

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71038; File No. SR-NYSEArca-2013-137)

December 11, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the Merk Gold Trust Pursuant to NYSE Arca Equities Rule 8.201

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 27, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change, which filing was amended and replaced in part by Amendment No. 1 thereto on December 11, 2013,⁴ as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to list and trade shares of the Merk Gold Trust (the “Trust”) pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ According to the Exchange, Amendment No. 1 seeks to clarify certain statements in the filing with respect to: (i) the Custodian’s information barriers between itself and its broker dealer affiliate; (ii) the use of unallocated gold accounts by other gold trusts; and (iii) the Trustee’s role in valuing the Trust’s physical gold holdings.

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 places specified in Item IV 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Trust under NYSE Arca Equities Rule 8.201.⁵ 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.”⁶ The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the APMEX Physical-1 oz. Gold Redeemable Trust⁷, as well as the ETFS Gold Trust⁸ and the Sprott Physical Gold Trust.⁹ In addition, the Commission has approved

⁵ See the registration statement for the Trust on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a), filed with the Commission on April 8, 2013 (No. 333-180868) (the “Registration Statement”). The descriptions of the Trust, the Shares and the gold market contained herein are based, in part, on the Registration Statement.

⁶ 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.

⁷ Securities Exchange Act Release No 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (“APMEX Release”).

⁸ Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40).

listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.¹⁰ Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (“NYSE”) and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.¹¹

The sponsor of the Trust is Merk Investments LLC (“Sponsor”), a Delaware limited liability company.¹² The trustee for the Trust is The Bank of New York Mellon (“Trustee”).¹³

⁹ Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113).

¹⁰ See Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust); 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

¹¹ See Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of streetTRACKS Gold Trust on NYSE); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

¹² The Sponsor generally oversees the performance of the Trustee and the Trust’s principal service providers, but does not exercise day-to-day oversight of the Trustee or such service providers.

The Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: the Trustee’s monthly fee and out-of-pocket expenses; the fee of the Custodian (as described below); the marketing support fees and expenses; expenses reimbursable under the custody agreement; the precious metals dealer’s fees and expenses reimbursable under its agreement with the Sponsor; Exchange listing fees; Commission registration fees; printing and mailing costs; maintenance expenses for the Trust’s website; audit fees and up to \$100,000 per annum in legal expenses. The Sponsor also will pay the costs of the Trust’s organization and the initial sale of the Shares, including applicable Commission registration fees. The Sponsor will undertake other activities for the Trust, as described in the Registration Statement.

¹³ The Trustee will be responsible for the day-to-day administration of the Trust. The Trustee’s responsibilities will include: (1) valuing the Trust’s physical gold and unallocated gold and calculating the net asset value (“NAV”) per Share of the Trust, (2) supplying inventory information to the Sponsor for the Trust’s website; (3) receiving and

The custodian is JPMorgan Chase Bank, N.A. (the “Custodian”).¹⁴

The Trust Shares

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust’s net assets. The Trust’s assets will consist principally of gold bullion held on the Trust’s behalf in financial institutions for safekeeping. The Trust’s gold

processing orders from “Authorized Participants” (as described below) for the creation and redemption of “Baskets” (as described below); (4) coordinating the processing of orders from Authorized Participants with the Custodian and The Depository Trust Company (“DTC”), including coordinating with the Custodian the receipt of unallocated gold transferred to the Trust in connection with each issuance of Baskets; (5) cooperating with the Sponsor, the precious metals dealer and the Custodian in connection with the delivery of “physical gold” (as defined below) to “Delivery Applicants”, as described below, in exchange for their Shares; (6) issuing and allocating Shares to the Sponsor in lieu of paying the fee to compensate the Sponsor (“Sponsor Fee”) in cash; (7) issuing and allocating Shares to the Sponsor to reimburse cash payments owed by the Trust, but undertaken by the Sponsor; (8) selling gold pursuant to the Sponsor’s direction or otherwise as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor; (9) holding the Trust’s cash and other financial assets, if any; (10) when appropriate, making distributions of cash or other property to investors; and (11) receiving and reviewing reports on the custody of and transactions in physical and unallocated gold from the Custodian and taking such other actions in connection with the custody of physical or unallocated gold as the Sponsor instructs.

