

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94928; File No. SR-CBOE-2022-009)

May 17, 2022

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change to Amend Rule 4.3.06 to Allow the Exchange to List and Trade Options on the Goldman Sachs Physical Gold ETF

I. Introduction

On March 25, 2022, Cboe Exchange, Inc. (“Exchange” or “Cboe”) 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> a proposed rule change to list and trade options on the Goldman Sachs Physical Gold ETF (“AAAU” or “Trust”). The proposed rule change was published for comment in the Federal Register on April 8, 2022.<sup>3</sup> The Commission received one comment on the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under Cboe Rule 4.3.06(a), securities deemed appropriate for options trading include Units<sup>5</sup> that represent certain types of interests.<sup>6</sup> Cboe Rule 4.3.06(a)(4) specifies Units that

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<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. 94594 (Apr. 4, 2022), 87 FR 20901 (Apr. 8, 2022) (“Notice”).

<sup>4</sup> See Letter from Andrew Robison, dated April 28, 2022, available at <https://www.sec.gov/comments/sr-cboe-2022-009/srcboe2022009.htm>. The comments expressed by the commenter are not relevant to the proposed rule change.

<sup>5</sup> The terms “Unit” and Exchange-Traded Fund (“ETF”) mean a share or other security traded on a national securities exchange and defined as an NMS stock as set forth in Cboe Rule 4.3. See Cboe Rule. 1.1. Capitalized terms not otherwise defined herein have the meanings set forth in CBOE’s rules or the Notice.

<sup>6</sup> See Cboe Rules 4.3.06(a)(1)-(5).

represent interests in the SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust. The proposed rule change would add AAAU to the list of ETFs under Rule 4.3.06(a)(4) that may be approved for options trading on the Exchange.

The Exchange states that AAAU is a gold-backed commodity ETF structured as a trust, much like other Units currently deemed appropriate for options trading pursuant to Cboe Rule 4.3.06(a)(4), such as the SPDR Gold Trust (“GLD”), iShares COMEX Gold Trust (“IAU”), Aberdeen Standard Physical Gold Trust (“SGOL”), and Sprott Physical Gold Trust (“PHYS”).<sup>7</sup> According to the Exchange, the Trust’s investment objective is for its shares to reflect the performance of the price of gold (less the expenses of the Trust’s operations), which offers investors an opportunity to gain exposure to gold without the complexities of gold delivery.<sup>8</sup> The Trust issues Goldman Sachs Physical Gold ETF Shares, which represent units of fractional undivided beneficial interest in the Trust, the assets of which consist principally of gold.<sup>9</sup> The Exchange states that AAAU is a competitively-priced commodity ETF whose cost is comparatively lower than the industry average for commodity ETFs.<sup>10</sup> The Exchange asserts that AAAU provides investors with a cost-efficient alternative that allows a level of participation in the gold market through the securities market.<sup>11</sup> The GLD, IAU, SGOL and PHYS trusts also issue shares that represent fractional undivided beneficial interest in the respective trust, each of

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<sup>7</sup> See Notice, supra note 3, 87 FR at 20902.

<sup>8</sup> See id.

<sup>9</sup> See id. The Trust may include minimal cash. See id. at n. 5.

<sup>10</sup> See Notice, supra note 3, 87 FR at 20902.

<sup>11</sup> See id.

which holds physical gold and is designed to track gold or the performance of the price of gold and offer access to the gold market.<sup>12</sup>

AAAU options will trade in the same manner as any other ETF options on the Exchange.<sup>13</sup> The Exchange states that Cboe rules that currently apply to the listing and trading of the aforementioned options on gold-backed commodity ETFs also will apply to the listing and trading of AAAU options on the Exchange.<sup>14</sup> The Exchange notes that these include rules governing, among other things, listing criteria, expiration and exercise prices, minimum increments, position and exercise limits, margin requirements, customer accounts and trading halt procedures.<sup>15</sup>

The Exchange's initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to AAAU.<sup>16</sup> The Exchange represents that AAAU satisfies the Exchange's initial listing standards as set forth in Cboe Rule 4.3(a) and Cboe Rule 4.3.06(b).<sup>17</sup> Pursuant to Cboe Rule 4.3(a), an underlying security on which options may be listed and traded on the Exchange must be duly registered and be an NMS stock,<sup>18</sup> and be characterized by a substantial number of outstanding shares which are widely held and actively traded.<sup>19</sup> In

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<sup>12</sup> See id. The trusts may include minimal cash. See id. at n.6.

