

## II. Ballista Securities LLC

On June 5, 2009, ISE Holdings, Inc. ("ISE Holdings"), the parent of ISE, entered into a Membership Purchase Agreement with Optifreeze LLC ("Optifreeze"). ISE Holdings acquired membership interests in Optifreeze by contributing cash to the capital of Optifreeze. As a result of the purchase, ISE Holdings has an 8.57% membership interest in Optifreeze, which wholly-owns and operates an Electronic Access Member of the ISE, Ballista Securities LLC ("Ballista"). The ownership interest of ISE Holdings in Ballista is subject to the conditions set forth in the Commission's approval order relating to ISE Holdings' purchase of Optifreeze.<sup>9</sup>

Recognizing that the Commission has previously expressed concern regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with one of its members, and (2) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis the other non-affiliated members, the ISE submitted a proposed rule change to amend ISE Rule 312 to permit the proposed affiliation subject to several conditions and limitations, including that a condition that the Exchange enter into a plan with a non-affiliated self-regulatory organization to regulate and oversee the activities of Ballista, pursuant to Rule 17d-2 under the Act.<sup>10</sup>

On March 19, 2010, the Parties submitted the proposed 17d-2 Plan to the Commission. On April 13, 2010, the Commission published notice of the Plan filed by ISE and FINRA in the **Federal Register**.<sup>11</sup> The Commission received no comments on the Plan. The text of the Plan allocates regulatory responsibilities among the Parties with respect to Ballista, which is a common member. Included in the Plan is an attachment (the "ISE Rules Certification for 17d-2 Agreement with FINRA," referred to herein as the "Certification") that lists every ISE rule and federal securities law and rule and regulation thereunder for which, under the Plan, FINRA would bear responsibility for examining, and enforcing compliance by, Ballista.

## III. Discussion

The Commission finds that the proposed Plan is consistent with the

factors set forth in Section 17(d)<sup>12</sup> of the Act and Rule 17d-2(c)<sup>13</sup> thereunder in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. Among other things, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain responsibilities for Ballista, a common member, that would otherwise be performed by both ISE and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to Ballista. Furthermore, because FINRA will be responsible for regulating Ballista instead of ISE, the plan should promote investor protection and help avoid any potential conflicts of interest that could arise if ISE was primarily responsible for regulating Ballista, with which ISE is affiliated.

The Commission notes that, under the Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Ballista and persons associated therewith, with all applicable rules. Specifically, FINRA would assume examination and enforcement responsibility relating to compliance by Ballista and persons associated therewith, with the rules of ISE that are substantially similar to the rules of FINRA, as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Exhibit 1 to the 17d-2 Plan ("Common Rules"). In addition, under the Plan, FINRA would assume regulatory responsibility, with respect to Ballista, for all other ISE rules that do not qualify as Common Rules, as discussed below, on account of Ballista's status as an "Inbound Router Member."

Under the 17d-2 Plan, ISE would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving ISE's own marketplace; registration pursuant to its unique rules (*i.e.*, registration rules that are not Common Rules); its duties as a Designated Examining Authority pursuant to Rule 17d-1 under the Act; and any rules that are not substantially similar to the rules of FINRA, except for ISE rules for any ISE member that acts as an inbound router for ISE and is a member of both ISE and FINRA ("Inbound Router Member").<sup>14</sup> For

purposes of the proposed 17d-2 Plan, Ballista would meet the definition of the term "Inbound Router Member" as it is used in the plan.<sup>14a</sup> The effect of these provisions is that regulatory oversight and enforcement responsibilities for Ballista would be vested with FINRA. These provisions should help avoid any potential conflicts of interest that could arise if ISE was primarily responsible for regulating Ballista, with which ISE is affiliated.

## IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-596. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

*It is therefore ordered*, pursuant to Sections 17(d) of the Act, that the Plan in File No. 4-596, between ISE and FINRA, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

*It is therefore ordered* that ISE is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-596.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61990; File No. SR-NYSEArca-2010-25]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending the Listing and Trading of ETFS Palladium Trust and ETFS Platinum Trust

April 27, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 8, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the

<sup>14a</sup> ISE's other Inbound Router Member, Direct Edge ECN LLC, is not addressed by this 17d-2 Plan, but is instead addressed in a similar manner under a separate, stand-alone plan. See Securities Exchange Act Release No. 59134 (December 22, 2008), 73 FR 79943 (December 30, 2008) (File No. 4-574) (order declaring effective the 17d-2 plan concerning Direct Edge ECN LLC).