¹⁴ The Custodian will be responsible for the safekeeping of the Trust’s allocated gold (as described below) and supplying inventory information to the Trustee and the Sponsor. The Custodian also will be responsible for facilitating the transfer of allocated gold and unallocated gold in and out of the Trust and facilitating the shipment of London Bars to Delivery Applicants. The Custodian will deposit into the Trust’s unallocated gold account (“Unallocated Account”) unallocated gold (as described below) received from an Authorized Participant in exchange for Baskets. The Custodian will promptly convert the deposit to allocated gold to be held in London Bars, as described below, unless the Sponsor instructs the Custodian to convert a portion of the unallocated gold received into physical gold for delivery to a Delivery Applicant. The Custodian has represented that it has policies and procedures in place to enable it to comply with its regulatory obligations in relation to appropriate information barriers and controls to safeguard client confidentiality, including, but not limited to, information barriers and controls between itself and its broker dealer affiliate so that its broker dealer affiliate will not have access to information concerning the composition and/or changes to the Trust’s holdings that are not available on the Trust’s website.

bullion will consist of (i) London Bars¹⁵ (“London Bars”) as allocated gold in the Trust Allocated Account¹⁶ and (ii) no more than 430 Fine Ounces¹⁷ of unallocated gold held with the Custodian in the Trust Unallocated Account¹⁸. The Trust may hold other types of physical gold¹⁹

¹⁵ According to the Registration Statement, a London Bar is a gold bar meeting the London Good Delivery Standards and is also known as a London Good Delivery Bar. According to the Registration Statement, the London Good Delivery Standards are the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars set forth in “The Good Delivery Rules for Gold and Silver Bars” published by the London Bullion Market Association (“LBMA”). According to the Registration Statement, a London Bar varies in size between 350 Fine Ounces and 430 Fine Ounces. As used herein, London Bars are one form of “physical gold” held by the Trust. See note 19.

¹⁶ According to the Registration Statement, allocated gold is stored in a vault under a custody arrangement, and the individual bars are the property of the owner. London Bars will be held by the Trust as allocated gold in the Trust Allocated Account.

¹⁷ Ounce is defined in the Registration Statement to mean one troy ounce, equal to 31.103 grams (1.0971428 ounces avoirdupois). Fine Ounce is defined in the Registration Statement as an Ounce of 100% pure gold.

¹⁸ According to the Registration Statement, unallocated gold (sometimes referred to as “paper gold”) is a claim on a non-specific pool of gold held by a financial institution. Gold is said to be held in unallocated form when the person in whose name such gold is held is entitled to receive delivery of gold in the amount standing to the credit of that person’s account, but that person has no ownership interest in any particular gold that the custodian for financial assets maintaining the account owns or holds. Unallocated gold facilitates transactions with Authorized Participants and to convert gold into different specifications to meet delivery requests from Delivery Applicants of physical gold. Upon receipt of a deposit of unallocated gold from an Authorized Participant, the Custodian will allocate such deposit to allocated gold consisting of London Bars held in the Trust Allocated Account. Because London Bars vary in size between 350 – 430 Fine Ounces, the Custodian may not have access to London Bars precisely matching the Fine Ounces of unallocated gold deposited by an Authorized Participant. However, the Custodian will transfer a deposit of unallocated gold into allocated gold in the Trust Allocated Account so that no more than 430 Fine Ounces remain in the Trust Unallocated Account.

¹⁹ According to the Registration Statement, the term “physical gold” means the physical gold bullion the Trust may hold, consisting of (i) London Bars, (ii) gold bars (other than London Bars) or gold coins, in each case without numismatic value and having a minimum fineness (or purity) of 99.5% or (iii) American Gold Eagle Coins. Unallocated gold is not considered “physical gold.”

for short periods, but only, if at all, in connection with the delivery of other types of physical gold to Delivery Applicants (as defined below). Thus, under these limited circumstances, the Trust may also hold (i) gold bars (other than London Bars) or gold coins, in each case without numismatic value and having a minimum fineness (or purity) of 99.5% or (ii) American Gold Eagle gold coins, with a minimum fineness of 91.67% (“American Gold Eagle Coins”), solely for delivery to an investor who would like to take delivery of physical gold in exchange for its Shares (such investor, a “Delivery Applicant”)²⁰. The Trust will not normally hold cash or any other assets, but may hold a very limited amount of cash in connection with the delivery of physical gold to Delivery Applicants as described below.