<sup>13</sup> See Notice, supra note 3, 87 FR at 20902.

<sup>14</sup> See id.

<sup>15</sup> See id.

<sup>16</sup> See id.

<sup>17</sup> See id.

<sup>18</sup> See id. The term "NMS stock" has the meaning set forth in Rule 600 of Regulation NMS. See Cboe Rule 1.1.

<sup>19</sup> See Notice, supra note 3, 87 FR at 20902. The Exchange notes that the year-to-date (March 23, 2022) average daily volume ("ADV") of AAAU shares is approximately 845,200 shares, the market capitalization of AAAU as of March 23, 2022 is approximately \$727.3 million and the NAV of its shares is \$19.19. See id. at n. 7.

addition, Cboe Rule 4.3.06(b) requires that Units must either (1) meet the criteria and guidelines under Cboe Rule 4.3.01,<sup>20</sup> or (2) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pools or other issuer in cash or in kind at a price related to net asset value, and the issuing trust, investment company, commodity pools or other issuer is obligated to issue Units 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 issuing trust, investment company, commodity pools or other issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets and/or cash 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 Units which underlie the option as described in the Units' prospectus.<sup>21</sup> The Exchange represents that, at minimum, AAAU satisfies Cboe Rule 4.3.06(b)(2).<sup>22</sup>

The Exchange states that AAAU also will be subject to the Exchange's continued listing requirements, set forth in Cboe Rule 4.4.06, for ETFs deemed appropriate for options trading pursuant to Cboe Rule 4.3.06.<sup>23</sup> Cboe Rule 4.4.06 provides that Units that were initially approved for options trading pursuant to Cboe Rule 4.3.06 shall be deemed not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Units, if the Units cease to be an NMS stock

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<sup>20</sup> See Cboe Rule 4.3.01 (providing guidelines established by the Board of Directors to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions).

<sup>21</sup> See Notice, supra note 3, 87 FR at 20902-03.

<sup>22</sup> See id. See also Goldman Sachs Physical Gold ETF, Prospectus (January 8, 2021) available at <https://www.gsam.com/content/gsam/us/en/individual/products/etf-fund-finder/goldman-sachs-physical-gold-etf.html#activeTab=overview>.

<sup>23</sup> See Notice, supra note 3, 87 FR at 20903.

or the Units are halted from trading in their primary market.<sup>24</sup> Additionally, options on Units may be subject to the suspension of opening transactions in any of the following circumstances: (1) in the case of options covering Units approved for trading under Cboe Rule 4.3.06(b)(1), in accordance with the terms of paragraphs (a), (b), and (c) of Cboe Rule 4.4.01; (2) in the case of options covering Units approved for trading under Cboe Rule 4.3.06(b)(2), following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange and are defined [sic] as an NMS stock, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; (3) 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 the Units are based is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.<sup>25</sup>

AAAU options will be physically-settled contracts with American-style exercise.<sup>26</sup> The Exchange states that, consistent with Cboe Rule 4.5, which governs the opening of

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<sup>24</sup> See id.

<sup>25</sup> See id.

<sup>26</sup> See id. See also Cboe Rule 4.2 (providing that the rights and obligations of holders and writers shall be as set forth in the Rules of The Options Clearing Corporation (“OCC”)); Cboe Equity Options Product Specifications (March 23, 2022) available at [https://www.cboe.com/exchange\\_traded\\_stock/equity\\_options\\_spec/?msclkid=8079efbbaaf111ec83b46e77a2984348](https://www.cboe.com/exchange_traded_stock/equity_options_spec/?msclkid=8079efbbaaf111ec83b46e77a2984348); OCC Rules, Chapter VIII (governing exercise and assignment) and Chapter IX (governing the discharge of delivery and payment obligations arising out of the exercise of physically-settled stock option contracts).

options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on AAAU<sup>27</sup> and may also list series of options on AAAU for trading on a weekly<sup>28</sup> or quarterly<sup>29</sup> basis.<sup>30</sup> The Exchange states that it may also list long-term equity option series (“LEAPS”) that expire from 12 to 180 months from the time they are listed.<sup>31</sup>

The Exchange states that, pursuant to Rule 4.5.07, which governs strike prices of series of options on Units, the interval between strike prices for series of options on AAAU will be \$1 or greater where the strike price is \$200 or less and \$5.00 or greater where the strike price is greater than \$200.<sup>32</sup> The Exchange states that, pursuant to Cboe Rule 5.4, where the price of a series of AAAU options is less than \$3.00 the minimum increment will be \$0.05, and where the price is \$3.00 or higher, the minimum increment will be \$0.10.<sup>33</sup> The Exchange states that any and all new series of AAAU options that the Exchange lists will be consistent and comply with the

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<sup>27</sup> See Notice, supra note 3, 87 FR at 20903 n. 11; see also Cboe Rule 4.5(b).

