

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-57894; File Nos. SR-Amex-2008-15; SR-CBOE-2005-11; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SR-Phlx-2008-17)

May 30, 2008

Self-Regulatory Organizations; American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, Philadelphia Stock Exchange, Inc., and NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified, and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified, Relating to Listing and Trading Options on the SPDR Gold Trust

On January 25, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to list and trade options on shares of the SPDR Gold Trust (formerly, the streetTRACKS Gold Trust) (“Gold Trust Options”). On April 12, 2005, CBOE submitted Amendment No. 1 to the proposed rule change. On March 7, 2008, CBOE submitted Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on March 17, 2008 for a 21-day comment period.<sup>3</sup> On May 21, 2008, CBOE submitted Amendment No. 3 to the proposed rule change.<sup>4</sup> This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3.

In addition, four other exchanges submitted proposals to list and trade Gold Trust Options. Specifically, the International Securities Exchange, LLC (“ISE”) submitted its proposal on February 7, 2008, the American Stock Exchange LLC (“Amex”) filed on February 20, 2008,

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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. 57465 (March 11, 2008), 73 FR 14284.

<sup>4</sup> In Amendment No. 3, CBOE updated its proposed rule text to reflect the change in name, effective May 21, 2008, of the underlying trust from streetTRACKS Gold Trust to SPDR Gold Trust. This is a technical amendment and is not subject to notice and comment.

the Philadelphia Stock Exchange, Inc. (“Phlx”) filed on February 28, 2008, and NYSE Arca, Inc. (“NYSE Arca”) filed on May 21, 2008 with the Commission the proposed rule changes as described in Items I and II below, which items have been prepared substantially by the Amex, ISE, NYSE Arca, and Phlx. On May 20, 2008, ISE and Phlx submitted Amendment No. 1 to their respective proposals. On May 21, 2008, ISE and Phlx submitted Amendment No. 2 to their respective proposals and Amex submitted Amendment No. 1 to its proposal. The proposals submitted by the Amex, ISE, NYSE Arca, and Phlx are substantively identical to CBOE’s proposal. Pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4<sup>6</sup> thereunder, the Commission is publishing this notice to solicit comments on these four proposed rule changes, as modified, from interested persons and is approving the proposals, as modified, on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Amex, ISE, NYSE Arca, and Phlx each propose to amend certain of their respective rules to enable the listing and trading of Gold Trust Options on their markets. The text of the proposals is available at each of the respective exchanges, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.com), [www.iseoptions.com](http://www.iseoptions.com), [www.nysearca.com](http://www.nysearca.com), and [www.phlx.com](http://www.phlx.com).

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

In their filings with the Commission, the Amex, ISE, NYSE Arca, and Phlx included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. These exchanges have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

A. Self-Regulatory Organizations’ Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex, ISE, NYSE Arca, and Phlx each state that the purpose of its proposed rule changes is to permit the listing and trading of Gold Trust Options.

Currently, the rules of these exchanges permit only certain “Units” (also referred to herein as exchange traded funds (“ETFs”)) to underlie options traded on their markets.<sup>7</sup>

Specifically, to be eligible as an underlying security for options traded on the Amex, ISE, NYSE Arca, or Phlx, an ETF must represent: (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 (“Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (“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

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<sup>7</sup> See Amex Rule 915 Commentary .06; ISE Rule 5.2(h); NYSE Arca Rule 5.3; and Phlx Rule 1009 Commentary .06.

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. The proposed rule change would expand the types of ETFs that may be approved for options trading on the Exchanges to include the SPDR Gold Trust.

