Commodity-based Trust Shares. The proposed rule change would provide

² See Securities Exchange Act Release No. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR-NYSEAMER-2019-38) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow Certain Flexible Equity Options To Be Cash Settled).

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investors with access to such additional investment opportunities, as an alternative to taking very large positions in the underlying commodity.

The Exchange believes that the proposed rule change would promote transparency surrounding the listing process for options on Commodity-Based Trust Shares. Including objective criteria in Exchange listing standards, such as those that would be applicable for the listing and trading of options on Commodity-Based Trust Shares, would help investors to make informed decisions about which options to invest in and would provide a level of transparency that is essential for a well-functioning market.³ The Exchange further believes that the Proposed Rule Change has the potential to significantly reduce the time frame and costs associated with bringing options on Commodity-Based Trust Shares to market, thereby reducing the burden on issuers and other market participants, while also promoting competition among options exchanges. In furtherance of that goal, the Exchange fully expects other options exchanges to submit a similar proposal once the Commission approves the Proposed Rule change.

We appreciate the Commission's consideration of our comments and respectfully request that the Commission approve the Proposed Rule Change.

If the Commission or its Staff has any questions on this letter, or if we can be of further assistance in this matter, please do not hesitate to contact Samir Patel at (212) 656-2030.

Respectfully submitted,



Jaime Klima

³ While acknowledging that The Options Clearing Corporation will require approval to clear options on Commodity-Based Trust Shares, the Exchange believes that treating the listing of such options differently from options on other ETFs introduces confusion among participants and potentially raises concerns that the Commission views the underlying commodity-based ETFs negatively when compared to other ETFs.