<sup>28</sup> See Notice, supra note 3, 87 FR at 20903. The weekly listing program is known as the Short Term Option Series Program and is described within Cboe Rule 4.5(d). See id. at n.12.

<sup>29</sup> See Notice, supra note 3, 87 FR at 20903; see also Cboe Rule 4.5(e).

<sup>30</sup> See Notice, supra note 3, 87 FR at 20903.

<sup>31</sup> See id.; see also Cboe Rule 4.5(f).

<sup>32</sup> See Notice, supra note 3, 87 FR at 20903. The Exchange notes that for options listed pursuant to the Short Term Option Series Program, Rule 4.5(d)(5) specifically sets forth intervals between strike prices on Short Term Option Series. See id. at n. 15.

<sup>33</sup> See Notice, supra note 3, 87 FR at 20903; see also Cboe Rule 5.4. The Exchange states that, if options on AAAU are eligible to participate in the Penny Interval Program, the minimum increment will be \$0.01 below \$3.00 and \$0.50 above \$3.00. See Notice, supra note 3, 87 FR at 20903 n. 20.

expirations, strike prices and minimum increments set forth in Cboe Rules 4.5 and 5.4, as applicable.<sup>34</sup>

The Exchange states that position and exercise limits for options on ETFs, including options on AAAU, are determined pursuant to Cboe Rules 8.30 and 8.32, respectively.<sup>35</sup> The Exchange states that position and exercise limits for ETF options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market, and smaller capitalization ETFs have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.<sup>36</sup> The Exchange states that, given AAAU volume over the previous six months, the Exchange anticipates that upon initial listing, AAAU options will fall into the position limit bucket of 75,000 contracts.<sup>37</sup> The Exchange further notes that Cboe Rule 10.3, which governs margin requirements applicable to the trading of all options on the Exchange, including options on ETFs, will also apply to the trading of AAAU options.<sup>38</sup>

The Exchange represents that the same surveillance procedures applicable to all other options on other Units currently listed and traded on the Exchange will apply to options on AAAU, and that it has the necessary systems capacity to support the new option series.<sup>39</sup> The

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<sup>34</sup> See Notice, supra note 3, 87 FR at 20903.

<sup>35</sup> See id.

<sup>36</sup> See id.

<sup>37</sup> See Notice, supra note 3, 87 FR at 20903 n. 21.

<sup>38</sup> See Notice, supra note 3, 87 FR at 20903.

<sup>39</sup> See id.

Exchange states it believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading ETF options, including AAAU options, as proposed.<sup>40</sup> Also, the Exchange states it may obtain information from the CME Group New York Mercantile Exchange, Inc. (“NYMEX”) (a member of the Intermarket Surveillance Group (“ISG”))<sup>41</sup> related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold.<sup>42</sup>

The Exchange represents that it has also analyzed its capacity and believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of options on AAAU, up to the number of expirations currently permissible under its rules.<sup>43</sup> The Exchange believes that because the proposal is limited to one class, any additional traffic that may be generated from the introduction of AAAU options will be manageable.<sup>44</sup> The Exchange also proposes to amend Cboe Rule 4.3.06(a)(4) to update the names of the “ETFS Silver Trust,” the “ETFS Gold Trust,” the “ETFS Palladium Trust” and the “ETFS Platinum Trust” to the “Aberdeen Standard Physical Silver Trust,” the “Aberdeen Standard Physical Gold Trust,” the “Aberdeen Standard Physical

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<sup>40</sup> See Notice, supra note 3, 87 FR at 20903-04.

<sup>41</sup> The purpose of the ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. See <https://isgportal.org/>.

<sup>42</sup> See Notice, supra note 3, 87 FR at 20904.

<sup>43</sup> See id.

<sup>44</sup> See id.



Palladium Trust,” and the “Aberdeen Standard Physical Platinum Trust,” respectively,<sup>45</sup> and make a non-substantive change to the rule to replace superfluous commas with conjunctions.<sup>46</sup>

### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>47</sup> and, in particular, the requirements of Section 6 of the Act.<sup>48</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>49</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

The Commission believes that the proposal to list and trade options on AAAU on the Exchange will provide investors with the ability to transact in AAAU options in a listed market environment, which could provide investors with heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options, as well as increased transparency and enhanced price discovery. Moreover, the Exchange already lists options on other gold-based ETFs, which, as described above, are trusts structured in substantially the same manner as

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<sup>45</sup> See Notice, supra note 3, 87 FR at 20902. The Exchange states that these ETFs were renamed in 2018. See id.