Apart from allowing the SPDR Gold Trust to be an underlying for options traded on Amex, ISE, NYSE Arca, and Phlx as described above, the listing standards for ETFs would remain unchanged from those that apply under the current rules of these exchanges. ETFs on which options may be listed and traded would still have to be listed and traded on a national securities exchange and satisfy the other listing standards set forth in the respective rules of each of these exchanges.<sup>8</sup>

Specifically, in addition to satisfying the aforementioned listing requirements, Units would have to continue to: (1) meet the criteria and guidelines under the exchanges' rules for underlying ETFs; or (2) 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

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<sup>8</sup> See Amex Rule 916 Commentary .07; ISE Rule 502(h); NYSE Arca Rule 5.3(g); and Phlx Rule 1009 Commentary .06.

consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.<sup>9</sup>

Amex, ISE, NYSE Arca, and Phlx each propose that the current continued listing standards for options on ETFs would apply to Gold Trust Options. Specifically, 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 exchanges makes further dealing on the exchange inadvisable.<sup>10</sup>

In addition, shares of the SPDR Gold Trust would not be deemed to meet the requirements for continued approval, and the Amex, ISE, NYSE Arca, and Phlx would not open for trading any additional series of option contracts of the class covering shares of the SPDR Gold Trust, if the shares of the SPDR Gold Trust cease to be an “NMS stock” as provided for in rules of these exchanges<sup>11</sup> or shares of the SPDR Gold Trust are halted from trading on their primary market.

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<sup>9</sup> See Amex Rule 915 Commentary .06; ISE Rule 502(h)(A)-(B); NYSE Arca Rule 5.3(g)(1)(A)-(B); and Phlx Rule 1009 Commentary .06.

<sup>10</sup> See Amex Rule 916 Commentary .07; ISE Rule 503(h); NYSE Arca Rule 5.4(k); and Phlx Rule 1010 Commentary .08.

<sup>11</sup> See Amex Rule 916 Commentary .07; ISE Rule 503(h); NYSE Arca Rule 5.4(b); and Phlx Rule 1010.

Amex, ISE, NYSE Arca, and Phlx each represented that the addition of the SPDR Gold Trust to types of Units that may underlie listed options traded on the exchange would not have any effect on the rules pertaining to position and exercise limits<sup>12</sup> or margin.<sup>13</sup>

Amex, ISE, NYSE Arca, and Phlx also represent that the respective surveillance procedures applicable to Gold Trust Options would be similar to those applicable to all other options on ETFs currently traded on these exchanges. In addition, the Amex, ISE, NYSE Arca, and Phlx note that they may obtain information from the New York Mercantile Exchange, Inc. (“NYMEX”) through the Intermarket Surveillance Group (“ISG”) related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, gold.<sup>14</sup>

## 2. Statutory Basis

Amex, ISE, NYSE Arca, and Phlx each state that amending its rules to accommodate the listing and trading of Gold Trust Options will benefit investors by providing them with valuable risk management tools. Accordingly, these exchanges believe that the proposed rule changes are consistent with the requirements of Section 6(b) of the Act<sup>15</sup> in general, and further the objectives of Section 6(b)(5)<sup>16</sup> of the Act in particular, in that they are designed to remove

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<sup>12</sup> See Amex Rules 904 and 905; ISE Rules 412 and 414; NYSE Arca Rules 6.8 and 6.9; and Phlx Rules 1001 and 1002.

<sup>13</sup> See Amex Rule 462; ISE Rule 1202; NYSE Arca Rules 4.15 and 4.16; and Phlx Rule 722.

<sup>14</sup> The Commission noted a surveillance arrangement between the New York Stock Exchange, Inc. and NYMEX in its order approving proposed rule changes to permit the listing and trading of shares of the SPDR Gold Trust. See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanism of, a free and open market in a manner consistent with the protection of investors and the public interest.

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

Amex, ISE, NYSE Arca, and Phlx each believe that the proposed rule changes will not impose any burden on competition that is 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

Amex, ISE, NYSE Arca, and Phlx each state that no written comments were solicited or received with respect to the proposed rule changes.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 Nos. SR-Amex-2008-15; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SR-Phlx-2008-17 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.

