

Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>8</sup> because it would not impact the Exchange's governance or regulatory structure, which would continue to be 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.

The Exchange believes that the proposed rule change would 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, because by increasing Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of Nasdaq.

The Exchange also notes that the proposed rule change is substantially similar to a prior proposal by Intercontinental Exchange, Inc. ("ICE"), which is the holding company for three national securities exchanges, including the New York Stock Exchange. The ICE proposal amended ICE's Certificate of Incorporation to effectuate a similar stock split as proposed by the Exchange herein.<sup>9</sup> As such, the Exchange does not believe that its proposal raises any new or novel issues not already considered by the Commission.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Because the proposed rule change relates solely to the number of authorized shares of Common Stock and shares of capital stock of the Company and not to the operations of the Exchange, the Exchange does not believe that the proposed rule change will impose any burden on competition

not necessary or appropriate in furtherance of the purposes of the Act.

#### *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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 (<http://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-MRX-2022-05 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.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-MRX-2022-05. 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 (<http://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 10:00 a.m. and 3:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2022-05 and should be submitted on or before June 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-10958 Filed 5-20-22; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-94928; File No. SR-CBOE-2022-009]

### **Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Rule 4.3.06 To Allow the Exchange To List and Trade Options on the Goldman Sachs Physical Gold ETF**

May 17, 2022.

#### **I. Introduction**

On March 25, 2022, Cboe Exchange, Inc. ("Exchange" or "Cboe") filed with the Securities and Exchange

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> In particular, the ICE proposal increased ICE's total number of authorized shares of ICE common stock in order to effectuate a 5-for-1 stock split by way of a stock dividend. See Securities Exchange Act Release No. 78992 (September 29, 2016), 81 FR 69092 (October 5, 2016) (SR-NYSE-2016-57, SR-NYSEArca-2016-119, and SR-NYSEMKT-2016-80) (hereinafter, "ICE Approval").

Commission (“Commission”), 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> a proposed rule change to list and trade options on the Goldman Sachs Physical Gold ETF (“AAAU” or “Trust”). The proposed rule change was published for comment in the **Federal Register** on April 8, 2022. <sup>3</sup> The Commission received one comment on the proposed rule change. <sup>4</sup> This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

Under Cboe Rule 4.3.06(a), securities deemed appropriate for options trading include Units <sup>5</sup> that represent certain types of interests. <sup>6</sup> Cboe Rule 4.3.06(a)(4) specifies Units that represent interests in the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFs Silver Trust, the ETFs Gold Trust, the ETFs Palladium Trust, the ETFs Platinum Trust, or the Sprott Physical Gold Trust. The proposed rule change would add AAAU to the list of ETFs under Rule 4.3.06(a)(4) that may be approved for options trading on the Exchange.

The Exchange states that AAAU is a gold-backed commodity ETF structured as a trust, much like other Units currently deemed appropriate for options trading pursuant to Cboe Rule 4.3.06(a)(4), such as the SPDR Gold Trust (“GLD”), iShares COMEX Gold Trust (“IAU”), Aberdeen Standard Physical Gold Trust (“SGOL”), and Sprott Physical Gold Trust (“PHYS”). <sup>7</sup> According to the Exchange, the Trust’s investment objective is for its shares to reflect the performance of the price of gold (less the expenses of the Trust’s operations), which offers investors an opportunity to gain exposure to gold without the complexities of gold delivery. <sup>8</sup> The Trust issues Goldman Sachs Physical Gold ETF Shares, which represent units of fractional undivided

beneficial interest in the Trust, the assets of which consist principally of gold. <sup>9</sup> The Exchange states that AAAU is a competitively-priced commodity ETF whose cost is comparatively lower than the industry average for commodity ETFs. <sup>10</sup> The Exchange asserts that AAAU provides investors with a cost-efficient alternative that allows a level of participation in the gold market through the securities market. <sup>11</sup> The GLD, IAU, SGOL and PHYS trusts also issue shares that represent fractional undivided beneficial interest in the respective trust, each of which holds physical gold and is designed to track gold or the performance of the price of gold and offer access to the gold market. <sup>12</sup>