<sup>46</sup> See id.

<sup>47</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>48</sup> 15 U.S.C. 78f.

<sup>49</sup> 15 U.S.C. 78f(b)(5).

AAAU,<sup>50</sup> and the Exchange represents that it has not identified any issues with the continued listing and trading of the gold-backed ETF options that it currently lists for trading.<sup>51</sup>

As a national securities exchange, Cboe is required under Section 6(b)(1) of the Act<sup>52</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 AAAU options also will be subject to best execution obligations and FINRA rules.<sup>53</sup> Applicable exchange rules also require that customers receive appropriate disclosure before trading AAAU Options.<sup>54</sup> Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.<sup>55</sup>

Options on AAAU will trade as options under the trading rules of the Exchange.<sup>56</sup> AAAU options must also satisfy Exchange initial listing and continued listing standards applicable to options on all Units, including the gold-backed commodity ETFs already approved for options trading on the Exchange. A security on which options may be listed and traded on the Exchange must be duly registered and be an “NMS stock” as defined under Rule 600 of Regulation NMS<sup>57</sup>

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<sup>50</sup> See e.g., Securities Exchange Act Release No. 59055 (Dec. 4, 2008), 73 FR 75148 (Dec. 10, 2008) (approving proposals to list and trade options on IAU and the iShares Silver Trust); Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (Jun. 5, 2008) (approving proposals to list and trade options on GLD); and Securities Exchange Act Release No. 61483 (Feb. 3, 2010), 75 FR 6753 (Feb. 10, 2010) (approving proposals to list and trade options on the ETFS Gold Trust and ETFS Silver Trust).

<sup>51</sup> See Notice, *supra* note 3, at 20904.

<sup>52</sup> 15 U.S.C. 78f(b)(1).

<sup>53</sup> See FINRA Rule 5310.

<sup>54</sup> See Cboe Rule 9.9 and Rule 9.15.

<sup>55</sup> See Cboe Rule 9.3.

<sup>56</sup> See Chapter 5 of Cboe’s Rules.

<sup>57</sup> 17 CFR 242.600.

and be characterized by a substantial number of outstanding shares which are widely held and actively traded.<sup>58</sup> Additionally, Units must meet either (1) the criteria and guidelines under Cboe Rule 4.3.01,<sup>59</sup> or (2) they must 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>60</sup>

Series of AAAU options also will be subject to the Exchange's continued listing requirements, including standards applicable to the underlying Trust. If the Units cease to be an NMS stock or the Units are halted from trading in their primary market, the Exchange will deem Units that were initially approved for options trading pursuant to Cboe Rule 4.3.06 not to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Units.<sup>61</sup>

The Exchange represents that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and

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<sup>58</sup> See Cboe Rule 4.3(a); see also supra note 19.

<sup>59</sup> See Cboe Rule 4.3.06(b)(1). See also Cboe Rule 4.3.01 (providing guidelines established by the Board of Directors to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions).

<sup>60</sup> See Cboe Rule 4.3.06(b)(2). The Exchange represents that, at minimum, the AAAU satisfies this initial listing criteria. See Notice, supra note 3, 87 FR at 20903.

<sup>61</sup> See Cboe Rule 4.4.06.

trading ETF options, including AAAU options.<sup>62</sup> The Exchange also represents that it has the necessary systems capacity to support the new ETF option series.<sup>63</sup> Additionally, the Commission notes that AAAU options will trade in the same manner as any other options on ETFs, and the same Exchange rules that currently govern the listing and trading of ETF options, including permissible expirations, strike prices and minimum increments, and applicable position and exercise limits and margin requirements, will govern the listing and trading of options on AAAU.

Finally, the Commission believes that the Exchange's proposals to make grammatical edits to the rule text and update the names of certain ETFs in Cboe Rule 4.3.06(a)(4) are helpful technical changes that add clarity and accuracy to the rule text.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>64</sup> that the proposed rule change (SR-CBOE-2022-009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>62</sup> See Notice, supra note 3, 87 FR at 20903.

<sup>63</sup> See id.

<sup>64</sup> 15 U.S.C. 78s(b)(2).

<sup>65</sup> 17 CFR 200.30-3(a)(12).