All submissions should refer to File Numbers SR-Amex-2008-15; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SR-Phlx-2008-17. 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, 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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 Numbers SR-Amex-2008-15; SR-ISE-2008-12, SR-NYSEArca-2008-52; and SR-Phlx-2008-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Commission Findings

After careful consideration, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>17</sup> and, in particular, the requirements of Section 6 of the Act.<sup>18</sup> Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,<sup>19</sup> which requires, among other things, that the rules of a national securities

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<sup>17</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>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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 national securities exchanges, each of Amex, CBOE, ISE, NYSE Arca, and Phlx is required under Section 6(b)(1) of the Act<sup>20</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 Gold Trust Options will also be subject to best execution obligations and FINRA rules.<sup>21</sup> Applicable exchange rules also require that customers receive appropriate disclosure before trading Gold Trust Options.<sup>22</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>23</sup>

Gold Trust Options will trade as options under the trading rules of each of the exchanges. These rules, among other things, are designed to avoid trading through better displayed prices for

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<sup>20</sup> 15 U.S.C. 78f(b)(1).

<sup>21</sup> See FINRA Rule 2320.

<sup>22</sup> See Amex Rule 926; CBOE Rule 9.15; ISE Rule 616; NYSE Arca Rule 9.18(g); and Phlx Rule 1029.

<sup>23</sup> See FINRA Rules 2860, 2860-2 and 2310; Amex Rule 923; CBOE Rules 9.7 and 9.9; ISE Rules 608 and 610; NYSE Arca Rule 918(b)-(c); and Phlx Rules 1024 and 1026.

Gold Trust Options available on other exchanges and, thereby, satisfy each exchange's obligation under the Options Intermarket Linkage Plan.<sup>24</sup> Series of the Gold Trust Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying SPDR Gold Trust. Shares of the SPDR Gold Trust 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>25</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>26</sup> If the SPDR Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of Gold Trust Options.

The Amex, CBOE, ISE, NYSE Arca, and Phlx have all represented that they have surveillance programs in place for the listing and trading of options based on the SPDR Gold Trust. For example, these exchanges 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, gold. Additionally, the listing and trading of Gold Trust Options will be subject to the exchanges' rules pertaining to position and exercise limits<sup>27</sup> and margin.<sup>28</sup>

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<sup>24</sup> See Amex Rule 942; CBOE Rule 6.83; ISE Rule 1902; NYSE Arca Rule 6.94; and Phlx Rule 1085. Specifically, each of the exchanges is a participant in the Options Intermarket Linkage Plan.

<sup>25</sup> 17 CFR 242.600.

<sup>26</sup> See Amex Rule 915 Commentary .06, Interpretation and Policy .06 to CBOE Rule 5.3; ISE Rule 502(a)-(b); NYSE Arca Rule 5.3(a)-(b); and Phlx Rule 1009 Commentary .06.

<sup>27</sup> See Amex Rules 904 and 905; CBOE Rules 4.11 and 4.12; ISE Rules 412 and 414; NYSE Arca Rules 6.8 and 6.9; and Phlx Rules 1001 and 1002.

<sup>28</sup> See Amex Rule 462; CBOE Rule 12.3; ISE Rule 1202; NYSE Arca Rules 4.15 and 4.16; and Phlx Rule 722. See also FINRA Rules 2860 and 2860-1.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> for approving the proposed rule changes of the Amex, ISE, Phlx, and NYSE Arca prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes that proposals of the Amex, ISE, Phlx, and NYSE Arca are substantively identical to the CBOE proposal, which was published for a 21-day comment period and generated no comments. Therefore, the Commission does not believe that the proposals of the Amex, ISE, Phlx, and NYSE Arca raise any new regulatory issues different from that of the CBOE proposal. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>30</sup> to approve the proposals by Amex, ISE, NYSE Arca, and Phlx on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-CBOE-2005-11), as modified, be and is hereby approved and that the proposed rule changes (SR- SR-Amex-2008-15; SR-ISE-2008-12, SR-NYSEArca-2008-52; and SR-Phlx-2008-17), as modified, be, and are hereby approved on an accelerated basis.

By the Commission.

Florence E. Harmon  
Acting Secretary

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<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 15 U.S.C. 78s(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(2).