

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62250; File Nos. SR-NYSEAmex-2010-37 and SR-NYSEArca-2010-25]

### Self-Regulatory Organizations; NYSE Amex LLC and NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes Relating to Listing and Trading Options on the ETFs Palladium Trust and the ETFs Platinum Trust

June 9, 2010.

On April 8, 2010, NYSE Amex LLC (“NYSE Amex”) and NYSE Arca, Inc. (“NYSE Arca”) (collectively the “Exchanges”) each 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> proposed rule changes (collectively the “Proposals”) to list and trade options on the ETFs Palladium Trust and the ETFs Platinum Trust (collectively “ETFs Options”). The NYSE Amex proposed rule change was published for comment in the **Federal Register** on May 5, 2010 <sup>3</sup> and the NYSE Arca rule change was published on May 6, 2010. <sup>4</sup> No comments were received on the proposed rule changes. This order approves the proposed rule changes.

#### I. Description of Proposal

The Commission previously authorized the Exchanges to list and trade options on the SPDR Gold Trust <sup>5</sup> (“GLD”), the iShares COMEX Gold Trust (“IAU”), the iShares Silver Trust <sup>6</sup> (“SLV”), the ETFs Silver Trust (“SIVR”), and the ETFs Gold Trust <sup>7</sup> (“SGOL”).

Now, the Exchanges propose to list and trade options on the ETFs Palladium Trust (“PALL”) and the ETFs Platinum Trust (“PPLT”).

Under current NYSE Amex Rule 915 and NYSE Arca Rule 5.3, 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(b)(47) of Regulation NMS, <sup>8</sup> 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, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), <sup>9</sup> 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); 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 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 GLD, IAU, SLV, SIVR, and SGOL; <sup>10</sup> or (v) represent interests 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 NYSE Amex and NYSE Arca, respectively. <sup>11</sup> The Proposals would expand the types of ETFs that may be approved for options trading on the Exchanges to include the PALL and the PPLT.

Apart from allowing the PALL and the PPLT to be underlyings for options traded on the Exchanges as described above, the listing standards for ETFs will remain unchanged from those that apply under current rules of both exchanges. 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 NYSE Amex Rule 915, Commentary .06 and NYSE Arca Rule 5.3(g).

*Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet either: (1) The criteria and guidelines under NYSE Amex Rule 915, Commentary .01 and NYSE Arca Rule 5.3(a) and (b); or (2) 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 ETFs 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 respective Exchange’s current continued listing standards for options

<sup>11</sup> See NYSE Amex Rule 915, Commentary .06 and NYSE Arca Rule 5.3(g).

<sup>17</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. 61989 (April 27, 2010), 75 FR 24769.

<sup>4</sup> See Securities Exchange Act Release No. 61990 (April 27, 2010), 75 FR 25005.

<sup>5</sup> See Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR-Amex-2008-15 and SR-NYSEArca-2008-52).

<sup>6</sup> See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (order approving SR-Amex-2008-68 and SR-NYSEArca-2008-66).

<sup>7</sup> See Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010)

(order approving SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110).

<sup>8</sup> 17 CFR 242.600.

<sup>9</sup> NYSE Amex Rule 915 also includes stock index futures contracts and options on futures within this category.

<sup>10</sup> See NYSE Amex Rule 915, Commentary .10 and NYSE Arca 5.3(g).

on ETFs will apply to options on the PALL and the PPLT. Both Exchanges will consider the suspension of opening transactions in PALL or PPLT in any of the following circumstances: (1) Following the initial twelve-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs 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 each Exchange makes further dealing on each Exchange inadvisable.

Additionally, the PALL and the PPLT shall not be deemed to meet the requirements for continued approval, and the Exchanges shall not open for trading any additional series of option contracts of the class covering the PALL and the PPLT, respectively, if the PALL and the PPLT ceases to be an "NMS stock" as provided for in NYSE Amex Rule 916, Commentary .07(2) and NYSE Arca Rule 5.4(b)(5), or if the PALL or the PPLT is halted from trading on its primary market, or, for NYSE Amex, if PALL or PPLT is delisted.

The addition of the PALL and PPLT will not have any effect on the Exchanges' rules pertaining to position and exercise limits<sup>12</sup> or margin.<sup>13</sup>

The Exchanges represent that their surveillance procedures applicable to trading in options on the PALL and PPLT will be similar to those applicable to all other options on other ETFs currently traded on the respective Exchange. Also, the Exchanges 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 the performance of palladium or platinum.

## II. Commission Findings

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 a national securities exchange,<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 general 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, NYSE Amex and NYSE Arca are required, under Section 6(b)(1) of the Act,<sup>17</sup> to enforce compliance by their members, and persons associated with their members, with the provisions of the Act, Commission rules and regulations thereunder, and their own rules. In addition, brokers that trade ETFs 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 ETFs Options.<sup>19</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>20</sup>

ETFs Options will trade as options under the trading rules of NYSE Amex and NYSE Arca. These rules, among other things, are designed to avoid trading through better displayed prices for ETFs Options available on other exchanges and, thereby, satisfy NYSE Amex and NYSE Arca's obligations under the Options Order Protection and Locked/Crossed Market Plan.<sup>21</sup> Series of the ETFs Options will be subject to the Exchanges' rules regarding continued listing requirements, including

standards applicable to the underlying ETFs Palladium and ETFs Platinum Trusts. Shares of the PALL and PPLT 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(b)(47) 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. If the PALL or PPLT shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFs Options.

NYSE Amex and NYSE Arca have represented that they have surveillance programs in place for the listing and trading of ETFs Options. For example, NYSE Amex and NYSE Arca 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 Exchanges' rules pertaining to position and exercise limits<sup>23</sup> and margin.<sup>24</sup>

## III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule changes (SR–NYSEAmex–2010–37 and SR–NYSEArca–2010–25) be, and are hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

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

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## DEPARTMENT OF STATE

[Public Notice: 7046]

### Notice of Extension of Public Comment Period for the Proposed Keystone XL Pipeline Project; Draft Environmental Impact Statement and Notice of Additional Public Comment Meetings

**AGENCY:** Department of State.

<sup>22</sup> 17 CFR 242.600.

<sup>23</sup> See NYSE Amex Rules 904 and 905; NYSE Arca Rules 6.8 and 6.9.

<sup>24</sup> See 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.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30–3(a)(12).

<sup>12</sup> See NYSE Amex Rules 904 and 905; NYSE Arca Rules 6.8 and 6.9.

<sup>13</sup> See NYSE Amex Rule 462 and NYSE Arca Rules 4.15 and 4.16.

<sup>14</sup> In approving these proposed rule changes, the Commission has considered the proposed rules' 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).

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

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

<sup>19</sup> See NYSE Amex Rule 926; and NYSE Arca Rule 9.18(g).

<sup>20</sup> See FINRA Rule 2360(b) and NYSE Amex Rule 923; and NYSE Arca Rule 9.18(b)–(c).

<sup>21</sup> See NYSE Amex Rule 991NY and NYSE Arca Rule 6.94. Each of the exchanges is a participant in the Options Order Protection and Locked/Crossed Market Plan.