According to the Registration Statement, the Trust is not an investment company registered under the Investment Company Act of 1940, as amended²¹ (“1940 Act”), and is not required to register with the Commission thereunder. The Trust will not hold or trade in

²⁰ According to the Registration Statement, the Trust permits individual investors, known as Delivery Applicants, to deliver Shares to the Trust in an amount less than a Basket, in exchange for physical gold. Upon receipt of a Delivery Application, as defined below, from a Delivery Applicant and an appropriate number of Shares, the Trust will arrange for delivery of physical gold, in accordance with the procedures described herein, to the Delivery Applicant. In order to effect a transfer of physical gold (other than London Bars) to a Delivery Applicant, the Trust will instruct the Custodian to transfer an amount of unallocated gold from the Trust Unallocated Account equal to the Fine Ounce content of the requested physical gold to the unallocated account of a precious metals dealer. Such precious metals dealer will then acquire physical gold in such specifications as the Delivery Applicant may request and arrange for delivery of such physical gold to the Delivery Applicant. Delivery of London Bars to Delivery Applicants will be effected directly by the Custodian. Once physical gold has been released by the Custodian or the precious metals dealer to a delivery service, as described below, for delivery to a Delivery Applicant, the physical gold cannot be returned and is no longer the responsibility of the Trust, the Trustee, the Custodian the precious metals dealer or the Sponsor; until such release to a delivery service, the physical gold will remain the property of the Trust

²¹ 15 U.S.C. 80a-1.

commodity futures contracts regulated by the Commodity Exchange Act²² (“CEA”), as administered by the Commodity Futures Trading Commission (“CFTC”). The Trust is not a commodity pool for purposes of the CEA and neither the Sponsor nor the Trustee is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares²³.

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.²⁴

The Trust will not hold or employ derivatives.

Trust Objective

According to the Registration Statement, the objective of the Trust is to provide investors with an opportunity to invest in gold through Shares, and be able to take delivery of physical gold in exchange for their Shares. The Trust’s secondary objective is for the Shares to reflect the

²² 17 U.S.C. 1.

²³ The Trust, like certain other gold trusts, transacts with Authorized Participants through unallocated gold accounts. See, e.g., Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (approving listing on the Exchange of the ETFs Gold Trust) and SPDR Gold Trust’s Annual Report on Form 10-K for the year ended September 30, 2013. Unallocated gold, as described above, together with allocated gold held in the Trust Allocated Account and, under very limited circumstances, any physical gold pending delivery to a Delivery Applicant, cumulatively represents the Trust’s ownership of gold; the difference between allocated and unallocated gold accounts is that particular London Bars are designated as held in the Trust Allocated Account whereas the Trust Unallocated Account does not entitle the Trust to a particular London Bar. The Trust may hold no more than 430 Fine Ounces of unallocated gold in the Trust Unallocated Account. The Trust Unallocated Account is not itself an instrument or form of derivative contract, or other commodity futures contract, but instead represents actual gold credited to the account of, and held by, the Trust. As such, the Trust Unallocated Account is not a “commodity” and merely represents the manner in which the Trust’s gold is custodied, similar to a deposit in a bank account being represented by a credit to a depositor’s account.

²⁴ 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).

performance of the price of gold less the expenses of the Trust's operations. The Trust is not actively managed. It does not engage in any activities designed to obtain a profit from, or to compensate investors for losses caused by, changes in the price of gold.

According to the Registration Statement, the Shares will provide investors with the opportunity to access the gold market through a traditional brokerage account. Further, according to the Registration Statement, the shares are intended to constitute a cost-efficient mechanism for investors to make an investment in gold. Although the shares are not the exact equivalent of an investment in gold, they provide investors with an alternative that allows a level of participation in the gold market through the securities market.

Operation of the Trust

The Trust will hold its London Bars in allocated form in the Trust Allocated Account with the Custodian. The allocated gold will be held in a segregated fashion in the name of the Trust, not commingled with other depositor funds or assets. The Trust will have full title to the individually identified London Bars held in the Trust Allocated Account with the Custodian holding it on the Trust's behalf. Each investor will own a pro-rata share of the Trust, and as such will hold a pro-rata ownership interest in the Trust assets, corresponding to the number of Shares held by such investor. Trust holdings in the Trust Allocated Account will be identified in a weight list of bars published on the Trust's website showing the unique bar number, gross weight, the assay or fineness of each bar and its fine weight. Credits or debits to the holding [sic] will be effected by physical movements of bars to or from the Trust's physical holding [sic]. The Trust's holdings will be subject to periodic audits.

All physical gold and unallocated gold held by the Trust will be valued based upon the

Benchmark Price²⁵ for any day certain or, if the Benchmark Price for that day is not available, the most recently announced Benchmark Price prior to the evaluation time. However, if the Sponsor determines that the Benchmark Price is inappropriate as a basis for evaluation, it shall identify an alternative basis to be employed by the Trustee.

The Gold Market

According to the Registration Statement, global gold trade consists of the over-the-counter (“OTC”) market, the futures and options markets and the London interbank market. The OTC market accounts for the largest percentage of global gold trading volume. It trades on a 24-hour per business day continuous basis and provides a relatively flexible market in terms of quotes, size, price, destinations for delivery and other factors. The standard trade size ranges between 5,000 and 10,000 ounces.