AAAU options will trade in the same manner as any other ETF options on the Exchange. <sup>13</sup> The Exchange states that Cboe rules that currently apply to the listing and trading of the aforementioned options on gold-backed commodity ETFs also will apply to the listing and trading of AAAU options on the Exchange. <sup>14</sup> The Exchange notes that these include rules governing, among other things, listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures. <sup>15</sup>

The Exchange’s initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to AAAU. <sup>16</sup> The Exchange represents that AAAU satisfies the Exchange’s initial listing standards as set forth in Cboe Rule 4.3(a) and Cboe Rule 4.3.06(b). <sup>17</sup> Pursuant to Cboe Rule 4.3(a), an underlying security on which options may be listed and traded on the Exchange must be duly registered and be an NMS stock, <sup>18</sup> and be characterized by a substantial number of outstanding shares which are widely held and actively traded. <sup>19</sup> In addition, Cboe Rule

4.3.06(b) requires that Units must either (1) meet the criteria and guidelines under Cboe Rule 4.3.01, <sup>20</sup> or (2) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pools or other issuer in cash or in kind at a price related to net asset value, and the issuing trust, investment company, commodity pools or other issuer is obligated to issue Units in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuing trust, investment company, commodity pools or other issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets and/or cash as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Units which underlie the option as described in the Units’ prospectus. <sup>21</sup> The Exchange represents that, at minimum, AAAU satisfies Cboe Rule 4.3.06(b)(2). <sup>22</sup>

The Exchange states that AAAU also will be subject to the Exchange’s continued listing requirements, set forth in Cboe Rule 4.4.06, for ETFs deemed appropriate for options trading pursuant to Cboe Rule 4.3.06. <sup>23</sup> Cboe Rule 4.4.06 provides that Units that were initially approved for options trading pursuant to Cboe Rule 4.3.06 shall be deemed not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Units, if the Units cease to be an NMS stock or the Units are halted from trading in their primary market. <sup>24</sup> Additionally, options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) In the case of options covering Units approved for trading under Cboe Rule 4.3.06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Cboe Rule 4.4.01; (2) in the case of options covering Units approved for trading under Cboe Rule

approximately \$727.3 million and the NAV of its shares is \$19.19. *See id.* at n. 7.

<sup>20</sup> *See* Cboe Rule 4.3.01 (providing guidelines established by the Board of Directors to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions).

<sup>21</sup> *See* Notice, *supra* note 3, 87 FR at 20902–03.

<sup>22</sup> *See id.* *See also* Goldman Sachs Physical Gold ETF, Prospectus (January 8, 2021) available at <https://www.gsam.com/content/gsam/us/en/individual/products/etf-fund-finder/goldman-sachs-physical-gold-etf.html#activeTab=overview>.

<sup>23</sup> *See* Notice, *supra* note 3, 87 FR at 20903.

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

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> *See* Securities Exchange Act Release No. 94594 (Apr. 4, 2022), 87 FR 20901 (Apr. 8, 2022) (“Notice”).

<sup>4</sup> *See* Letter from Andrew Robison, dated April 28, 2022, available at <https://www.sec.gov/comments/sr-cboe-2022-009/sr-cboe2022009.htm>. The comments expressed by the commenter are not relevant to the proposed rule change.

<sup>5</sup> The terms “Unit” and Exchange-Traded Fund (“ETF”) mean a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Cboe Rule 4.3. *See* Cboe Rule. 1.1. Capitalized terms not otherwise defined herein have the meanings set forth in CBOE’s rules or the Notice.

<sup>6</sup> *See* Cboe Rules 4.3.06(a)(1)–(5).

<sup>7</sup> *See* Notice, *supra* note 3, 87 FR at 20902.

