

For the U.S. Nuclear Regulatory Commission.

**Lawrence E. Kokajko,**

*Director, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58136; File No. SR-BSE-2008-41]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options on Shares of the SPDR® Gold Trust

July 10, 2008.

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> notice is hereby given that on July 9, 2008, the Boston Stock Exchange, Inc. (“BSE” 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 prepared by the Exchange. BSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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.

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

The Exchange proposes to amend Section 3 (Criteria for Underlying Securities) of Chapter IV of the Rules of the Boston Options Exchange Group LLC (“BOX”) to enable the listing and trading on BOX of options on the SPDR® Gold Trust (*Ticker*: GLD). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.bostonstock.com>.

#### 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 Exchange 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 these 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 aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to enable the listing and trading of options on the SPDR® Gold Trust (the “Gold ETF”) on BOX.

Currently, Section 3(i) of Chapter IV of the BOX Rules provides that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that are traded on a national securities exchange and are defined as an “NMS” stock under Rule 600 of Regulation NMS, 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, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase 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 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 and Money Market 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 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. The proposed rule change would expand the types of ETFs that may be approved for options trading on BOX to include the SPDR® Gold Trust.

Apart from allowing the SPDR® Gold Trust to be an underlying for options traded on BOX as described above, the listing standards for ETFs would remain unchanged from those that apply under current BOX rules. In addition to satisfying the aforementioned listing standards in Section 3(i) of Chapter IV of the BOX Rules, the Gold ETF must be traded on a national securities exchange and must be defined as an “NMS stock” under Rule 600 of Regulation NMS. The Gold ETF must also either: (1) Meet the criteria and guidelines of paragraphs (a) and (b) under Section 3 of Chapter IV of the BOX Rules (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and 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 is obligated to issue the Gold ETF in a specified aggregate number even if some or all of the investments 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 of the Gold ETF, all as described in the Gold ETF’s prospectus.

The Exchange proposes that the current applicable continued listing standards for options on ETFs would apply to options on the SPDR® Gold Trust. Specifically, as set forth in Section 4(h) of Chapter IV of the BOX Rules, the Gold ETF approved for options trading will not be deemed to meet the requirements for continued approval, and the Exchange will not open for trading any additional series of options contracts if the Gold ETF ceases to be an “NMS stock,” or the Gold ETF is delisted, halted or suspended from trading on its primary market or if any of the following circumstances occur: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Gold ETF, there are fewer than 50 record and/or beneficial holders of the Gold ETF for 30 or more consecutive trading days; (2)

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

the value of the index or portfolio of securities or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities, on which the Gold ETF is based 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 in such options on the Exchange inadvisable.

The Exchange represents that its surveillance procedures applicable to trading in options on the Gold ETF will be similar to those applicable to all other options on ETFs currently traded on BOX. Further, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including, but not limited to, the New York Mercantile Exchange, Inc., related to any financial instrument(s) traded on that exchange that is based, in whole or in part, upon an interest in, or performance of, gold.

Finally, the listing and trading of options on the Gold ETF under Section 3(i) will not have any effect on the rules pertaining to position and exercise limits<sup>5</sup> or margin.<sup>6</sup>

This proposed rule change is based on filings recently approved by the Commission.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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. Specifically, the Exchange believes that amending the BOX Rules to accommodate the listing and trading of options on the Gold ETF will benefit investors by providing them with greater risk management tools.

<sup>5</sup> See Sections 7 and 9 of Chapter III of the BOX Rules.

<sup>6</sup> See Section 3 of Chapter XIII of the BOX Rules.

<sup>7</sup> See Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (File Nos. SR-Amex-2008-15; SR-CBOE-2005-11; SR-ISE-2008-12; SR-NYSEArca-2008-52; and SR-Phlx-2008-17). See also Securities Exchange Act Release No. 57945 (June 10, 2008), 73 FR 34353 (June 17, 2008) (SR-NASDAQ-2008-051).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

## 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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on the Gold ETF immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest to permit the listing and trading of options on the SPDR Gold Trust without further delay.<sup>12</sup> The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission, and does not raise any

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

new regulatory issues.<sup>13</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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 Number SR-BSE-2008-41 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 Number SR-BSE-2008-41. 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 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted

<sup>13</sup> See supra note 7.