OTC market makers include the nine market-making members of the LBMA, and the main centers are London, New York, and Zurich. Market participants include jewelry manufacturers, mining companies, central banks, investors and speculators. Liquidity in the OTC market varies during the day, with the most liquid time periods generally occurring in business day mornings, when trading hours in European time zones overlap with trading hours in the United States.

The London Bullion Market is the largest wholesale OTC market for gold and is operated by the LBMA, which acts as the principal point of contact between the market and its regulators. Gold must meet the requirements defined by the LBMA.

Futures and Options Exchanges

²⁵ Benchmark Price means, as of any day, (i) such day’s London PM Fix; or (ii) if such day’s London PM Fix is not available then such day’s London AM Fix; or (iii) if such day’s London AM Fix is not available then another publicly available price the Sponsor may determine fairly represents the commercial value of gold held by the Trust.

The major exchanges trading gold futures and options include the COMEX (an affiliate of the Chicago Mercantile Exchange, Inc. (“CME”)), the Multi Commodity Exchange of India, the Tokyo Commodities Exchange and the Shanghai Futures Exchange. Gold futures and options are traded on these exchanges in standardized transaction sizes and delivery dates. Only a small portion of the gold futures market turnover is typically physically delivered.

The COMEX is the largest gold futures and options exchange. In 2012, it represented approximately 79% of global futures and options trading volume. The Multi Commodity Exchange of India is the second largest futures exchange in terms of gold futures trading volume, accounting for around 7.0% of the world total. The Tokyo Commodities Exchange accounted for about 6.8% of total gold futures trading volume in 2012. The Shanghai Futures Exchange accounted for 6.6% of total gold futures trading volume in 2012.²⁶

Gold spot trades on over-the-counter markets throughout the world.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and redeem Baskets equal to a block of 50,000 Shares,²⁷ and only to Authorized Participants²⁸. Orders to create and redeem

²⁶ Source: The CPM Gold Yearbook 2013, Page 198-199. For additional information regarding the gold bullion market, gold futures exchanges, and regulation of the global gold market, see Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (order approving Exchange listing and trading of the ETFS Gold Trust). Additional information regarding the market for American Gold Eagle Coins is contained in the APMEX Release (see, note 3 [sic], supra).

²⁷ The Sponsor will also receive a fee that will accrue daily based on the prior business day’s net asset value and will be payable in Shares corresponding to the net asset value of the Shares at the time of payment on a monthly basis in arrears. According to the Registration Statement, paying the Sponsor’s fee in Shares of the Trust, rather than cash, eliminates the need for the Trust to sell gold to raise cash to pay the Sponsor’s fee.

²⁸ An Authorized Participant must: (1) be a registered broker-dealer or other securities market participant, such as a bank or other financial institution which, but for an

Baskets may be placed only by Authorized Participants. The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of unallocated gold represented by the Baskets being created or redeemed, the amount of which will be based on the combined Fine Ounces represented by the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

Creation Procedures – Authorized Participants

Only Authorized Participants will deliver unallocated gold to the Trust in exchange for Shares. Such deliveries will take place through unallocated accounts and the Trust will not accept the delivery of physical gold. According to the Registration Statement, unallocated gold is delivered to the Trust through credits and debits between Authorized Participants' unallocated accounts and the Trust Unallocated Account. When an Authorized Participant creates a Basket, unallocated gold will be transferred from an Authorized Participant to the Custodian. The transfer will appear as a debit to the Authorized Participant's unallocated account and a credit to the Trust Unallocated Account. On the same business day, the Custodian will convert the deposit of unallocated gold to allocated gold, to be held in the Trust Allocated Account, and store such allocated gold for safekeeping. The Custodian must convert unallocated gold deposits to allocated gold in the Trust Allocated Account such that no more than 430 Fine Ounces of

exclusion from registration, would be required to register as a broker-dealer to engage in securities transactions, (2) be a participant in DTC, and (3) have an agreement with the Custodian establishing an Unallocated Account in London or have an existing Unallocated Account with another LBMA-member custodian identified by the Authorized Participant to the Custodian and the Trustee. Gold held in Authorized Participants' Unallocated Accounts with the Custodian is typically not segregated from the Custodian's assets. As a result, an Authorized Participant establishing an Unallocated Account with the Custodian will have no proprietary interest in any specific bars of gold held by the Custodian. Credits to such an Unallocated Account are therefore at risk of the Custodian's or other bullion clearing bank's insolvency.

unallocated gold remain in the Trust Unallocated Account at the end of each business day.

On any business day²⁹, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Purchase orders must be placed by 3:59:59 p.m. Eastern time. The day on which the Trustee receives a valid purchase order is the purchase order date.