<sup>8</sup> *See id.*

<sup>9</sup> *See id.* The Trust may include minimal cash. *See id.* at n. 5.

<sup>10</sup> *See* Notice, *supra* note 3, 87 FR at 20902.

<sup>11</sup> *See id.*

<sup>12</sup> *See id.* The trusts may include minimal cash. *See id.* at n.6.

<sup>13</sup> *See* Notice, *supra* note 3, 87 FR at 20902.

<sup>14</sup> *See id.*

<sup>15</sup> *See id.*

<sup>16</sup> *See id.*

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

<sup>18</sup> *See id.* The term “NMS stock” has the meaning set forth in Rule 600 of Regulation NMS. *See* Cboe Rule 1.1.

<sup>19</sup> *See* Notice, *supra* note 3, 87 FR at 20902. The Exchange notes that the year-to-date (March 23, 2022) average daily volume (“ADV”) of AAAU shares is approximately 845,200 shares, the market capitalization of AAAU as of March 23, 2022 is

4.3.06(b)(2), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange and are defined [sic] as an NMS stock, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) 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 the Units are based is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.<sup>25</sup>

AAAU options will be physically-settled contracts with American-style exercise.<sup>26</sup> The Exchange states that, consistent with Cboe Rule 4.5, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on AAAU<sup>27</sup> and may also list series of options on AAAU for trading on a weekly<sup>28</sup> or quarterly<sup>29</sup> basis.<sup>30</sup> The Exchange states that it may also list long-term equity option series (“LEAPS”) that expire from 12 to 180 months from the time they are listed.<sup>31</sup>

The Exchange states that, pursuant to Rule 4.5.07, which governs strike prices of series of options on Units, the interval between strike prices for series of options on AAAU will be \$1 or greater where the strike price is \$200 or less and \$5.00 or greater where the strike price is greater than \$200.<sup>32</sup> The

Exchange states that, pursuant to Cboe Rule 5.4, where the price of a series of AAAU options is less than \$3.00 the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.<sup>33</sup> The Exchange states that any and all new series of AAAU options that the Exchange lists will be consistent and comply with the expirations, strike prices and minimum increments set forth in Cboe Rules 4.5 and 5.4, as applicable.<sup>34</sup>

The Exchange states that position and exercise limits for options on ETFs, including options on AAAU, are determined pursuant to Cboe Rules 8.30 and 8.32, respectively.<sup>35</sup> The Exchange states that position and exercise limits for ETF options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market, and smaller capitalization ETFs have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.<sup>36</sup> The Exchange states that, given AAAU volume over the previous six months, the Exchange anticipates that upon initial listing, AAAU options will fall into the position limit bucket of 75,000 contracts.<sup>37</sup> The Exchange further notes that Cboe Rule 10.3, which governs margin requirements applicable to the trading of all options on the Exchange, including options on ETFs, will also apply to the trading of AAAU options.<sup>38</sup>

The Exchange represents that the same surveillance procedures applicable to all other options on other Units currently listed and traded on the Exchange will apply to options on AAAU, and that it has the necessary systems capacity to support the new option series.<sup>39</sup> The Exchange states it believes that its existing surveillance

and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading ETF options, including AAAU options, as proposed.<sup>40</sup> Also, the Exchange states it may obtain information from the CME Group New York Mercantile Exchange, Inc. (“NYMEX”) (a member of the Intermarket Surveillance Group (“ISG”))<sup>41</sup> related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold.<sup>42</sup>

The Exchange represents that it has also analyzed its capacity and believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on AAAU, up to the number of expirations currently permissible under its rules.<sup>43</sup> The Exchange believes that because the proposal is limited to one class, any additional traffic that may be generated from the introduction of AAAU options will be manageable.<sup>44</sup> The Exchange also proposes to amend Cboe Rule 4.3.06(a)(4) to update the names of the “ETFS Silver Trust,” the “ETFS Gold Trust,” the “ETFS Palladium Trust” and the “ETFS Platinum Trust” to the “Aberdeen Standard Physical Silver Trust,” the “Aberdeen Standard Physical Gold Trust,” the “Aberdeen Standard Physical Palladium Trust,” and the “Aberdeen Standard Physical Platinum Trust,” respectively,<sup>45</sup> and make a non-substantive change to the rule to replace superfluous commas with conjunctions.<sup>46</sup>

### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>47</sup> and, in particular, the requirements of Section 6

<sup>25</sup> See *id.*

<sup>26</sup> See *id.* See also Cboe Rule 4.2 (providing that the rights and obligations of holders and writers shall be as set forth in the Rules of The Options Clearing Corporation (“OCC”)); Cboe Equity Options Product Specifications (March 23, 2022) available at [https://www.cboe.com/exchange\\_traded\\_stock/equity\\_options\\_spec/?msclid=8079efbbaaf111ec83b46e77a2984348](https://www.cboe.com/exchange_traded_stock/equity_options_spec/?msclid=8079efbbaaf111ec83b46e77a2984348); OCC Rules, Chapter VIII (governing exercise and assignment) and Chapter IX (governing the discharge of delivery and payment obligations arising out of the exercise of physically-settled stock option contracts).

<sup>27</sup> See Notice, *supra* note 3, 87 FR at 20903 n. 11; see also Cboe Rule 4.5(b).

<sup>28</sup> See Notice, *supra* note 3, 87 FR at 20903. The weekly listing program is known as the Short Term Option Series Program and is described within Cboe Rule 4.5(d). See *id.* at n.12.

<sup>29</sup> See Notice, *supra* note 3, 87 FR at 20903; see also Cboe Rule 4.5(e).

<sup>30</sup> See Notice, *supra* note 3, 87 FR at 20903.

<sup>31</sup> See *id.*; see also Cboe Rule 4.5(f).

<sup>32</sup> See Notice, *supra* note 3, 87 FR at 20903. The Exchange notes that for options listed pursuant to

the Short Term Option Series Program, Rule 4.5(d)(5) specifically sets forth intervals between strike prices on Short Term Option Series. See *id.* at n. 15.

<sup>33</sup> See Notice, *supra* note 3, 87 FR at 20903; see also Cboe Rule 5.4. The Exchange states that, if options on AAAU are eligible to participate in the Penny Interval Program, the minimum increment will be \$0.01 below \$3.00 and \$0.50 above \$3.00. See Notice, *supra* note 3, 87 FR at 20903 n. 20.

<sup>34</sup> See Notice, *supra* note 3, 87 FR at 20903.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See Notice, *supra* note 3, 87 FR at 20903 n. 21.

<sup>38</sup> See Notice, *supra* note 3, 87 FR at 20903.

<sup>39</sup> See *id.*

<sup>40</sup> See Notice, *supra* note 3, 87 FR at 20903–04.

<sup>41</sup> The purpose of the ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. See <https://isgportal.org/>.

<sup>42</sup> See Notice, *supra* note 3, 87 FR at 20904.

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See Notice, *supra* note 3, 87 FR at 20902. The Exchange states that these ETFs were renamed in 2018. See *id.*

<sup>46</sup> See *id.*

<sup>47</sup> 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).

of the Act.<sup>48</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>49</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Commission believes that the proposal to list and trade options on AAAU on the Exchange will provide investors with the ability to transact in AAAU options in a listed market environment, which could provide investors with heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options, as well as increased transparency and enhanced price discovery. Moreover, the Exchange already lists options on other gold-based ETFs, which, as described above, are trusts structured in substantially the same manner as AAAU,<sup>50</sup> and the Exchange represents that it has not identified any issues with the continued listing and trading of the gold-backed ETF options that it currently lists for trading.<sup>51</sup>

