

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70992; File No. SR-MIAX-2013-55)

December 5, 2013

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 402

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 November 26, 2013, Miami International Securities Exchange LLC (“MIAX” 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. 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 is filing a proposal to amend Exchange Rule 402 to enable the listing and trading on the Exchange of options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust.

The text of the proposed rule change is available on the Exchange’s website at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

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

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

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

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 Exchange proposes to amend Rule 402 (Criteria for Underlying Securities) to enable the listing and trading on the Exchange of options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust.

Under current Rule 402, only Exchange-Traded Fund Shares (“ETFs”) that (1) 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 (“Funds”), 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 (2) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust which when aggregated in some specified minimum number may be surrendered to the trust or similar entity 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 (“Currency Trust Shares”), or (3) 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 (4) are issued by the SPDR® Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust, or (5) represent an interest 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 the Exchange.<sup>3</sup> This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust.

Apart from allowing ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange Rules. ETFs on which options may be listed and

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<sup>3</sup> See Exchange Rule 402(i).

traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Rule 402(i).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet [sic] either (1) meet the criteria and guidelines set forth in paragraphs 402(a) and (b) or (2) they must 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 is obligated to issue ETF Shares 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 of the ETF Shares, all as described in the ETF Shares' prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust. Specifically, under 403(g), options on ETFs may be subject to suspension of opening transactions as follows: (1) following the initial twelve-month period beginning upon the commencement of trading of the ETF Fund [sic] Shares, there are fewer than 50 record and/or beneficial holders of the ETF Fund [sic] Shares 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 ETF Fund [sic] Shares

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.

In addition, ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust shall not be deemed 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 the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust, if the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust cease to be an “NMS stock” as provided for in Rules [sic] 403(b)(4) or the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust is halted or suspended from trading on its primary market.

The addition of the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust to Rule 402(i) will not have any effect on the rules pertaining to position and exercise limits<sup>4</sup> or margin.<sup>5</sup> The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust will 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. (“NYMEX”) (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of silver, gold, palladium, and platinum.

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<sup>4</sup> See Exchange Rules 307, Position Limits, and 309, Exercise Limits.

<sup>5</sup> See Exchange Rule Chapter XV.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust will benefit investors by providing them with valuable risk management tools.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes this proposed rule change will benefit investors by providing additional methods to trade options on ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust Shares, and by providing them with valuable risk management tools. Specifically, the Exchange believes that market participants on MIAX would benefit from the introduction and availability of options on ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust in a manner that is similar to other exchanges and will provide investors with yet another venue on which to trade these products. The Exchange notes that the rule change is being proposed as a competitive response to other competing options

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

exchanges<sup>8</sup> and believes this proposed rule change is necessary to permit fair competition among the options exchanges. For all the reasons stated above, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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<sup>8</sup> See Securities Exchange Act Release Nos. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR-CBOE-2010-007, SR-ISE-2009-106, SR-NYSEAmex-2009-86, and SR-NYSEArca-2009-110); 61892 (April 13, 2010), 75 FR 20649 (April 20, 2010) [sic] (SR-CBOE-2010-015); 62463 (July 7, 2010), 75 FR 40005 (July 13, 2010) (SR-CBOE-2010-043); 62464 (July 7, 2010), 75 FR 40007 (July 13, 2010) (SR-BX-2010-045); 65099 (August 11, 2011), 76 FR 51114 (August 17, 2011) (SR-NASDAQ-2011-109); 65098 (August 11, 2011), 76 FR 51116 (August 17, 2011) (SR-PHLX-2011-102).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</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 Commission has waived the five-day pre-filing requirement in this case.

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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>11</sup> The Commission notes that the proposal is substantively identical to proposals that were approved by the Commission, and does not raise any new regulatory issues.<sup>12</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 summarily may temporarily suspend 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

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<sup>11</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).

<sup>12</sup> See supra note 8.



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2013-55 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-MIAX-2013-55. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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 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-MIAX-2013-55 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill  
Deputy Secretary

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