

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61496; File No. SR-NYSEArca-2009-113)

February 4, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change to List and Trade the Sprott Physical Gold Trust

I. Introduction

On December 15, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade units³ of the Sprott Physical Gold Trust (the “Trust”) pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the Federal Register on January 4, 2010.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade units (“Units”) of the Trust under NYSE Arca Equities Rule 8.201. Sprott Asset Management LP is the sponsor or manager of the Trust (“Sponsor” or “Manager”).⁵ RBC Dexia Investor Services Trust is the trustee of the Trust. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Each unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of units.

⁴ See Securities Exchange Act Release No. 61236 (December 23, 2009), 75 FR 170 (“Notice”).

⁵ The Manager is a limited partnership existing under the laws of Ontario, Canada, and acts as manager of the Trust pursuant to the Trust’s trust agreement and the management agreement. The Manager provides management and advisory services to the Trust. Additional details regarding the Trust are set forth in the Registration Statement on Form

Royal Canadian Mint is the custodian for the physical gold bullion owned by the Trust and RBC Dexia serves as the custodian of the Trust's assets other than physical gold bullion.

The Units will be issued in an initial public offering. The Trust may issue additional Units: (i) in future offerings if the gross proceeds received by the Trust per Unit is not less than 100% of the most recently calculated net asset value ("NAV") or (ii) by way of a distribution in Units in connection with an income distribution. The Trust will not issue Units on an on-going or daily basis. At the start of trading, the Trust will issue a minimum of 1,000,000 Units to at least 400 holders ("Unitholders"). The Exchange states that the Units satisfy the remaining criteria of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.⁶

The Trust's investment objective is for the Units to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations. The Trust expects to own only London Good Delivery physical gold bullion. The Trust is not actively managed and does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of gold bullion.

The Exchange states that the Trust does not intend to create additional Units. The Units will be redeemable monthly at the option of the holder for physical gold bullion or for cash subject to the certain conditions. Generally, Units redeemed for physical gold will be entitled to a redemption price equal to 100% of the NAV of the redeemed Units on the last business day of the calendar month in which the redemption request is processed, less redemption and delivery expenses. Units redeemed for cash will be entitled to a redemption price equal to 95% of the

F-1 for the Sprott Physical Gold Trust, filed with the Commission on December 9, 2009 (No. 333-163601) ("Registration Statement").

⁶ With respect to application of Rule 10A-3 under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

lesser of: (i) the volume-weighted average trading price of the Units traded on the NYSE Arca or, if trading has been suspended on NYSE Arca, the trading price of the units traded on the Toronto Stock Exchange, for the last five business days of the month in which the redemption request is processed and (ii) the NAV of the redeemed Units as of 4:00 p.m., Toronto time, on the last business day of such month.⁷

Additional information regarding the Trust, the Units, the Trust's investment objectives, strategies, policies, and restrictions, fees and expenses, creation and redemption of Units, the gold market, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and in the Registration Statement, as applicable.⁸

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

⁷ See Notice and the Registration Statement, supra notes 4 and 5, respectively, for additional information.

⁸ Id.

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

In addition, the Commission finds that the proposal to list and trade Units on the Exchange is consistent with Section 11(a)(1)(C)(iii) of the Act,¹² which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Units will be available via the Consolidated Tape Association. The Trust's Web site will provide an intraday indicative value ("IIV") per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 AM to 4:00 PM, New York time). The IIV will be calculated based on a price of gold derived from updated bids and offers indicative of the spot price of gold.¹³ In addition, the Web site for the Trust will contain the following information, on a per Unit basis, for the Trust: (a) the mid-point of the bid-ask price¹⁴ at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format 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 Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will provide the last sale price of the Units as traded in the US market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

¹² 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹³ The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

The Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange has received a representation from the Trust that, prior to listing, the NAV would be calculated daily and made available to all market participants at the same time.¹⁵ Additionally, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹⁶ Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12 month period following commencement of trading: (1) the value of gold 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 stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. These may include: (1) the extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; or (2) whether other unusual

¹⁴ The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

¹⁵ See supra note 4.

conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.¹⁷

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as Market Makers in the Units. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its trading in the underlying gold, 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 Units 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 gold, related futures or options on futures or any other related derivative (including the Units).

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

- (1) The Units will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.
- (2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting

¹⁶ See e-mail, dated February 4, 2010, from Tim Malinowski, NYSE Arca, to Steve Varholik, Special Counsel, Division of Trading and Markets, Commission.

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.¹⁸

- (3) 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 Units. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Units; (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 Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.

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

¹⁷ See NYSE Arca Equities Rule 7.12.

¹⁸ The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the Tokyo Commodity Exchange, Inc. ("TOCOM") is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁹ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-NYSEArca-2009-113) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon
Deputy Secretary

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78s(b)(2)

²¹ 17 CFR 200.30-3(a)(12)