

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁴ 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 Web site viewing and printing in the Commission's Public Reference Room, 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2010-026 and should be submitted on or before May 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61892; File No. SR-CBOE-2010-015]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Enable the Listing and Trading of Options on the ETFS Palladium Trust and the ETFS Platinum Trust

April 13, 2010.

On February 8, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4

thereunder,² a proposed rule change to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust (collectively "ETFS Options"). The proposed rule change was published in the **Federal Register** on March 12, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Description of Proposal

Recently, the Commission authorized CBOE to list and trade options on the SPDR Gold Trust,⁴ the iShares COMEX Gold Trust, the iShares Silver Trust,⁵ the ETFS Silver Trust and the ETFS Gold Trust.⁶ Now, the Exchange proposes to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust.

Under current Rule 5.3, only Units (also referred to herein as exchange traded fund ("ETFs")) representing (i) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments), or (ii) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest

and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust, or (iii) commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool Units"), or (iv) represent interests in the streetTRACKS Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust or the ETFS Silver Trust or the ETFS Gold Trust, or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share") are eligible as underlying securities for options traded on the Exchange.⁷ This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the ETFS Palladium Trust and the ETFS Platinum Trust.

Apart from allowing the ETFS Palladium Trust and the ETFS Platinum Trust to be an underlying security for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Interpretation and Policy .06 to Rule 5.3.

Specifically, in addition to satisfying the aforementioned listing requirements, Units must meet either: (1) The criteria and guidelines under Rule 5.3 and Interpretation and Policy .01 to Rule 5.3, *Criteria for Underlying Securities*; or (2) they must be available for creation or redemption each business day from or through the issuer

⁷ See Interpretation and Policy .06 to CBOE Rule 5.3.

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61663 (March 5, 2010), 75 FR 11955.

⁴ See Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR-CBOE-2005-11).

⁵ See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR-CBOE-2008-72).

⁶ See Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (order approving SR-CBOE-2010-007).

¹⁴ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on the ETFS Palladium Trust and the ETFS Platinum Trust. Specifically, under Interpretation and Policy .08 to Rule 5.4, options on Units may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Units, there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which Units are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, the ETFS Palladium Trust and the ETFS Platinum Trust shall 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 the ETFS Palladium Trust and the ETFS Platinum Trust, if the ETFS Palladium Trust and the ETFS Platinum Trust ceases to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or the ETFS Palladium Trust and the ETFS Platinum Trust is halted from trading on its primary market.

The addition of the ETFS Palladium Trust and the ETFS Platinum Trust to Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits⁸ or margin.⁹

The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Palladium Trust and the ETFS Platinum Trust will be similar to those applicable to all other options on other Units currently traded on the Exchange. The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Palladium Trust and the ETFS Platinum Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member 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 palladium or platinum.

II. Commission Findings

After careful consideration, the Commission finds that the proposed rule change submitted by CBOE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹⁰ and, in particular, the requirements of Section 6 of the Act.¹¹ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed 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. In accordance with the Memorandum of Understanding entered into between the Commodity Futures Trading Commission ("CFTC") and the Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

As a national securities exchange, the CBOE is required under Section 6(b)(1) of the Act¹³ 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. In addition, brokers that trade ETFS Options will also be subject to best execution obligations and FINRA rules.¹⁴ Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFS Options.¹⁵ Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.¹⁶

ETFS Options will trade as options under the trading rules of the CBOE. These rules, among other things, are designed to avoid trading through better displayed prices for ETFS Options available on other exchanges and, thereby, satisfy CBOE's obligation under the Options Order Protection and Locked/Crossed Market Plan.¹⁷ Series of the ETFS Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying ETFS Silver and ETF Gold Trusts. Shares of the ETFS Silver and ETFS Gold Trusts must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.¹⁸ In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value.¹⁹ If the ETFS Silver or ETFS Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFS Options.

CBOE has represented that it has surveillance programs in place for the listing and trading of ETFS Options. For example, CBOE may obtain trading information via the ISG from the NYMEX related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, palladium or platinum. Additionally, the listing and trading of ETFS Options will be subject to the

¹⁴ See NASD Rule 2320.