As a national securities exchange, Cboe is required under Section 6(b)(1) of the Act<sup>52</sup> 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 AAAU options also will be subject to best execution obligations and FINRA rules.<sup>53</sup> Applicable exchange rules also require that customers receive appropriate disclosure before trading AAAU Options.<sup>54</sup> Further, brokers opening accounts and recommending options transactions must comply with

relevant customer suitability standards.<sup>55</sup>

Options on AAAU will trade as options under the trading rules of the Exchange.<sup>56</sup> AAAU options must also satisfy Exchange initial listing and continued listing standards applicable to options on all Units, including the gold-backed commodity ETFs already approved for options trading on the Exchange. A security on which options may be listed and traded on the Exchange must be duly registered and be an “NMS stock” as defined under Rule 600 of Regulation NMS<sup>57</sup> and be characterized by a substantial number of outstanding shares which are widely held and actively traded.<sup>58</sup> Additionally, Units must meet either (1) the criteria and guidelines under Cboe Rule 4.3.01,<sup>59</sup> or (2) they must 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, 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.<sup>60</sup>

Series of AAAU options also will be subject to the Exchange’s continued listing requirements, including standards applicable to the underlying Trust. If the Units cease to be an NMS stock or the Units are halted from trading in their primary market, the Exchange will deem Units that were initially approved for options trading pursuant to Cboe Rule 4.3.06 not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Units.<sup>61</sup>

The Exchange represents that its existing surveillance and reporting

safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading ETF options, including AAAU options.<sup>62</sup> The Exchange also represents that it has the necessary systems capacity to support the new ETF option series.<sup>63</sup> Additionally, the Commission notes that AAAU options will trade in the same manner as any other options on ETFs, and the same Exchange rules that currently govern the listing and trading of ETF options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on AAAU.

Finally, the Commission believes that the Exchange’s proposals to make grammatical edits to the rule text and update the names of certain ETFs in Cboe Rule 4.3.06(a)(4) are helpful technical changes that add clarity and accuracy to the rule text.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>64</sup> that the proposed rule change (SR-CBOE-2022-009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-10967 Filed 5-20-22; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94935; File No. SR-GEMX-2022-07]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Amended and Restated Certificate of Incorporation

May 17, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 6, 2022, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule

<sup>62</sup> See Notice, *supra* note 3, 87 FR at 20903.

<sup>63</sup> See *id.*

<sup>64</sup> 15 U.S.C. 78s(b)(2).

<sup>65</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>48</sup> 15 U.S.C. 78f.

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> See e.g., Securities Exchange Act Release No. 59055 (Dec. 4, 2008), 73 FR 75148 (Dec. 10, 2008) (approving proposals to list and trade options on IAU and the iShares Silver Trust); Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (Jun. 5, 2008) (approving proposals to list and trade options on GLD); and Securities Exchange Act Release No. 61483 (Feb. 3, 2010), 75 FR 6753 (Feb. 10, 2010) (approving proposals to list and trade options on the ETFS Gold Trust and ETFS Silver Trust).

<sup>51</sup> See Notice, *supra* note 3, at 20904.

<sup>52</sup> 15 U.S.C. 78f(b)(1).

<sup>53</sup> See FINRA Rule 5310.

<sup>54</sup> See Cboe Rule 9.9 and Rule 9.15.

<sup>55</sup> See Cboe Rule 9.3.

<sup>56</sup> See Chapter 5 of Cboe’s Rules.

<sup>57</sup> 17 CFR 242.600.

<sup>58</sup> See Cboe Rule 4.3(a); see also *supra* note 19.

<sup>59</sup> See Cboe Rule 4.3.06(b)(1). See also Cboe Rule 4.3.01 (providing guidelines established by the Board of Directors to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions).

<sup>60</sup> See Cboe Rule 4.3.06(b)(2). The Exchange represents that, at minimum, the AAAU satisfies this initial listing criteria. See Notice, *supra* note 3, 87 FR at 20903.

<sup>61</sup> See Cboe Rule 4.4.06.