

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, 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 Amex. 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 SR-Amex-2008-13 and should be submitted on or before April 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57465; File No. SR-CBOE-2005-11]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, Relating to the Listing and Trading on the Exchange of Options on the streetTRACKS Gold Trust

March 11, 2008.

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, notice is hereby given that on January 25, 2005, 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 the Exchange. On April 12, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change. On March 7, 2008, the Exchange submitted Amendment No. 2 to the proposed rule change. 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 proposes to amend certain CBOE rules to enable the listing and trading on the Exchange of options on the streetTRACKS Gold Trust. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.cboe.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 CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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, the Proposed Rule Change

###### 1. Purpose

The Exchange states that the purpose of the proposed rule change is to permit the listing and trading of options on the streetTRACKS Gold Trust.

Currently, Interpretation and Policy .06 to CBOE Rule 5.3 permits only certain Units (also referred to herein as exchange traded funds ("ETFs")) to underlie options traded on the Exchange. Specifically, to be eligible as an underlying security for options traded on the Exchange, 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 (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 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) 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. The proposed rule change would expand the types of ETFs that may be approved for options trading on the Exchange to include the streetTRACKS Gold Trust.

Apart from allowing the streetTRACKS Gold Trust to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs would remain unchanged from those that apply under current Exchange rules. 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 Interpretation and Policy .06 to CBOE Rule 5.3.

Specifically, in addition to satisfying the aforementioned listing requirements, Units would have to: (1) Meet the criteria and guidelines under Rule 5.3 *Criteria for Underlying Securities* and Interpretation and Policy .01 thereunder; 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.

The Exchange proposes that the current continued listing standards for

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>19</sup> 15 U.S.C. 78s(b)(1).

<sup>20</sup> 17 CFR 240.19b-4.

options on ETFs would apply to options on the streetTRACKS Gold Trust. Specifically, under Interpretation and Policy .08 to CBOE Rule 5.4, 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 Exchange makes further dealing on the Exchange inadvisable.

Additionally, the streetTRACKS Gold Trust would not be deemed to meet the requirements for continued approval, and the Exchange would not open for trading any additional series of option contracts of the class covering the streetTRACKS Gold Trust, if the streetTRACKS Gold Trust ceases to be an "NMS stock" as provided for in paragraph (f) of Interpretation and Policy .01 of CBOE Rule 5.4 or the streetTRACKS Gold Trust is halted from trading on its primary market.

The Exchange believes that the addition of the streetTRACKS Gold Trust to Interpretation and Policy .06 to CBOE Rule 5.3 would not have any effect on the rules pertaining to position and exercise limits<sup>3</sup> or margin.<sup>4</sup>

The Exchange represents that its surveillance procedures applicable to trading in options on the streetTRACKS Gold Trust would be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. (a member of the Intermarket Surveillance Group) related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, gold.

## 2. Statutory Basis

The Exchange believes that amending its rules to accommodate the listing and trading of options on the streetTRACKS Gold Trust will benefit investors by

providing them with valuable risk management tools. Accordingly, the CBOE believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> of the Act in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

### *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 written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-CBOE-2005-11 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2005-11. 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 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 Number SR-CBOE-2005-11 and should be submitted on or before April 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>3</sup> See CBOE Rules 4.11, *Position Limits*, and 4.12, *Exercise Limits*.

<sup>4</sup> See CBOE Rule 12.3, *Margin Requirements*.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).