

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62464; File No. SR-BX-2010-045)

July 7, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enable the Listing and Trading on BOX of Options on the ETFs Gold Trust, the ETFs Silver Trust, the ETFs Palladium Trust and the ETFs Platinum Trust

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 June 30, 2010, NASDAQ OMX BX, Inc. (the “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the “Exchange”) proposes to amend the Rules of the Boston Options Exchange Group, LLC (“BOX”) to enable the listing and trading on BOX of options on the ETFs Gold Trust, the ETFs Silver Trust, the ETFs Palladium Trust and the ETFs Platinum Trust. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at

<http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 self-regulatory organization 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. The self-regulatory organization 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

Recently, the U.S. Securities and Exchange Commission (“SEC” or “Commission”) authorized the listing and trading on BOX of options on the SPDR Gold Trust<sup>5</sup> and the iShares COMEX Gold Trust and the iShares Silver Trust.<sup>6</sup> Now, the Exchange proposes for BOX to list and trade options on the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust.

Under current Chapter IV, Section 3(i) of the BOX Rules, only Exchange-Traded Fund Shares, or ETFs, that are traded on a national securities exchange and are defined as an “NMS” stock under Rule 600 of Regulation NMS, and that (i) represent 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,

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<sup>5</sup> See Securities Exchange Act Release No. 58136 (July 10, 2008), 73 FR 40884 (July 16, 2008) (SR-BSE-2008-41) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options on Shares of the SPDR Gold Trust).

<sup>6</sup> See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR-BSE-2008-51) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Listing and Trading Options on Shares of the iShares COMEX Gold Trust and the iShares Silver Trust).

including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase 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 broad based 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) represent interests in a trust that holds a specified non-U.S. currency or currencies 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 or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”) or (iii) represent 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 ETFs”) or (iv) are issued by the SPDR® Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust are eligible as underlying securities for options traded on BOX.<sup>7</sup> This rule change proposes to expand the types of ETFs that may be approved for options trading on BOX

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<sup>7</sup> See Chapter IV, Section 3(i) of the BOX Rules.

to include the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust.

Apart from allowing the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust to be underlying securities for options traded on BOX, as described above, the listing standards for ETFs will remain unchanged from those that apply under current BOX 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 Chapter IV, Section 3(i) of the BOX Rules.

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must either (1) meet the criteria and guidelines set forth in paragraphs (a) and (b) of Chapter IV, Section 3 or (2) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Exchange-Traded Fund Shares 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 issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them 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 Exchange-Traded Fund Shares, all as provided in the Exchange-Traded Fund Shares' prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust. Specifically, under Chapter IV, Section 4(h) of the BOX Rules, options on Exchange-Traded Fund Shares 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 Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (2) the value of the underlying silver, gold, palladium or platinum, respectively, 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 in such options on BOX inadvisable.

Additionally, the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust shall not be deemed to meet the requirements for continued approval, and BOX shall not open for trading any additional series of option contracts of the class covering the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust, respectively, if the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust ceases to be an “NMS stock” as provided for in Chapter IV, Section 4(b)(vi) of the BOX Rules or the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust is halted from trading on its primary market. The addition of the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust to Chapter IV, Section 3(i) of the BOX Rules 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 Gold Trust, the ETFS Silver Trust, 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 BOX. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. (“NYMEX”) (a member of the Intermarket Surveillance Group) related to any

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<sup>8</sup> See Chapter III, Sections 7 and 9 of the BOX Rules.

<sup>9</sup> See Chapter XIII of the BOX Rules.

financial instrument that is based, in whole or in part, upon an interest in or performance of gold, silver, palladium and/or platinum.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that amending the BOX Rules to accommodate the listing and trading of options on the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust and the ETFS Platinum Trust will benefit investors by providing them with valuable risk management tools.

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 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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust, and the ETFS Platinum Trust immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest to permit the Exchange to list and trade options on the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust, and the ETFS Platinum Trust without delay.<sup>14</sup> The Commission notes the proposal is substantively identical to proposals that were recently

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

approved by the Commission, and does not raise any new regulatory issues.<sup>15</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2010-045 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>15</sup> See Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6773 (February 10, 2010) (Order Granting Approval of Proposed Rule Changes and Notice of Filings and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing and Trading of the ETFs Gold Trust and the ETFs Silver Trust) (SR-CBOE-2010-007; SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110). See also Securities Exchange Act Release Nos. 61892 (April 13, 2010), 75 FR 20649 (April 20, 2010) (SR-CBOE-2010-015); 61983 (April 26, 2010), 75 FR 23314 (May 3, 2010) (SR-ISE-2010-19); and 62250 (June 9, 2010), 75 FR 33882 (June 15, 2010) (SR-NYSEArca-2010-25) (SR-NYSEAmex-2010-37) (Orders Granting Approval of Proposed Rule Changes to Enable the Listing and Trading of Options on the ETFs Palladium Trust and the ETFs Platinum Trust on CBOE, ISE, NYSEArca and NYSEAmex, respectively).



All submissions should refer to File Number SR-BX-2010-045. This file number should be included on the subject line if e-mail 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>16</sup> 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, 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; 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

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<sup>16</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

to File Number SR-BX-2010-045 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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