Determination of Required Deposits

The amount of the required deposit for a Basket will be determined by dividing the number of Fine Ounces of gold held by the Trust by the number of Baskets outstanding, as adjusted for the number of Fine Ounces of gold constituting estimated accrued but unpaid fees and expenses of the Trust. The number of Baskets outstanding is determined by dividing the number of Shares outstanding by 50,000 (or other number of Shares in a Basket for such business day). Fractions of a Fine Ounce of gold smaller than 0.001 of a Fine Ounce which are included in the unallocated gold deposit amount will be disregarded in the foregoing calculation.

Delivery of Required Deposits

An Authorized Participant who places a purchase order is responsible for crediting its unallocated gold account, if held at the Custodian, with the required deposit amount and, if the Authorized Participant does not maintain its unallocated gold account with the Custodian, causing the required deposit to be transferred to the Custodian, by 11:00 a.m. (London time) on the third business day following the purchase order date. Upon receipt of the deposit amount, the

²⁹ For purposes of processing both purchase and redemption orders, a “business day” means any day other than a day: (1) when the NYSE Arca is closed for regular trading; or (2), if the order or other transaction requires the receipt or delivery, or the confirmation of receipt or delivery, of gold in the United Kingdom or in some other jurisdiction on a particular day, (A) when banks are authorized to close in the United Kingdom or in such other jurisdiction or when the London gold market is closed or (B) when banks in the United Kingdom or in such other jurisdiction are, or the London gold market is, not open for a full business day and the transaction requires the execution or completion of procedures which cannot be executed or completed by the close of the business day.

Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer by 11:00 a.m. (London time) on the third business day following the purchase order date the deposit amount to the Trust Unallocated Account, and on the same business day, convert the deposit amount from the Trust Unallocated Account to the Trust Allocated Account such that no more than 430 Fine Ounces of unallocated gold remains [sic] in the Trust Unallocated Account. Upon confirmation of the conversion of the deposit amount to the Trust Allocated Account, the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account.

No Shares will be issued unless and until the Custodian has informed the Trustee that it has allocated to the Trust Allocated Account the corresponding allocated gold amount. If the Custodian notifies the Trustee and the Sponsor that it is unable to convert the deposit from the Trust Unallocated Account to the Trust Allocated Account in connection with a particular purchase order or generally, the Trustee will reject the particular purchase order as well as any other subsequent purchase orders on the same day.

Redemption Procedures – Authorized Participants

The procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed no later than 3:59:59 p.m. on each business day the NYSE Arca is open for regular trading. A redemption order so received will be effective on the date it is received in satisfactory form by the Trustee.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust no later than the third business day

following the effective date of the redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

The redemption distribution from the Trust will be effected by (i) conversion of allocated gold in the Trust Allocated Account to unallocated gold in the Trust Unallocated Account and (ii) a debit from the Trust Unallocated Account and credit to the redeeming Authorized Participant's unallocated account representing the amount of the gold held by the Trust evidenced by the Shares being redeemed as of the date of the redemption order. Fractions of a Fine Ounce of gold included in the redemption distribution smaller than 0.001 of a Fine Ounce are disregarded for such calculation. Redemption distributions will be subject to the deduction of any applicable tax, fee or other governmental charge that may be due as well as any charges or fees in connection with the transfer of gold and the issuance and delivery of shares, and any expense associated with the delivery of gold other than by credit to an Authorized Participant's unallocated account with the Custodian.

The redemption distribution due from the Trust will be delivered to the Authorized Participant on the third business day following the redemption order date if, by 9:00 a.m. Eastern time on such third business day, the Trustee's DTC account has been credited with the Baskets to be redeemed.

Suspension or rejection of redemption orders

The Trustee may, in its discretion, and will when directed by the Sponsor, suspend the right of redemption, or postpone the redemption settlement date or reject a particular redemption order, (1) for any period during which the NYSE Arca is closed other than customary weekend or holiday closings, or trading on the NYSE Arca is suspended or restricted or (2) for any period

during which an emergency exists as a result of which delivery, disposal or evaluation of gold is not reasonably practicable.³⁰ The Sponsor has represented that it will promptly notify the Exchange of any such suspension of redemption orders.

