

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-61483; File Nos. SR-CBOE-2010-007; SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110)

February 3, 2010

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

Three options exchanges filed with the Securities and Exchange Commission (“Commission”) proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4² thereunder to list and trade options on shares of the ETFS Gold Trust and the ETFS Silver Trust (collectively “ETFS Options”). Specifically, NYSE Amex LLC (“NYSE Amex”) and NYSE Arca, Inc. (“NYSE Arca”) both submitted their proposals on December 4, 2009 and the International Securities Exchange, LLC (“ISE”) submitted its proposal on December 10, 2009. Each proposed rule change was published for comment in the Federal Register on December 30, 2009 for a 21-day comment period.³ No comments were received on the proposed rule changes. This order approves the proposed rule changes.

In addition, on January 27, 2010, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Commission the proposed rule change as described in Items I and II below, which items have been prepared by the CBOE. The proposal submitted by the CBOE is substantively identical to the proposals of NYSE Amex, NYSE Arca, and ISE.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 61223 (December 22, 2009), 74 FR 69161; 61222 (December 22, 2009), 74 FR 69182; and 61228 (December 22, 2009), 74 FR 69180.

Pursuant to Section 19(b)(1) of the Act⁴ and Rule 19b-4⁵ thereunder, the Commission is publishing this notice to solicit comments on the CBOE proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to amend certain rules to enable the listing and trading on the Exchange of options on the ETFS Silver Trust and the ETFS Gold Trust. The text of the rule proposal is available on the Exchange's website (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

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 those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

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

1. Purpose

Recently, the Commission authorized CBOE to list and trade options on the SPDR Gold Trust,⁶ the iShares COMEX Gold Trust and the iShares Silver Trust.⁷ Now, the Exchange proposes to list and trade options on the ETFS Silver Trust ("SIVR") and the ETFS Gold Trust ("SGOL").

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

⁶ See Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR-CBOE-2005-11).

⁷ See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR-CBOE-2008-72).

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, or (iv) represent interests in the streetTRACKS Gold Trust or the iShares COMEX Gold Trust or the iShares Silver 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 are eligible as underlying securities for options traded on the Exchange.⁸ This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include SIVR and SGOL.

Apart from allowing SIVR and SGOL 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

⁸ See Interpretation and Policy .06 to Rule 5.3.

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 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 SIVR and SGOL. 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, SIVR and SGOL 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 SIVR and SGOL, if SIVR and SGOL ceases to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of Rule 5.4 or SIVR and SGOL is halted from trading on its primary market.

The addition of SIVR and SGOL to Interpretation and Policy .06 to Rule 5.3 will not have any effect on the rules pertaining to position and exercise limits⁹ or margin.¹⁰

The Exchange represents that its surveillance procedures applicable to trading in options on SIVR and SGOL 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 SIVR and SGOL 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 gold or silver.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹¹ of the Act, in general, and furthers the objectives of Section 6(b)(5)¹² in particular in that it is 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 facilitating

⁹ See Rules 4.11, Position Limits, and 4.12, Exercise Limits.

¹⁰ See Rule 12.3, Margin Requirements.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the ETFS Gold Trust and the ETFS Silver Trust will benefit investors by providing them with valuable risk management tools.

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

CBOE 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 neither solicited nor received comments on the proposal.

III. 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. Please include File Number SR-CBOE-2010-007 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2010-007. 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 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 to File Number SR-CBOE-2010-007 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 submitted by CBOE, ISE, NYSE Amex, and NYSE Arca (collectively, the "Proposals") are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹³ and, in particular, the requirements of Section 6 of the Act.¹⁴ Specifically, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the

¹³ 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).

¹⁴ 15 U.S.C. 78f.

Act,¹⁵ 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 national securities exchanges, each of the CBOE, ISE, NYSE Amex, and NYSE Arca is required under Section 6(b)(1) of the Act¹⁶ 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.¹⁷ Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFs Options.¹⁸ Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.¹⁹

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(1).

¹⁷ See NASD Rule 2320.

¹⁸ See CBOE Rule 9.15; ISE Rule 616; NYSE Amex Rule 926; and NYSE Arca Rule 9.18(g).

¹⁹ See FINRA Rule 2360(b); CBOE Rules 9.7 and 9.9; ISE Rules 608 and 610; NYSE Amex Rule 923; and NYSE Arca Rule 918(b)-(c).

ETFS 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 ETFS Options available on other exchanges and, thereby, satisfy each exchange's obligation under the Options Order Protection and Locked/Crossed Market Plan.²⁰ 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.²¹ 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.²² 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, ISE, NYSE Amex, and NYSE Arca have all represented that they have surveillance programs in place for the listing and trading of ETFS Options. 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,

²⁰ See CBOE Rule 6.81; ISE Rule 1902; NYSE Amex Rule 991NY; and NYSE Arca Rule 6.94. Specifically, each of the exchanges is a participant in the Options Order Protection and Locked/Crossed Market Plan.

²¹ 17 CFR 242.600.

²² See Interpretation and Policy .06 to CBOE Rule 5.3; ISE Rule 502(a)-(b); NYSE Amex Rule 915 Commentary .06; and NYSE Arca Rule 5.3(a)-(b).

silver or gold. Additionally, the listing and trading of ETFS Options will be subject to the exchanges' rules pertaining to position and exercise limits²³ and margin.²⁴

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ for approving the proposed rule change of CBOE prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes that CBOE's proposal is substantively identical to the proposals of ISE, NYSE Amex, and NYSE Arca, which were published for a 21-day comment period and generated no comments. Therefore, the Commission does not believe that the CBOE proposal raises any new regulatory issues different from that of the ISE, NYSE Amex, and NYSE Arca proposals. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²⁶ to approve the CBOE proposal on an accelerated basis.

²³ See CBOE Rules 4.11 and 4.12; ISE Rules 412 and 414; NYSE Amex Rules 904 and 905; and NYSE Arca Rules 6.8 and 6.9.

²⁴ See CBOE Rule 12.3; ISE Rule 1202; NYSE Amex Rule 462; and NYSE Arca Rules 4.15 and 4.16. See also FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 15 U.S.C. 78s(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule changes (SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110) be, and are hereby, approved and that the proposed rule change (SR-CBOE-2010-007) be, and is hereby, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon
Deputy Secretary

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).