

changes adequately protect investors and the public interest.

Finally, the Commission notes that the elimination of the outdated and redundant provisions is consistent with the Act and should make the Company Manual easier and clearer to use.

## V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and in particular Section 6 of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (File No. SR-Amex-2008-70) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59055; File Nos. SR-Amex-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SR-NYSEArca-2008-66; and SR-Phlx-2008-58]

### Self-Regulatory Organizations; American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, NYSE Arca, Inc., and Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Listing and Trading Options on Shares of the iShares COMEX Gold Trust and the iShares Silver Trust

December 4, 2008.

Six 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")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to list and trade options on shares of the iShares COMEX Gold Trust and the iShares Silver Trust ("iShares Trust Options"). Specifically, NYSE Arca, Inc. ("NYSE Arca") submitted its proposal on June 24, 2008; the Chicago Board Options Exchange, Incorporated ("CBOE") submitted its proposal on July 3, 2008; the International Securities

Exchange, LLC ("ISE") submitted its proposal on July 14, 2008; the Philadelphia Stock Exchange, Inc. ("Phlx") submitted its proposal on July 23, 2008; the American Stock Exchange LLC ("Amex")<sup>3</sup> submitted its proposal on August 20, 2008; and the Boston Stock Exchange, Inc. ("BSE") submitted its proposal on November 12, 2008. The proposals (collectively, the "Proposals") submitted by the Amex, BSE, CBOE, ISE, NYSE Arca, and Phlx (collectively, the "Exchanges") are substantively identical. The Commission is publishing this notice to solicit comments on the Proposals from interested persons and is approving the Proposals on an accelerated basis.

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

The Exchanges each propose to amend certain of their respective rules to enable the listing and trading of iShares 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 <http://www.amex.com>, <http://www.bostonoptions.com>, <http://www.cboe.com>, <http://www.iseoptions.com>, <http://www.nysearca.com>, and <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 Exchanges included statements concerning the purpose of, and basis for, the Proposals. The text of these statements may be examined at the places specified in Item III below. The Exchanges have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

Recently, the Commission approved the Exchanges' proposals to list and

trade options on the SPDR Gold Trust.<sup>4</sup> Now, the Exchanges propose to list and trade iShares Trust Options.

Currently, the rules of the Exchanges permit only certain "Units" (also referred to herein as exchange traded funds ("ETFs")) to underlie options traded on their markets.<sup>5</sup> Specifically, to be eligible as an underlying security for options traded on the Exchanges, 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 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) are shares of the SPDR Gold Trust. The Proposals would expand the types of ETFs that may be

<sup>4</sup> See Securities Exchange Act Release Nos. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-Amex-2008-15; SR-CBOE-2005-11; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SR-Phlx-2008-17); 58136 (July 10, 2008), 73 FR 40884 (July 16, 2008) (SR-BSE-2008-41) ("SPDR Gold Trust Options Approval Orders").

<sup>5</sup> See Amex Rule 915 Commentary .06 and .10; Boston Options Exchange ("BOX") Rules, Chapter IV, Section 3(i); Interpretation and Policy .06 to CBOE Rule 5.3; ISE Rule 5.2(h); NYSE Arca Rule 5.3(g); and Phlx Rule 1009 Commentary .06.

<sup>36</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> On September 29, 2008, the Commission approved the merger of The Amex Membership Corporation, Amex's parent, with NYSE Euronext. See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (approving the merger). As a result, Amex was renamed NYSE Alternext US LLC. For the purposes of this order, the Commission will still refer to Amex.

approved for options trading on the Exchanges to include shares of the iShares COMEX Gold Trust and the iShares Silver Trust.

Apart from allowing iShares Trust Options to be traded on the Exchanges as described above, the Exchanges' listing standards would remain unchanged. 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 the Exchanges.<sup>6</sup>

Specifically, all ETFs underlying options would also continue to be required 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 consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.<sup>7</sup>

The Exchanges each propose that the current continued listing standards for options on ETFs would apply to iShares 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>8</sup>

In addition, shares of the iShares COMEX Gold Trust and the iShares Silver Trust would not be deemed to meet the requirements for continued approval, and the Exchanges would not open for trading any additional series of option contracts of the class covering shares of the iShares COMEX Gold Trust and the iShares Silver Trust, if the shares cease to be an "NMS stock" as provided for in rules of the Exchanges<sup>9</sup> or are halted from trading on their primary market.

The Exchanges each represent that the addition of the iShares COMEX Gold Trust and the iShares Silver Trust to types of Units that may underlie listed options traded on the respective exchange would not have any effect on the rules pertaining to position and exercise limits<sup>10</sup> or margin.<sup>11</sup>

The Exchanges also represent that the respective surveillance procedures applicable to iShares Trust Options would be similar to those applicable to all other options on ETFs currently traded on the Exchanges. In addition, the Exchanges 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 or silver.

## 2. Statutory Basis

The Exchanges each state that amending its rules to accommodate the listing and trading of iShares Trust Options will benefit investors by providing them with valuable risk management tools. Accordingly, the Exchanges believe that the proposed rule changes are consistent with the requirements of Section 6(b) of the Act<sup>12</sup> in general, and further the objectives of Section 6(b)(5)<sup>13</sup> of the Act in particular, in that they are designed to promote just and equitable principles of trade, 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.