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 SR-BSE-2008-41 and should be submitted on or before August 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58138; File No. SR-CBOE-2007-30]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Rule 9.21 (Communications to Customers)

July 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup>, and Rule 19b-4 thereunder<sup>2</sup>, notice is hereby given that on March 19, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by CBOE. CBOE filed Amendment No. 1 to the proposed rule change on June 9, 2008.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to remove or otherwise amend elements of CBOE Rule 9.21 ("Communications to Customers") that incorporate provisions of the Securities Act of 1933 ("Securities Act")<sup>4</sup> because options traded on CBOE consist solely of standardized options issued by the

Options Clearing Corporation ("OCC"), a registered clearing agency, that are exempt under Rule 238 of the Securities Act from all provisions of the Securities Act except the antifraud provisions of Section 17. Additionally, the proposed amendments expand the types of communications governed by Rule 9.21 to include independently prepared reprints and other communications between a member or member organization and a customer. The proposed amendments also exempt certain options communications from the pre-approval requirement by a Registered Options Principal ("ROP"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and <http://www.cboe.org/legal>.

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

In its filing with the Commission, CBOE 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 these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

###### 1. Purpose

On December 23, 2002, the Commission published final rules that exempt standardized options, as defined in Rule 9b-1<sup>5</sup> of the Exchange Act, that are issued by a registered clearing agency and traded on a registered national securities exchange or on a registered national securities association, from all provisions of the Securities Act (other than the anti-fraud provisions) and the registration requirements of the Exchange Act.<sup>6</sup> Because the Securities Act and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, CBOE proposes to remove elements of the Securities Act that are embedded in CBOE Rule 9.21. In particular, CBOE proposes to remove all references to a

"prospectus" from Rule 9.21. Prospectuses are no longer required for such standardized options, and the OCC has, in fact, ceased publication of a prospectus.<sup>7</sup> In addition, the proposed amendments will update and reorganize Rule 9.21. The proposed amendments are similar to amendments filed with the Commission by the Financial Industry Regulatory Authority, Inc. and the New York Stock Exchange, LLC and, if adopted, would provide a more uniform approach to communications to customers regarding standardized options.<sup>8</sup>

###### a. Deletion of Certain Provisions

As noted above, CBOE Rule 9.21 contains a number of references to a prospectus and other Securities Act requirements. *The Exchange proposes to delete the following from Rule 9.21:*

(1) Rule 9.21(a)(iv), which references the Securities Act definition of prospectus,

(2) Rule 9.21(d), which incorporates Securities Act principles in that it prohibits written material concerning options from being furnished to any person who has not previously or contemporaneously received the ODD,

(3) Rule 9.21(e)(ii), which defines the term "Educational Material,"<sup>9</sup>

(4) Interpretation and Policy .02A of Rule 9.21, which outlines what is permitted in an "Advertisement,"<sup>10</sup> and

(5) Interpretation and Policy .03 of Rule 9.21, which concerns educational material.<sup>11</sup>

###### b. Redesignation of Rule 9.21(a) to Proposed Rule 9.21(d) and Related Amendments

Rule 9.21(a) currently contains an outline of the "General Rule" for options communications. CBOE proposes to redesignate paragraph (a) as paragraph (d), and to incorporate limitations on the use of options communications contained in Interpretations and Policies .01 of Rule 9.21 into proposed Rule 9.21(d). In addition, proposed Rule 9.21(d)(iii) would amend Rule 9.21(a)(iii) by

<sup>7</sup> The options disclosure document ("ODD") prepared in accordance with Rule 9b-1 under the Exchange Act is not deemed to be a prospectus. 17 CFR 230.135b. *See, e.g.*, Securities Act Release No. 8049 (Dec. 21, 2001), 67 FR 228 (Jan. 2, 2002).

<sup>8</sup> *See* Exchange Act Release No. 57720 (Apr. 25, 2008) 73 FR 24332 (May 2, 2008) (SR-FINRA-2008-13) and SR-NYSE-2006-50.

<sup>9</sup> This paragraph essentially incorporates language of Securities Act Rule 134a. While this amendment would eliminate the separate educational material category, as discussed below the Exchange also proposes to revise the definition of Sales Literature to include educational material.

<sup>10</sup> This paragraph essentially incorporates language of Securities Act Rule 134.

<sup>11</sup> *See* note 9, *supra*.

<sup>14</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> Amendment No. 1 replaces the original filing in its entirety.

<sup>4</sup> 15 U.S.C. 77a *et seq.*

<sup>5</sup> 17 CFR 240.9b-1.

<sup>6</sup> *See* "Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule," Securities Act Release No. 8171 and Exchange Act Release No. 47082 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003).