¹⁵ See CBOE Rule 9.15.

¹⁶ See FINRA Rule 2360(b) and CBOE Rules 9.7 and 9.9.

¹⁷ See CBOE Rule 6.81. Specifically, CBOE is a participant in the Options Order Protection and Locked/Crossed Market Plan.

¹⁸ 17 CFR 242.600.

¹⁹ See Interpretation and Policy .06 to CBOE Rule 5.3.

⁸ See CBOE Rules 4.11 and 4.12.

⁹ See CBOE Rule 12.3.

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(1).

exchange's rules pertaining to position and exercise limits²⁰ and margin.²¹

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the propose rule change (SR-CBOE-2010-015) be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61904; File No. SR-NASDAQ-2010-047]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Global Select Market Initial Listing Requirements

April 14, 2010.

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 April 6, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to amend the Global Select initial listing requirements and to make a technical conforming correction to a rule cross reference. The text of the proposed rule change is below.

Proposed new language is in *italics* and proposed deletions are in *brackets*.

* * * * *

5310. Definitions and Computations

(a)-(d) No change.

(e) In the case of a Company listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 5315(f)(3)(B), [and] (C) *and (D)* will be based on the Company's market capitalization at the time of listing.

(f)-(h) No change.

(i) A Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM-5101-2, is not eligible to list on the Nasdaq Global Select Market.

5315. Initial Listing Requirements for Primary Equity Securities

Rule 5310 provides guidance about computations made under this Rule 5315.

(a)-(e) No change.

(f)

(1) No change.

(2) Market Value Requirement

The Publicly Held Shares shall meet one of the following:

(A)-(B) No change.

(C) A Market Value of at least \$45[70] million in the case of: (i) A Company listing in connection with its initial public offering; *and* (ii) a Company that is affiliated with, or a spin-off from, another Company listed on the Global Select Market; *or* [and (iii)]

(D) A Market Value of at least \$70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940.

(3) Valuation Requirement

A Company, other than a closed end management investment company, shall meet the requirements of sub-paragraph (A), (B), [or] (C), *or (D)* below:

(A)-(B) No change.

(C)(i) Average market capitalization of at least \$850 million over the prior 12 months, and (ii) total revenue of at least \$90 million in the previous fiscal year[.]; *or*

(D)(i) Market capitalization of at least \$160 million, (ii) total assets of at least \$80 million for the most recently completed fiscal year, and (iii) stockholders' equity of at least \$55 million.

* * * * *

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Nasdaq proposes to amend Rule 5315(f)(3) to adopt a fourth initial listing standard for listing on the Nasdaq Global Select Market. This standard would permit listing if the company has: (i) \$80 million in total assets, (ii) \$55 million in stockholders' equity and (iii) \$160 million of market capitalization. Companies qualifying under this standard will also have to meet all other requirements of Rule 5315, including the ownership and market value requirements contained in Rule 5315(f) and, upon listing, would be subject to the Global Market continued listing standards.

Nasdaq believes that this new listing standard will continue to ensure that only companies of a significant size and financial standing will be able to list on the Global Select Market. In addition, the new listing standard will permit certain companies that qualify for listing today on other national securities exchanges to also qualify for the Global Select Market. In that regard, Nasdaq notes that the Commission recently approved a similar alternative standard for listing on the New York Stock Exchange, Inc. ("NYSE").⁴ This new NYSE alternative allows a company to list if it has total assets of at least \$75 million, stockholders' equity of at least \$50 million, and a global market capitalization of at least \$150 million. The proposed requirements for initial listing on the Nasdaq Global Select Market are higher than those adopted by the NYSE.

Like companies listing under the current Global Select Market initial listing standards, companies listing under the proposed new standard must

⁴ Securities Exchange Act Release No. 58934 (November 12, 2008), 73 FR 69708 (SR-NYSE-2008-098, modifying Section 102.01C of the Listed Company Manual).

²⁰ See CBOE Rules 4.11 and 4.12.

²¹ See CBOE Rule 12.3. See also FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).