

⁷ FINRA shall not have any Regulatory Responsibility regarding the self regulatory organization's requirements to the extent such rules do not contain an exception to permit sharing in the profits and losses of an account.

⁸ FINRA shall not have any Regulatory Responsibility regarding the self regulatory organization's requirements to the extent such rules do not contain an exception addressing immediate family.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the 17d-2 plan, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-966 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 S7-966. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 the plan also will be available for inspection and copying at the principal offices of BATS, CBOE, C2, ISE, FINRA, NYSE, Amex, Arca, NASDAQ, BX and the Phlx. 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 S7-966 and should be submitted on or before March 25, 2010.

V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants, and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add BATS Exchange, Inc. and C2 Options Exchange, Incorporated as SRO participants and to reflect the name changes of the American Stock Exchange, LLC to the NYSE Amex LLC, the Boston Stock Exchange, Inc. to the NASDAQ OMX BX, Inc., and the Philadelphia Stock Exchange, Inc. to the NASDAQ OMX PHLX, Inc. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁷ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7-966.

It is therefore ordered, pursuant to Section 17(d) of the Act,¹⁸ that the amended plan dated February 5, 2010 by and between the BATS, CBOE, C2, ISE, FINRA, NYSE, Amex, Arca, NASDAQ, BX and the Phlx filed pursuant to Rule 17d-2 is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DOEA as to

a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOEA under the amended plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-4456 Filed 3-3-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61591; File No. SR-OCC-2009-20]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares

February 25, 2010.

I. Introduction

On December 14, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934.¹ On January 8, 2010, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.² For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The proposed rule change will amend the interpretation following the definition of "fund share" in Article I, Section 1, of OCC's By-Laws. This amendment will enable OCC to (i) clear and treat as securities options any option contracts on ETFS Physical Swiss Gold Shares or on ETFS Physical Silver Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares.³ In addition, in its capacity as a

¹⁹ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 61254 (Dec. 29, 2009), 75 FR 1093.

³ The Commission recently approved rule changes permitting NYSE Amex, NYSE Arca, International Securities Exchange, and the Chicago Board Options Exchange to each list and trade options based on the EFTS Gold Trust and EFTS Silver Trust shares. Securities Exchange Act Release

¹⁷ See *supra* note 16 (citing to Securities Exchange Act Release No. 57987).

¹⁸ 15 U.S.C. 78q(d).

“derivatives clearing organization” registered with the Commodities Futures Trading Commission (“CFTC”), OCC also filed this proposed rule change with the CFTC for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (“CEA”) in order to foreclose any potential liability under the CEA based on an argument that OCC’s clearing of such options as securities options or the clearing of such futures as security futures constitutes a violation of the CEA.

The products that are affected by this approval order are essentially the same as the options and security futures on SPDR Gold Shares, iShares COMEX Gold Shares, and iShares Silver Shares that OCC currently clears pursuant to rule changes approved by the Commission last year.⁴

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative transactions.⁵ By amending its By-Laws to help clarify that options and security futures on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares will be treated and cleared as securities options or security futures, OCC’s proposed rule change should help clarify the jurisdictional status of such contracts and accordingly should help to promote the prompt and accurate clearance and settlement of securities transactions and of derivative transactions. In accordance with the Memorandum of Understanding entered into between the 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 a CFTC- or Commission-regulated environment or both in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed

rule change is consistent with the requirements of the Act and in particular Section 17A of the Act⁶ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR–OCC–2009–20) be and hereby is approved.⁸

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4517 Filed 3–3–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61594; File No. SR–NASDAQ–2010–024]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Round Lot Holder Initial Listing Requirement for Listing of Warrants on the Nasdaq Global and Capital Markets Except for Initial Firm Commitment Underwritten Public Offering

February 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on February 19, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or “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 substantially prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,³ 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.

⁶ 15 U.S.C. 78q–1.

⁷ 15 U.S.C. 78s(b)(2).

⁸ In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 17 CFR 240.19b–4(f)(6).

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

NASDAQ is filing this proposed rule change to adopt a round lot holder requirement for listing on the Global and Capital markets, and to make a technical correction to a cross referenced rule.

The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in [brackets].

5410. Initial Listing Requirements for Rights and Warrants

For initial listing, the rights or warrants must meet all the requirements below:

- (a) No change.
- (b) The underlying security must be listed on the Global Market or be a Covered Security; [and]
- (c) There must be at least three registered and active Market Makers[.] ; *and*
- (d) *In the case of warrants, there must be at least 400 Round Lot Holders (except that this requirement will not apply to the listing of warrants in connection with the initial firm commitment underwritten public offering of such warrants).*

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5515. Initial Listing Requirements for Rights, Warrants, and Convertible Debt

The following requirements apply to a Company listing convertible debt, rights or warrants on The Nasdaq Capital Market.

- (a) For initial listing, rights, warrants and put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company’s common stock, at a specified price until a specified period of time) must meet the following requirements:

- (1) No change.
- (2) The underlying security must be listed on Nasdaq or be a Covered Security; [and]
- (3) At least three registered and active Market Makers[.] ; *and*
- (4) *In the case of warrants, at least 400 Round Lot Holders (except that this requirement will not apply to the listing of rights or warrants in connection with the initial firm commitment underwritten public offering of such warrants).*

- (b)–(c) No change.

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5730. Listing Requirements for Securities Not Specified Above (Other Securities)

- (a) Initial Listing Requirements

No. 61483 (Feb. 3, 2010), 75 FR 6753 (Feb. 10, 2010).

⁴ Securities Exchange Act Release Nos. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008) and 59054 (Dec. 4, 2008), 73 FR 75159 (Dec. 10, 2008).

⁵ 15 U.S.C. 78q–1(b)(3)(F).