Taking Delivery of Physical Gold – Delivery Applicants

A Delivery Applicant wishing to deliver Shares of the Trust in exchange for physical gold must submit to the Sponsor a Delivery Application and payment for (1) the applicable processing fees, and (2) the applicable delivery fees to cover the cost of preparing and transporting physical gold from the Custodian or the precious metals dealer³¹ from which they were obtained to the location specified by the Delivery Applicant in the Delivery Application. The Sponsor will screen and pre-approve the Delivery Application.³² The Share Submission Day³³ will typically be the third business day following approval of the Delivery Application. The number of Shares to be delivered must (i) correspond to at least one Fine Ounce of physical gold and (ii) have a minimum dollar value in an amount that is specified by the Sponsor from time to time on the Trust's website. Taking delivery of physical gold is subject to guidelines intended to minimize the amount of cash that will be distributed with physical

³⁰ The Exchange may suspend trading in the Shares in the event the Sponsor suspends the right of redemptions.

³¹ The Sponsor will not be affiliated with any precious metals dealer.

³² Prior to pre-approving a Delivery Application, the Sponsor will coordinate with a precious metals dealer to evaluate if the physical gold (other than London Bars) is available in the type and quantity of physical gold requested by the Delivery Applicant, and that the delivery method and location can be agreed upon with the Delivery Applicant.

³³ According to the Registration Statement, the Share Submission Day is defined as the day on which a Delivery Applicant submits shares to the Trustee.

gold. The Delivery Application is not binding until Shares are delivered to the Trustee.³⁴

To minimize the cash portion of delivery by Delivery Applicants of physical gold for their Shares, the Sponsor will only approve Delivery Applications where the number of Shares to be submitted leads to a cash portion that is as low as practical in the assessment of the Sponsor. After the liquidation of unallocated gold to satisfy the cash portion of delivery, but before the actual delivery to the Delivery Applicant, the Trust will hold such cash temporarily.

Upon pre-approval of the Delivery Application by the Sponsor, a Delivery Applicant will be required to instruct its broker-dealer to submit the Delivery Application and transfer Shares to the Trustee; such submission and transfer by the broker-dealer will be a binding and irrevocable request to take delivery of physical gold in exchange for Shares based on instructions in the Delivery Application (“Share Submission”).

Once the Trustee has received a Delivery Applicant’s Share Submission, if the Delivery Applicant seeks physical gold other than London Bars, it will instruct the Custodian to (i) convert allocated gold not exceeding the Fine Ounces represented by the Shares surrendered as determined by the Sponsor from the Trust Allocated Account into unallocated gold in the Trust Unallocated Account, (ii) debit such amount of unallocated gold from the Trust Unallocated Account and credit a corresponding amount to the unallocated gold account of a precious metals dealer and (iii) instruct such precious metals dealer to acquire physical gold in the specifications

³⁴ Delivery Applicants may fail to submit Shares, or fail to submit Shares in the amount required on the Share Submission Day; accordingly, the Delivery Application is not binding until Shares are delivered to the Trustee. As noted above, the delivery of Shares in exchange for physical gold will take place at the NAV on the Share Submission Day such that any estimates provided in advance of the number of Shares required to be submitted must be non-binding since an additional Share or Shares may be required to be submitted if the NAV differs from the time the calculator is used so that neither the Delivery Applicant nor remaining shareholders are disadvantaged if the NAV changes between the time of the estimate and delivery.

requested by the Delivery Applicant and deliver such physical gold to the Delivery Applicant. Deliveries of London Bars will be effected by the Custodian.

Processing Fees

The exchange of Shares for the delivery of physical gold is subject to the following Processing Fees. The Processing Fees must be submitted with the Delivery Application. The Processing Fees include fees to compensate the Sponsor (“Exchange Fee”), and a delivery fee (“Delivery Fee”) associated with the transport of physical gold to Delivery Applicants.³⁵ The Delivery Fee is only applicable if delivery is made outside of the lower 48 States.

The Exchange Fee will compensate the Sponsor for services provided as part of the delivery process, including the cost to the Sponsor and the Trustee to process the Share Submission; and the cost associated with OTC transactions to convert gold held by the Trust into physical gold of different specifications, if applicable. The Exchange Fee is a percentage of the value of the gold represented by the Shares submitted on the Share Submission day based on the most recent quarter’s end spot price of gold, as set forth in the Registration Statement, subject to minimum fees as follows:

³⁵ The Exchange Fee will vary depending on the type of physical gold a Delivery Applicant would like to take delivery of and reflect costs arising from: reviewing Delivery Applications, coordinating with Delivery Applicants and the Trust’s other service providers, the conversion of London Bars into physical gold to be delivered, and the related expenses of the Trustee and the Sponsor. The Exchange Fee for London Bars will be set at 2.5%. A delivery fee (as described in the Registration Statement) will cover the cost of the physical transfer to the Delivery Applicant.