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

The Exchanges 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

The Exchanges 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-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SR-NYSEArca-2008-66; and SR-Phlx-2008-58 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-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SR-NYSEArca-2008-66; and SR-Phlx-2008-58. 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

<sup>6</sup> *Id.*

<sup>7</sup> See Amex Rule 915 Commentary .06 and .10; BOX Rule Chapter IV, Section 3(i)(A)-(B); Interpretation and Policy .01 and .06 to CBOE Rule 5.3; ISE Rule 502(h)(A)-(B); NYSE Arca Rule 5.3(g)(1)(A)-(B); and Phlx Rule 1009 Commentary .06.

<sup>8</sup> See Amex Rule 916 Commentary .07 and .11; BOX Rule Chapter IV, Section 3(i); Interpretation and Policy .08 to CBOE Rule 5.4; ISE Rule 503(h); NYSE Arca Rule 5.4(k); and Phlx Rule 1010 Commentary .08.

<sup>9</sup> See Amex Rule 916 Commentary .07 and .11; BOX Rule Chapter IV, Section 3(i); Interpretation and Policy .01 to CBOE Rule 5.4; ISE Rule 503(h); NYSE Arca Rule 5.4(b); and Phlx Rule 1010.

<sup>10</sup> See Amex Rules 904 and 905; BOX Rules Chapter III, Sections 7 and 9; 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>11</sup> See Amex Rule 462; BOX Rules Chapter XIII, Sections 3; CBOE Rule 12.3; ISE Rule 1202; NYSE Arca Rules 4.15 and 4.16; and Phlx Rule 722.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 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 Numbers SR-Amex-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SR-NYSEArca-2008-66; and SR-Phlx-2008-58 and should be submitted on or before December 31, 2008.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges<sup>14</sup> and, in particular, the requirements of Section 6 of the Act.<sup>15</sup> Specifically, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Act,<sup>16</sup> 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 Exchanges is required under

Section 6(b)(1) of the Act<sup>17</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 iShares Trust Options will also be subject to best execution obligations and FINRA rules.<sup>18</sup> Applicable rules of the Exchanges also require that customers receive appropriate disclosure before trading iShares Trust Options.<sup>19</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>20</sup>

iShares 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 iShares Trust Options available on other exchanges and, thereby, satisfy each exchange's obligation under the Options Intermarket Linkage Plan.<sup>21</sup> Series of the iShares Trust Options will be subject to the Exchanges' rules regarding continued listing requirements, including standards applicable to the underlying iShares COMEX Gold Trust and the iShares Silver Trust. Shares of the iShares COMEX Gold Trust and the iShares Silver 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>22</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>23</sup> If shares of the iShares COMEX Gold Trust and the iShares Silver Trust fail to meet these requirements, the Exchanges will not open for trading any new series of iShares Trust Options.

<sup>17</sup> 15 U.S.C. 78f(b)(1).

<sup>18</sup> See FINRA Rule 2320.

<sup>19</sup> See Amex Rule 926; BOX Rules Chapter XI, Section 17; CBOE Rule 9.15; ISE Rule 616; NYSE Arca Rule 9.18(g); and Phlx Rule 1029.

<sup>20</sup> See FINRA Rules 2860, 2860-2 and 2310; Amex Rule 923; BOX Rules Chapter XI, Section 11; CBOE Rules 9.7 and 9.9; ISE Rules 608 and 610; NYSE Arca Rule 918(b)-(c); and Phlx Rules 1024 and 1026.

<sup>21</sup> See Amex Rule 942; BOX Rules Chapter XII, Section 3; 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>22</sup> 17 CFR 242.600.

<sup>23</sup> See Amex Rule 915 Commentary .06 and .10; BOX Rules Chapter IV, Section 3(i); 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.

The Exchanges have all represented that they have surveillance programs in place for the listing and trading of options based on the iShares COMEX Gold Trust and the iShares Silver Trust. For example, the 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 or silver. Additionally, the listing and trading of iShares Trust Options will be subject to the Exchanges' rules pertaining to position and exercise limits<sup>24</sup> and margin.<sup>25</sup>

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> for approving the Proposals prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Proposals are similar to proposals previously approved by the Commission to list and trade options on shares of the SPDR Gold Trust.<sup>27</sup> Therefore, the Commission does not believe that the Proposals raise any new regulatory issues. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>28</sup> to approve the Proposals on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the Proposals (SR-Amex-2008-68; SR-BSE-2008-51; SR-CBOE-2008-72; SR-ISE-2008-58; SR-NYSEArca-2008-66; and SR-Phlx-2008-58) are hereby approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E8-29200 Filed 12-9-08; 8:45 am]

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<sup>24</sup> See Amex Rules 904 and 905; BOX Rules Chapter III, Sections 7 and 9; CBOE Rules 4.11 and 4.12; ISE Rules 4.12 and 4.14; NYSE Arca Rules 6.8 and 6.9; and Phlx Rules 1001 and 1002.

<sup>25</sup> See Amex Rule 462; BOX Rules Chapter XIII, Section 3; 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.

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> See SPDR Gold Trust Options Approval Orders, *supra* note 4.

<sup>28</sup> 15 U.S.C. 78s(b)(5).

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

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>14</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>15</sup> 15 U.S.C. 78f.

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