

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58956; File No. SR-NYSEArca-2008-124)

November 14, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List Shares of iShares Silver Trust

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 5, 2008, NYSE Arca, Inc. (“NYSE Arca” 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 and approving the proposed rule change on an accelerated basis.

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

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to list and trade shares (“Shares”) of the iShares<sup>®</sup> Silver Trust (the “Trust”) pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’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 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

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

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

places specified in Item III 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 the Shares under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (“UTP”) “Commodity-Based Trust Shares.”<sup>3</sup> The Commission has previously approved listing of the Shares on NYSE Alternext US LLC (“NYSE Alternext US”) (formerly, the American Stock Exchange LLC (“Amex”))<sup>4</sup> and trading on the Exchange pursuant to UTP.<sup>5</sup> Prior to listing on the Exchange, the issuer of the Shares would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of Securities Exchange Act of 1934 (“Act”),<sup>6</sup> relating to listing the Shares on the Exchange.<sup>7</sup>

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<sup>3</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

<sup>4</sup> See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72) (“Amex Order”).

<sup>5</sup> See Securities Exchange Act Release No. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (“UTP Filing”).

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

<sup>7</sup> See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Brian O’Neill, Attorney, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, dated November 12, 2008 (“November 12 e-mail”). The Exchange will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext US and listed on the Exchange.

The Shares represent beneficial ownership interests in the net assets of the Trust consisting primarily of silver bullion (“silver”). The investment objective of the Trust is for the Shares to reflect the performance of the price of silver, less the Trust’s expenses.

Descriptions of the Trust and the Shares are included in the Amex Order, the UTP Filing, and Registration Statement for the Trust.<sup>8</sup> The Exchange represents that the Shares satisfy the requirements of Rule 8.201 and thereby qualify for listing on the Exchange.<sup>9</sup> The Exchange states that all of the facts describing the Trust and the Shares contained in the Amex Order are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Order relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange. To the extent NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange represents that it would take the place of NYSE Alternext US in such role and discharge such obligations.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange’s existing rules governing the trading of equity securities. The Shares will trade on the Exchange from 4:00 a.m. to 8:00 p.m. Eastern Time.<sup>10</sup> The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

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<sup>8</sup> See the Registration Statement for the Trust, dated May 29, 2008 (Registration Statement No. 333-149810).

<sup>9</sup> With respect to application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

<sup>10</sup> See November 12 e-mail, supra, note 7.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying silver, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying silver, related futures or options on futures or any other related derivative (including the Shares). In addition, NYSE Arca Equities Rule 8.201(g) prohibits an ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying silver, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange,

make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.<sup>11</sup> Also, the Exchange has an Information Sharing Agreement with the New York Mercantile Exchange ("NYMEX") for the purpose of sharing information in connection with trading in or related to COMEX (a division of NYMEX) silver futures contracts.

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<sup>11</sup> A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org).

### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable and that silver is a wasting asset); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the Intraday Trading Value (“ITV”) is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) the risks involved in trading the Shares in the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated.<sup>12</sup> For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical

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<sup>12</sup> See November 12 e-mail, supra, note 7.

commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>13</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>14</sup> 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The proposed rule change will permit the listing and trading of the Shares on the Exchange, which the Exchange believes will benefit investors and the marketplace.

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

No written comments were solicited or received with respect to the proposed rule change.

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

### III. 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-NYSEArca-2008-124 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-NYSEArca-2008-124. 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 10:00 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-NYSEArca-2008-124 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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>15</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>16</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 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 Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.201. NYSE Arca represents that the Shares satisfy the requirements of Rule 8.201, which include initial and continued listing criteria to which the Shares will be subject. The Exchange deems the Shares to be equity securities, thus subjecting the Shares to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the Exchange from 4:00 a.m. to 8:00 p.m. Eastern Time. The Commission approved the listing and trading of the

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<sup>15</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

Shares on Amex,<sup>17</sup> now known as NYSE Alternext US, and trading of the Shares pursuant to UTP on NYSE Arca.<sup>18</sup>

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>19</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange states that: (1) the representations included in the Amex Order relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange; and (2) to the extent NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange will assume the role of NYSE Alternext US and discharge such obligations. Accordingly, among other things:

1. The last sale price for the Shares will be disseminated on a real-time basis via the facilities of the Consolidated Tape Association;<sup>20</sup>
2. Shortly after 4 p.m. each business day, the NAV of the Trust, the Basket Silver Amount (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Silver Amount are disseminated;<sup>21</sup>

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<sup>17</sup> See Amex Order, supra, note 4.

<sup>18</sup> See UTP Filing, supra, note 5.

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>20</sup> See Amex Order, supra, note 4, 71 FR at 14970.

<sup>21</sup> Id. at 14969-70.

3. The ITV will be disseminated on a per Share basis at least every 15 seconds between 9:30 a.m. and 4:15 p.m. Eastern Time;<sup>22</sup>
4. The Trust's Web site is and will be publicly accessible at no charge and will contain, among other things, the NAV of the Silver Shares and the Basket Silver Amount as of the prior business day, the Indicative Basket Amount, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV;<sup>23</sup>
5. The Trust's Web site, to which the NYSE Arca will link, will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information; and<sup>24</sup>
6. The Exchange will provide a hyperlink on its Web site to the Trust's Web site ([www.iShares.com](http://www.iShares.com)), which will include, among other things a real-time indicative silver spot price through TheBullionDesk at [www.thebulliondesk.com](http://www.thebulliondesk.com).<sup>25</sup>

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under its continued listing standards, after the 12-month period following the commencement of

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<sup>22</sup> Id. at 14971.

<sup>23</sup> Id.

<sup>24</sup> Id. at 14974-75.

<sup>25</sup> Id. at 14971.

trading on the Exchange, the Exchange will consider suspending trading in the Shares or removing them from listing if: (1) the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange, or if the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;<sup>26</sup> or (2) the ITV is no longer made available on at least a 15-second delayed basis.<sup>27</sup> With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.<sup>28</sup>

Specifically, however, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants pursuant to NYSE Arca Equities Rule 7.34(a)(5).

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions (described above) on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. The Exchange states that it has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange states that it can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

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<sup>26</sup> See NYSE Arca Equities Rule 8.201(e)(2)(iv).

<sup>27</sup> See NYSE Arca Equities Rule 8.201(e)(2)(v).

<sup>28</sup> Trading may be halted because of market conditions or for reasons that make trading in the Shares inadvisable, including: (1) the extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

In support of this proposal, the Exchange has made the following representations:

- (1) The Shares satisfy the requirements of NYSE Arca Equities Rule 8.201, which includes the initial and continued listing criteria for Commodity-Based Trust Shares.
- (2) The Exchange's surveillance procedures are adequate to properly monitor trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (3) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. Previously, the Commission approved the listing and trading of the Shares on Amex,<sup>30</sup> and the trading of the Shares pursuant to UTP on the Exchange.<sup>31</sup> The Exchange's proposal to list and trade the Shares does not appear to present any novel or significant regulatory issues.

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<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> See Amex Order, supra, note 4.

<sup>31</sup> See UTP Filing, supra, note 5.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NYSEArca-2008-124) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

Florence E. Harmon  
Acting Secretary

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<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).