<u>Type of Physical Gold</u>	<u>Percentage</u>	<u>Minimum Charge</u>
1 ounce Coins: American Gold Eagle	7%	\$7,000
1 ounce Coins: other qualifying	6%	\$6,000
1 ounce Bars	3.5%	\$3,500
10 ounce Bars	2.5%	\$2,500
London Bars	2.5%	None

The Sponsor may waive or reduce applicable Processing Fees from time to time. Any waiver or reduction in applicable Processing Fees will be published on the Trust’s website and available to any eligible Delivery Applicant. Although waivers or reductions in Processing Fees are not currently available, in the future, waivers or reductions may apply during certain limited time periods, for Delivery Applicants seeking particular types of physical gold (i.e., coins or bars), or for Delivery Applicants completing multiple Delivery Applications over proscribed time periods.

Delivery Method

The Trustee will instruct the Custodian or the Sponsor shall instruct the precious metals dealer, as applicable, to deliver physical gold to a Delivery Applicant based on instructions in the Delivery Application. Once physical gold has been released by the Custodian or the precious metals dealer to a delivery service, as described below, for delivery to a Delivery Applicant, the physical gold cannot be returned and is no longer the responsibility of the Trust, the Trustee, the Custodian, the precious metals dealer or the Sponsor.

The Custodian will ship London Bars and the precious metals dealer will ship all other forms of physical gold to a Delivery Applicant fully insured using accepted business practices for precious metals delivery that may include, amongst others, use of a conventional shipping carrier or an armored transportation service.

Valuation of Gold and Computation of Net Asset Value

On each business day that the NYSE Arca is open for regular trading, as promptly as practicable after 4:00 p.m., Eastern time, the Trustee will value the physical gold and unallocated gold held by the Trust and will determine the NAV of the Trust, as described below.

The NAV of the Trust will be the aggregate value of physical gold and unallocated gold of the Trust (other than amounts credited to the Trust's reserve account, if any) and cash, if any, less liabilities of the Trust, which include estimated accrued but unpaid fees and expenses. All physical gold and unallocated gold will be valued based on its Fine Ounce content, calculated by multiplying the weight of gold by its purity; the same methodology is applied independent of the type of physical gold and unallocated gold held by the Trust. Similarly, the value of up to 430 Fine Ounces of unallocated gold the Trust may hold is calculated by multiplying the number of Fine Ounces with the price of gold determined by the Trustee, as described below.

In determining the NAV of the Trust, the Trustee will value the physical gold and unallocated gold held by the Trust on the basis of the price of a Fine Ounce of gold as set by the afternoon session of the twice daily fix of the price of a Fine Ounce of gold which starts at 3:00 p.m. London, England time and is performed by the five members of the London gold fix. If no London PM Fix is made on a particular evaluation day, the gold price from that day's London AM Fix will be used in the determination of the NAV of the Trust or, if such day's London AM Fix is not available, then another publicly available price which the Sponsor may determine fairly represents the commercial value of gold held by the Trust will be used.

According to the Registration Statement, physical gold in the Trust will be valued at the price of gold independent of location and type of physical gold. The price of gold commonly quoted refers to the price of a London Bar in London. Any physical gold that is not a London

Bar located in London may obtain a bid price when offered for sale that deviates from the price of gold. Nonetheless, the Trustee will value all physical gold at the price of gold. Conversely, in the unlikely event that such a conversion yields a profit, the Sponsor, not the Trust, will keep such profit. As a result, the value of physical gold in the Trust will be limited to the price of gold multiplied by the Fine Ounce content of the physical gold. Similarly, when investors exchange their Shares for physical gold other than London Bars, the Shares also will be valued at the price of gold for purposes of calculating their share in the Trust. The Sponsor may recover this conversion cost as part of the Exchange Fee.

Once the value of gold has been determined, the Trustee will subtract all estimated accrued but unpaid fees (other than the fees accruing for such day on which the valuation takes place computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of physical gold and unallocated gold and any other assets of the Trust, including cash, if any. The resulting figure will be the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE Arca (which will include the net number of any Shares created or redeemed on such evaluation day).

Prior to commencement of trading on the Exchange, the Exchange will obtain a representation from the Sponsor that the NAV will be calculated daily and will be made available to all market participants at the same time.

