

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and paragraph (f)(2) of Rule 19b-4¹² thereunder. 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. Please include File Number SR-Phlx-2010-60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2010-60. 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 on official business days between the hours of 10 a.m. and 3 p.m. 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 Number SR-Phlx-2010-60 and should be submitted on or before May 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61983; File No. SR-ISE-2010-19]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change To List and Trade Options on the ETFS Palladium Trust and the ETFS Platinum Trust

April 26, 2010.

On March 5, 2010, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² 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 26, 2010.³ The Commission received no

comments on the proposal. This order approves the proposed rule change.

I. Description of Proposal

Recently, the Commission authorized ISE to list and trade options on the SPDR Gold Trust,⁴ the iShares COMEX Gold Trust and the iShares Silver Trust,⁵ the ETFS Gold Trust and the ETFS Silver Trust.⁶ Now, the Exchange proposes to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust.

Under current ISE Rule 502(h), 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, 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 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 ("Funds"); or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing

⁴ See Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-ISE-2008-12).

⁵ See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR-ISE-2008-58).

⁶ See Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR-ISE-2009-106).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61742 (March 19, 2010), 75 FR 14646 ("Notice").

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust or the ETFS Silver Trust; or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management 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.⁷ 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 ISE Rule 502(h).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet either: (1) The criteria and guidelines under ISE Rules 502(a) and (b); or (2) they must 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, 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 ISE Rule 503(h), 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 palladium or underlying platinum 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, respectively, if the ETFS Palladium Trust and the ETFS Platinum Trust ceases to be an "NMS stock" as provided for in ISE Rule 503(b)(5) 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 ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits⁸ or margin.⁹

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.

⁸ See ISE Rules 412 and 414.

⁹ See ISE Rule 1202.

II. Commission Findings

After careful consideration, the Commission finds that the proposed rule change submitted by ISE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹⁰ and, in particular, the requirements of Section 6 of the Act.¹¹ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² 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 a national securities exchange, the ISE is required under Section 6(b)(1) of the Act¹³ 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.¹⁴ Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFS Options.¹⁵ Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.¹⁶

ETFS Options will trade as options under the trading rules of the ISE. These rules, among other things, are designed to avoid trading through better

¹⁰ 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).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(1).

¹⁴ See NASD Rule 2320.

¹⁵ See ISE Rule 616.

¹⁶ See FINRA Rule 2360(b) and ISE Rules 608 and 610.

⁷ See ISE Rule 502(h).

displayed prices for ETFs Options available on other exchanges and, thereby, satisfy ISE's obligation under the Options Order Protection and Locked/Crossed Market Plan.¹⁷ 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.¹⁸ 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.¹⁹ 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.

ISE has represented that it has surveillance programs in place for the listing and trading of ETFs Options. For example, ISE 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 limits²⁰ and margin.²¹

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-ISE-2010-19) be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,
Deputy Secretary.

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¹⁷ See ISE Rule 1902. Specifically, ISE is a participant in the Options Order Protection and Locked/Crossed Market Plan.

¹⁸ 17 CFR 242.600.

¹⁹ See ISE Rule 502(a)-(b).

²⁰ See ISE Rules 412 and 414.

²¹ See ISE Rule 1202. See also FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61979; File No. SR-FINRA-2010-003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Trade Reporting of OTC Equity Securities and Restricted Equity Securities

April 23, 2010.

I. Introduction

On January 15, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to trade reporting of OTC Equity Securities and certain restricted equity securities. On February 5, 2010, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 19, 2010.³ The Commission received no comment letters on the proposed rule change. On March 25, 2010, FINRA filed Amendment No. 2 to the proposed rule change.⁴ Because Amendment No. 2 is technical in nature, the Commission is not publishing it for comment. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

Background

In 1990, the SEC adopted Rule 144A ("SEC Rule 144A") under the Securities Act of 1933⁵ ("Securities Act") to establish a safe harbor for the private resale of "restricted securities" to "qualified institutional buyers" ("QIBs").⁶ At the same time, FINRA

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61510 (February 5, 2010), 75 FR 7530 ("Notice").

⁴ Amendment No. 2 reflects changes to FINRA Rule 6635 that were made in SR-FINRA-2010-002, which was filed with the Commission for immediate effectiveness on January 14, 2010. See Securities Exchange Act Release No. 61427 (January 27, 2010), 75 FR 5834 (February 4, 2010).

⁵ 17 CFR 230.144A.

⁶ See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990). For the purpose of SEC Rule 144A, a QIB is generally defined as any institution acting for its own account, or for the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the institution.

(formerly known as the National Association of Securities Dealers, Inc. ("NASD")) created the PORTAL Market to serve as a system for quoting, trading, and reporting trades in certain designated restricted securities that were eligible for resale under SEC Rule 144A ("PORTAL securities").⁷ In September 2008, the NASDAQ Stock Market ("NASDAQ") ceased the operation of the PORTAL Market.⁸ NASDAQ explained in its rule filing that it is taking a minority stake in a consortium that will control and operate a new electronic platform for handling transactions in SEC Rule 144A-eligible securities.⁹ In October 2009, NASDAQ filed a proposed rule change with the Commission for immediate effectiveness terminating NASDAQ's PORTAL security designation process and removing rules related to the PORTAL Market from its rulebook.¹⁰ As a result, NASDAQ no longer accepts new applications for debt or equity securities seeking PORTAL designation.¹¹

In the instant rule proposal, FINRA has proposed to delete certain PORTAL rules from its rulebook, amend certain other rules to address gaps that elimination of such PORTAL rules would create, amend certain definitions to create consistent use of terminology in FINRA rules, and make certain other clarifying changes.

III. Description of the Proposal

Current FINRA Rule 6610 requires that members report transactions in "OTC Equity Securities" to the OTC

⁷ See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990).

⁸ See Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008). As part of the separation of NASDAQ from FINRA, certain functionality relating to PORTAL, including the qualification and designation of PORTAL securities, became part of NASDAQ's rules and were eliminated from the NASD rules. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁹ In addition to NASDAQ ceasing operation of the PORTAL Market, the Commission has also approved the deletion of the Depository Trust Company ("DTC") requirement that a SEC Rule 144A security, other than investment grade securities, be included in an "SRO Rule 144A System" in order to be eligible for DTC's deposit, book-entry delivery, and other depository services. See Securities Exchange Act Release No. 59384 (February 11, 2009), 74 FR 7941 (February 20, 2009). The PORTAL Market was the only "SRO Rule 144A System." *Id.*

¹⁰ Securities Exchange Act Release No. 60991 (November 12, 2009), 74 FR 60006 (November 19, 2009).

¹¹ See *id.* NASDAQ noted in the filing that nothing in the proposal was "intended to impact securities previously designated as PORTAL securities or alter any existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization." *Id.*