

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2017-79, and should be submitted on or before January 11, 2018.

## V. Accelerated Approval of Amendment No. 2

The Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the **Federal Register**. As described above, the Exchange proposes to establish a Nonstandard Expirations Pilot Program based upon, and substantially similar to, CBOE's Rule 24.9(e), Nonstandard Expirations Pilot Program, previously approved by the Commission. Amendment No. 2 proposes to provide additional data to the Commission that was not applicable to CBOE's Nonstandard Expirations Pilot Program specifically because it would provide data to the Commission on the effect of a subsequent pilot program on the CBOE's existing pilot program. The Exchange's proposed Amendment No. 2 does not otherwise change its proposal. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> to approve Amendment No. 2 on an accelerated basis.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Phlx-2017-79), as modified by Amendment No. 1, be approved, and Amendment No. 2 thereto be approved on an accelerated basis, for a pilot period of twelve months.

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

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82336; File No. SR-CBOE-2017-072; SR-C2-2017-030]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Cboe C2 Exchange, Inc.; Order Granting Accelerated Approval to a Proposed Rule Change Relating to Its Nominating and Governance Committee and Regulatory Oversight and Compliance Committee as Well as Its Director Nomination and Committee Appointment Process

December 15, 2017.

#### I. Introduction

On November 14, 2017, Cboe C2 Exchange, Inc. ("C2") and on November 15, 2017, Cboe Exchange, Inc. ("Cboe") and, together with C2, the "Exchanges" 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 to eliminate their Nominating and Governance Committees ("N&G Committee"); amend the process by which (i) directors are elected, (ii) committee appointments are made, and (iii) vacancies are filled; and rename their Regulatory Oversight and Compliance Committees ("ROCC").<sup>3</sup> The proposed rule changes were published for comment in the **Federal Register** on November 27, 2017.<sup>4</sup> The Commission received no comments on the proposals. This order approves the proposed rule changes on an accelerated basis.

#### II. Description of the Proposal

First, the Exchanges propose to eliminate their N&G Committees and provide that the sole stockholder of the Exchanges (Cboe Global Markets, Inc.) shall nominate and elect directors at the annual meetings of the sole stockholder, except with respect to fair-representation directors ("Representative Directors").<sup>5</sup> As a consequence of the elimination of the N&G Committee, the Exchanges propose

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

<sup>2</sup> 17 CFR 240.19b4.

<sup>3</sup> In addition, the Exchanges propose to make several formatting changes throughout their Bylaws as well as to change their names in the title and signature lines in their Certificates of Incorporation ("Certificates") to reflect recent changes to their legal names.

<sup>4</sup> See Securities Exchange Act Release No. 82119 (November 20, 2017), 82 FR 56085 (SR-CBOE-2017-072); Securities Exchange Act Release No. 82120 (November 20, 2017), 82 FR 56069 (SR-C2-2017-030) ("Notices").

<sup>5</sup> See *id.* at 56086 and 56069, respectively.

conforming changes to reallocate its responsibility. Specifically, the Exchanges propose to amend the definition of "Representative Director Nominating Body" to provide that if an Exchange's Board of Directors ("Board") has two or more Industry Directors, excluding directors that are Exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. If there are fewer than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Trading Permit Holder Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Exchanges further propose to amend their Bylaws and Certificates to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, the Exchanges each propose to amend Section 3.1 of their Bylaws to provide that the Board is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director.

Second, the Exchanges propose to transfer the N&G Committee's current authority with respect to committee appointments to their Boards (or appropriate subcommittee of the Board).<sup>6</sup> Specifically, the Exchanges propose to amend Section 4.2 and 6.1 of their Bylaws to state that members of the Executive Committee and Advisory Board will be appointed by the Board. The Exchanges also propose to amend Section 4.4 of their Bylaws to state that members of the ROCC will be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. Lastly, Cboe proposes to amend its Rule 2.1 to provide that the Board shall appoint the Chairman, Vice Chairman (if any) and members to the Business Conduct Committee ("BCC") as well as fill any vacancies on the BCC.

Third, the Exchanges propose to amend their Bylaws to alter the process for filling director vacancies.<sup>7</sup> Specifically, the Exchanges propose to amend Section 3.4 of their Bylaws to provide that in the event any Industry or Non-Industry Director fails to maintain the required qualifications and the director's term is accordingly terminated, the sole stockholder, instead of the Board, shall be able to fill the

<sup>6</sup> See *id.* at 56086 and 56070, respectively.