Termination of the Trust

The Trustee will notify investors at least 30 days before the date for termination of the Trust Agreement and the Trust if any of the following occurs:

- The Trustee is notified that the Shares are delisted from the NYSE Arca and are

not approved for listing on another national securities exchange within five business days of their delisting;

- Investors acting in respect of at least 75% of the outstanding Shares notify the Trustee that they elect to terminate the Trust;
- 60 days have elapsed since the Trustee notified the Sponsor of the Trustee's election to resign or since the Sponsor removed the Trustee, and a successor trustee has not been appointed and accepted its appointment;
- any sole Custodian then acting resigns or is removed and no successor custodian has been employed within 60 days of such resignation or removal;
- the Commission determines that the Trust is an investment company under the 1940 Act, and the Trustee has actual knowledge of such Commission determination;
- the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act, and the Trustee has actual knowledge of that determination;
- the aggregate market capitalization of the Trust, based on the closing price for the Shares, is less than \$350 million (as adjusted for inflation by reference to the U.S. Consumer Price Index) at any time more than 18 months after the Trust's formation, and the Trustee receives, within six months after the last trading date on which such capitalization (as so based) was less than \$350 million, notice from the Sponsor of its decision to terminate the Trust;
- the Trust fails to qualify for treatment, or ceases to be treated, as a "grantor trust" for federal tax purposes, and the Trustee receives notice from the Sponsor that the Sponsor determines that, because of that tax treatment or change in tax treatment,

termination of the Trust is advisable; or

- 60 days have elapsed since DTC or another depository has ceased to act as depository with respect to the Shares, and the Sponsor has not identified another depository that is willing to act in such capacity.

Availability of Information

The website for the Trust (www.merkgold.com), which the Trust will launch upon the closing of the initial public offering, will contain the following information, on a per Share basis, for the Trust:

- (a) the midpoint of the bid-ask price 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 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 website for the Trust will also provide the Trust’s prospectus, as well as the two most recent reports to stockholders.

The Trust website also will provide the last sale price of the Shares as traded in the US market, as well as a breakdown of the holdings of the Trust by the form in which gold is held. The value of the Trust’s holdings will be reported on the Trust’s website daily. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”).

Investors may obtain gold pricing information based on the spot price for a Fine Ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust’s website will

provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website.

Each day the NYSE Arca is open for trading, the Sponsor will publish on the Trust's internet website a calculator to estimate the smallest whole number of Shares greater than the net assets of the Trust corresponding to the Fine Ounces of physical gold requested ("Share Submission Quantity") and the "Cash Proceeds" (i.e., the difference between the value of a Delivery Applicant's Shares and the value of physical gold to be delivered to the Delivery Applicant) for an exchange of one American Gold Eagle Coin, a London Bar or a bar of physical gold of another specification. The actual Cash Proceeds will be the net proceeds received from the sale of the excess Fine Ounces included in the Share Submission Quantity. The Share Submission Quantity may be rejected if the Trust incurs extraordinary expenses between the submission of the Delivery Application and the Share Submission Day.

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange. In addition, there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.³⁶

³⁶ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds. The Sponsor anticipates that the IIV will be calculated by a market vendor who provides IIVs

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for a Fine Ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers.

Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its website. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at www.thebulliondesk.com.

The Trust's daily NAV will be posted on the Trust's website as soon as practicable. The Exchange will provide on its website (www.nyx.com) a link to the Trust's website. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

for several other products. Currently, the gold price expected to be used by the market vendor for calculating the IIV is the mid point of the bid and ask price of the 24-hour Reuters composite spot rate in gold.

The Trust and the Shares will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

The Exchange will require that a minimum of 100,000 Shares will be outstanding at the start of trading. The minimum number of Shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the Sprott Physical Gold Trust.³⁷ The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

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. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

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 gold 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

³⁷ See note 7 [sic], supra.

are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.³⁸ The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

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.

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(g), 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 gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity

³⁸ See NYSE Arca Equities Rule 7.12.

underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

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. 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.

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(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders 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 or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁹ The Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG membership of CME and NYMEX.

³⁹ A list of ISG members is available at www.isgportal.org.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

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; (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) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) the possibility that trading spreads and the resulting premium or discount on the Shares 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 (5) trading information. 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 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 gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold 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 basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴⁰ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG membership of CME and NYMEX.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on

⁴⁰ 15 U.S.C. 78f(b)(5).

the spot price for a Fine Ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. In addition, the London AM Fix and London PM Fix are publicly available at no charge at www.thebulliondesk.com. The Trust's website will also provide the Trust's prospectus, as well as the two most recent reports to stockholders, when available. The Exchange will provide on its website a link to the Trust's website. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above,

investors will have ready access to information regarding gold pricing and gold futures information.

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. The Exchange believes the proposed rule change would permit listing and trading on the Exchange of an additional and unique issue of Commodity-Based Trust Shares based on gold, which will enhance competition among market participants, to the benefit of investors and the marketplace.

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.

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

Within 45 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 or disapprove the 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. Please include File Number SR-NYSEArca-2013-137 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-NYSEArca-2013-137. 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-NYSEArca-2013-137 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.⁴¹

Kevin M. O'Neill
Deputy Secretary

⁴¹ 17 CFR 200.30-3(a)(12).