

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61892; File No. SR-CBOE-2010-015)

April 13, 2010

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

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> the iShares COMEX Gold Trust, the iShares Silver Trust,<sup>5</sup> the ETFS Silver Trust and the ETFS Gold Trust.<sup>6</sup> Now, the Exchange proposes to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust.

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<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. 61663 (March 5, 2010), 75 FR 11955.

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

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

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

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.<sup>7</sup> 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 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 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

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<sup>7</sup> See Interpretation and Policy .06 to CBOE Rule 5.3.

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 limits<sup>8</sup> or margin.<sup>9</sup>

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 exchange<sup>10</sup> and, in particular, the requirements of Section 6 of the Act.<sup>11</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</sup> 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

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<sup>8</sup> See CBOE Rules 4.11 and 4.12.

<sup>9</sup> See CBOE Rule 12.3.

<sup>10</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).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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 Act<sup>13</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 ETFs Options will also be subject to best execution obligations and FINRA rules.<sup>14</sup> Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFs Options.<sup>15</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>16</sup>

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.<sup>17</sup> Series of the ETFs Options will be subject

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<sup>13</sup> 15 U.S.C. 78f(b)(1).

<sup>14</sup> See NASD Rule 2320.

<sup>15</sup> See CBOE Rule 9.15.

<sup>16</sup> See FINRA Rule 2360(b) and CBOE Rules 9.7 and 9.9.

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

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.<sup>18</sup> 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.<sup>19</sup> 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 exchange’s rules pertaining to position and exercise limits<sup>20</sup> and margin.<sup>21</sup>

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<sup>18</sup> 17 CFR 242.600.

<sup>19</sup> See Interpretation and Policy .06 to CBOE Rule 5.3.

<sup>20</sup> See CBOE Rules 4.11 and 4.12.

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

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> 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.<sup>23</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).