<sup>7</sup> See *id.* at 56086 and 56070, respectively.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

vacancy.<sup>8</sup> The Exchanges also propose to amend Section 3.5 of their Bylaws to provide the sole stockholder with authority to fill vacancies so long as the elected director qualifies for the position. Additionally, with respect to vacancies among the Representative Directors, the Representative Director Nominating Body will recommend an individual, or provide a list of recommended individuals, to the sole stockholder who shall select and fill the position.

Fourth, the Exchanges propose to change the name of the ROCC to the “Regulatory Oversight Committee” (“ROC”).<sup>9</sup> As such, the Exchanges propose to remove the word “Compliance” from references to the “ROCC” in the Bylaws and, as applicable, Exchange rules.

Finally, the Exchanges propose to change their names in the title and signature lines in their Certificates to reflect recent changes to their legal names.<sup>10</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of Section 6 of the Act<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule changes are consistent with Sections 6(b)(1) of the Act,<sup>13</sup> which require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to comply and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,<sup>14</sup> which requires that the rules of

<sup>8</sup> Amended Section 3.4 would also provide that if such terminated director requalified, the sole stockholder would have discretion to reappoint such director, including by increasing the size of the Board, should that be necessary.

<sup>9</sup> The Exchanges note that the regulatory oversight committees of its affiliated exchanges does not use the term “Compliance” in their Committees’ name. See Notices, *supra* note 5 at 56087 n.8 and 56070 n.8, respectively.

<sup>10</sup> Other technical formatting changes occur throughout the Bylaws as a result of the Exchanges proposed changes. See Notices, *supra* note 5 at 56087 and 56070, respectively.

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

<sup>12</sup> In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(1).

<sup>14</sup> 15 U.S.C. 78f(b)(3).

a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

The Commission believes that the Exchanges’ proposals to eliminate their N&G Committees and reassign the N&G Committees’ responsibilities are consistent with the Act. In particular, with respect to vesting the authority to nominate and elect directors in the sole stockholder, the Exchanges cite to the rules of another Exchange that similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation directors.<sup>15</sup> Importantly, the Commission notes that the proposed rule changes do not substantively impact the provisions concerning the nomination and selection of fair representation directors that currently apply to the Exchanges. The sole stockholder will continue to be bound to nominate and elect the Representative Director nominees recommended by the Representative Director Nominating Body and there are no other changes to the process for the nomination and selection of Representative Directors. Accordingly, the Commission believes that members of the Exchanges should continue to have a voice in the governance of the Exchanges through Board representation and thus will have a voice in the Exchanges’ exercise of their self-regulatory authority. The Exchanges represent that they are not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that such existing compositional requirements must continue to be satisfied, including the provision relating to the fair representation of members.<sup>16</sup>

In addition, with respect to providing the Board, as opposed to the N&G Committee, with the authority to recommend and approve members of the Executive Committee, Advisory Board, ROC and BCC, the Commission notes that other exchanges provide that their Boards, without input from a nominating committee, may appoint members to committees.<sup>17</sup> While the

<sup>15</sup> See Section 3.02(f) of the Amended and Restated NYSE Arca, Inc. Bylaws. See also Notices, *supra* note 5 at 56086 and 56069, respectively.

<sup>16</sup> See *id.* at 56087 and 56071, respectively.

<sup>17</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5–3.

internal Exchange delegations of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of director vacancies and (iv) appointment of committees are being amended, the Exchanges represent that the substantive requirements of the Exchanges applicable to those items will remain the same.<sup>18</sup>

The Commission further believes that the proposals to change the name of the ROCC to the ROC are consistent with the Act as they may clarify the scope of the ROC’s activities. Moreover, the Exchanges note that changing the name of the committee would harmonize the names with the name of the regulatory oversight committee of their affiliated exchanges.<sup>19</sup>

Finally, the Commission believes that the proposals to update the exchanges’ names in their Certificates are consistent with the Act as they may also serve to reduce potential confusion by ensuring the Exchanges’ corporate documents reflect their recent name changes.

### IV. Accelerated Approval of Proposed Rule Changes

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> to approve the proposed rule changes prior to the 30th day after the date of publication of the Notices in the **Federal Register**.<sup>21</sup> The Commission believes that the proposed rule changes do not raise novel regulatory issues and are substantively similar to the existing rules of other national securities exchanges.<sup>22</sup> In particular, the Commission notes that the proposed rule changes do not substantively impact the provisions concerning the nomination and selection of fair representation directors that currently apply to the Exchanges. Members of the Exchanges should continue to have an opportunity to participate in the selection of Board representation and have input into the Exchanges’ exercise of self-regulatory authority. In addition, the Commission did not receive any comment on the proposed changes. Accordingly, the Commission finds that good cause exists to approve the proposed rule changes on an accelerated basis.