<sup>15</sup> 17 CFR 200.30-3(a)(34).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>9</sup> See Securities Exchange Act Release No. 60598 (September 1, 2009), 74 FR 46280 (September 8, 2009).

<sup>10</sup> See Securities Exchange Act Release No. 60382 (July 24, 2009), 74 FR 38068 (July 30, 2009).

<sup>11</sup> See Securities Exchange Act Release No. 61853 (April 6, 2010), 75 FR 18925 (April 13, 2010).

<sup>12</sup> 15 U.S.C. 78q(d).

<sup>13</sup> 17 CFR 240.17d-2(c).

<sup>14</sup> Apparent violations of such ISE rules by any Inbound Router Member will be processed by, and enforcement proceedings will be conducted by, FINRA.

“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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**

The Exchange proposes to amend certain rules in order to enable the listing and trading on the Exchange of options on the ETFS Palladium Trust and the ETFS Platinum Trust. The text of the proposed rule change is available on the Commission's Web Site at <http://www.sec.gov>. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

### **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 IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

Recently, the U.S. Securities and Exchange Commission (“SEC” or “Commission”) authorized the Exchange to list and trade options on the SPDR Gold Trust (“GLD”) <sup>4</sup> and on the iShares COMEX Gold Trust (“IAU”) and the iShares Silver Trust (“SLV”),<sup>5</sup> the ETFS Silver Trust (“SIVR”) and the ETFS Gold Trust (“SGOL”).<sup>6</sup> Now, the Exchange proposes to list and trade options on the ETFS Palladium Trust (“PALL”) and the ETFS Platinum Trust (“PPLT”).

Currently, Rule 5.3 deems appropriate for options trading Exchange-Traded

Fund Shares (“ETFs” or “Fund Shares” or “Units”) that are traded on a national securities exchange and are defined as an “NMS stock” in Rule 600(b)(47) of Regulation NMS and that 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, 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 SPDR Gold Trust, are eligible as underlying securities for options traded on the Exchange or (iv) represent interests in the SPDR Gold Trust, or (v) represent interests in the iShares COMEX Gold Trust, or (vi) represent interests in the iShares Silver Trust, or, (vii) 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”) or, (viii) represents interest in the ETFS Silver Trust or the ETFS Gold Trust.<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 ETFS Platinum Trust to be underlyings 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 Rule 5.3(g).

Specifically, in addition to satisfying the aforementioned listing requirements, Units must meet either (1) the criteria and guidelines under Rule 5.3(a) and (b) 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 the ETFS Palladium Trust and ETFS Platinum Trust. Specifically, under Rule 5.4(k), 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

<sup>4</sup> See Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR-NYSEArca-2008-52).

<sup>5</sup> See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 238 [sic] (December 10, 2008) (order approving SR-NYSEArca-2008-66).

<sup>6</sup> See Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010).

<sup>7</sup> See Rule 5.3(g).

trading days; (2) the value of the underlying silver or underlying gold [sic] 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 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 or the ETFS Platinum Trust, respectively, if the ETFS Palladium Trust or the ETFS Platinum Trust ceases to be an "NMS stock" as provided for in Rule 5.4(b)(5) or the ETFS Palladium Trust or the ETFS Platinum Trust is halted from trading on its primary market.

The addition of the ETFS Palladium Trust and ETFS Platinum Trust to Rule 5.3(g) 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 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 traded there that is based, in whole or part, upon an interest in or performance of silver or gold [sic].

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> 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 transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

### 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 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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### 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 No. SR-NYSEArca-2010-25 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 No. SR-NYSEArca-2010-25. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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 No. SR-NYSEArca-2010-25 and should be submitted on or before May 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61999; File No. SR-NYSEArca-2010-15]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

April 29, 2010.

#### I. Introduction

On March 5, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "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 relating to co-location services and related fees. The proposed rule change was published for comment in the **Federal Register** on March 26, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

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

<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. 61748 (March 19, 2010), 75 FR 14644 ("Notice").

<sup>8</sup> See Rule 6.8 regarding positions limits, and Rule 6.9 regarding exercise limits.

<sup>9</sup> See Rules 4.15 and 4.16 regarding margins.

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

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