<sup>18</sup> See *id.*

<sup>19</sup> See *supra* note 10.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> As noted above, the Notices were published for comment in the **Federal Register** on November 27, 2017 and the comment period closed on December 12, 2017. Accordingly, the 30th day after publication of the Notices is December 27, 2017.

<sup>22</sup> See notes 15 and 17, *supra*.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>23</sup> that the proposed rule changes (SR-CBOE-2017-072; SR-C2-2017-030) be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82340; File No. SR-NYSEArca-2017-112]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the GraniteShares Palladium Trust Under NYSE Arca Rule 8.201-E**

December 15, 2017.

#### I. Introduction

On September 12, 2017, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the GraniteShares Palladium Trust under NYSE Arca Rule 8.201-E. The proposed rule change was published for comment in the **Federal Register** on October 3, 2017.<sup>3</sup> On October 24, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. On November 16, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 1.<sup>4</sup> The Commission has not

received any comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

#### **II. Description of the Proposed Rule Change, as Modified by Amendment No. 2**

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 Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the GraniteShares Palladium Trust (the "Trust"), under NYSE Arca Rule 8.201-E.<sup>5</sup> Under NYSE Arca Rule 8.201-E, the

asset value ("NAV") will be calculated; (6) increased the minimum number of Shares that the Exchange will require to be outstanding at the commencement of trading; (7) expanded the circumstances in which the Exchange would or might halt trading in the Shares; (8) specified that the Shares would trade in all of the Exchange's trading sessions; (9) represented that palladium futures trade on significant exchanges, including the NYMEX (as defined herein), which is regulated by the CFTC (as defined herein) and is member of ISG (as defined herein); and (10) made certain technical corrections. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-112/nysearca2017112-2693354-161503.pdf>.

<sup>5</sup> On September 8, 2017, the Trust submitted to the Commission its draft registration statement on Form S-1 (the "Registration Statement") under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act"). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an "emerging growth company" may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Form S-1 Registration Statement on a confidential basis with the Commission.

Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") Commodity-Based Trust Shares.<sup>6</sup>

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,<sup>7</sup> and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>8</sup>

The Sponsor of the Trust is GraniteShares LLC, a Delaware limited liability company. The Bank of New York Mellon is the trustee of the Trust (the "Trustee")<sup>9</sup> and ICBC Standard Bank PLC is the custodian of the Trust (the "Custodian").<sup>10</sup>

The Commission has previously approved listing on the Exchange under NYSE Arca Rule 8.201-E of other precious metals and palladium-based commodity trusts, including the ETFS Platinum Trust,<sup>11</sup> the ETFS Palladium

<sup>6</sup> Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

<sup>7</sup> 15 U.S.C. 80a-1.

<sup>8</sup> 17 U.S.C. 1.

<sup>9</sup> The Trustee is responsible for the day-to-day administration of the Trust. The responsibilities of the Trustee include (1) processing orders for the creation and redemption of Baskets; (2) coordinating with the Custodian the receipt and delivery of palladium transferred to, or by, the Trust in connection with each issuance and redemption of Baskets; (3) calculating the net asset value of the Trust on each business day; and (4) selling the Trust's palladium as needed to cover the Trust's expenses. The Trust does not have a Board of Directors or persons acting in a similar capacity.

<sup>10</sup> The Custodian is responsible for safekeeping the palladium owned by the Trust. The Custodian is appointed by the Trustee and is responsible to the Trustee under the Trust's palladium custody agreements. The Custodian will facilitate the transfer of palladium in and out of the Trust through the unallocated palladium accounts it may maintain for each Authorized Participant or unallocated palladium accounts that may be maintained for an Authorized Participant by another palladium-clearing bank approved by the London Palladium and Palladium Market ("LPPM"), and through the loco London account maintained for the Trust by the Custodian on an unallocated basis pursuant to the Trust unallocated account agreement (the "Trust Unallocated Account"). The Custodian is responsible for allocating specific bars of palladium to the loco London account maintained for the Trust by the Custodian on an allocated basis pursuant to the Trust agreement (the "Trust Allocated Account"). The Custodian will provide the Trustee with regular reports detailing the palladium transfers in and out of the Trust Unallocated Account with the Custodian and identifying the palladium bars held in the Trust Allocated Account.

<sup>11</sup> Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR-NYSEArca-2009-95).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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. 81737 (Sept. 27, 2017), 82 FR 46106.

<sup>4</sup> In Amendment No. 2, the Exchange: (1) Clarified the permitted investments of the Trust (as defined herein); (2) supplemented its description of the duties of the Trust Custodian (as defined herein); (3) provided information about palladium futures; (4) supplemented its description of the process of Share (as defined herein)redemptions; (5) supplemented its description of how the Trust's net