

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70195; File No. SR-NYSEArca-2013-61)

August 14, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to List and Trade Units of the First Trust Gold Trust Pursuant to NYSE Arca Equities Rule 8.201

I. Introduction

On June 11, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade units (“Units”) of the First Trust Gold Trust (“Trust”) pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the Federal Register on July 1, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Units under NYSE Arca Equities Rule 8.201,<sup>4</sup> which governs the listing and trading pursuant to unlisted trading privileges of Commodity-Based Trust Shares.<sup>5</sup> The Exchange has represented that the Units satisfy the requirements of

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

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

<sup>3</sup> See Securities Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399 (July 1, 2013) (“Notice”). Terms not defined herein are defined in the Notice.

<sup>4</sup> The Trust expects that Units also will be listed and traded on the Toronto Stock Exchange (“TSX”). See id. at 39400.

<sup>5</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. See id. at 39399.

NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.<sup>6</sup> The Exchange deems the Units to be equity securities and therefore subject to the Exchange's rules governing the trading of equity securities.<sup>7</sup>

FT Portfolios Canada Co. will be the trustee and manager of the Trust ("Manager"),<sup>8</sup> and The Bank of Nova Scotia Trust Company will be the custodian of the Trust's assets ("Trust Custodian"). Equity Financial Trust Company will process redemption orders and transfers for the Trust ("Transfer Agent"). CIBC Mellon Trust Company ("Valuation Agent") will calculate the value of the net assets of the Trust on a daily basis and reconcile all purchases and redemptions of Units to determine the net asset value per Unit ("NAV").

According to the Registration Statement,<sup>9</sup> the Trust was created to invest and hold substantially all of its assets in physical gold bullion.<sup>10</sup> The Exchange states that the Trust seeks to provide a secure, convenient, and exchange-traded investment alternative for investors

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<sup>6</sup> See id. at 39400.

<sup>7</sup> See id. at 39405.

<sup>8</sup> The Manager is a company subsisting under the laws of Nova Scotia. The Manager is responsible for the day-to-day activities and administration of the Trust. The Manager manages, or causes to be managed, the Trust pursuant to the declaration of trust. See id.

<sup>9</sup> See the draft registration statement for the Trust on Form F-1, filed with the Commission on March 19, 2013 (File No. 377-00130) (the "Registration Statement"). According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940 nor a commodity pool for purposes of the Commodity Exchange Act.

<sup>10</sup> According to the Registration Statement, at least 90% of the net assets of the Trust will be invested in allocated kilogram bars of physical gold bullion with a fineness of 0.995 or higher that are manufactured by refiners recognized by the London Bullion Market Association for the production of good delivery bars ("Kilogram Bars"). The Trust is subject to various investment and operating restrictions ("Restrictions") and will not invest in gold certificates or other financial instruments that represent gold or that may be exchanged for gold. The Trust will not speculate with regard to short-term changes in gold prices. See Notice, supra note 3, at 39400.

interested in holding physical gold bullion.<sup>11</sup> Each outstanding Unit will represent an equal, fractional, undivided ownership interest in the Trust. Units will be redeemable monthly, directly from the Trust, for physical gold bullion or cash, as described in the Notice and Registration Statement.

Additional information regarding the Trust, including NAV calculation, operation of the Trust, restrictions, risks, expenses, and redemptions of Units, can be found in the Notice and/or Registration Statement.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade Units is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>13</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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 Commission also finds that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act, 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

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<sup>11</sup> See id.

<sup>12</sup> 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).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

investors of information with respect to quotations for and transactions in securities. Last sale, quotation information, trading volume, closing prices and NAV for the Units from the previous day will be available via the Consolidated Tape.<sup>14</sup> The Trust’s website will provide an intraday indicative value (“IIV”) per share for the Units, which will be calculated by a third party financial provider and disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session.<sup>15</sup> The website also will include, on a per Unit basis, for the Trust, (1) 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; (2) 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; and (3) the Trust’s prospectus, as well as the two most recent reports to stockholders.<sup>16</sup> The Trust’s website also will provide the last sale price of the Units as traded in the U.S. market.<sup>17</sup> Furthermore, 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 Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Trust’s website will post the daily NAV, a breakdown of the holdings of the Trust.<sup>18</sup> The Commission notes that the Exchange will obtain a representation from the issuer of the Units that the NAV

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<sup>14</sup> See Notice, supra note 3, 78 FR at 39404.

<sup>15</sup> See id. The Exchange states that 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 will be calculated once a day. See id.

<sup>16</sup> See id.

<sup>17</sup> See id.

<sup>18</sup> The Exchange will provide a link to the Trust on its website. See id.

will be calculated on each business day and will be made available to all market participants at the same time.<sup>19</sup> Moreover, investors may obtain gold pricing information from a variety of service providers and newspapers. For example, financial information service providers offer, on a 24-hour basis, gold pricing information based on the spot price of an ounce of gold from various financial information providers.<sup>20</sup> Real-time data for gold futures and options prices traded on the COMEX, an affiliate of the Chicago Mercantile Exchange, Inc., are also available by subscription.<sup>21</sup>

The Exchange will consider suspending trading in the Units 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, or Custodian, or the Exchange stops providing a hyperlink on its website to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis.<sup>22</sup> If the IIV is not being disseminated as

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<sup>19</sup> See id. 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.

<sup>20</sup> See id.

<sup>21</sup> The data is available by subscription from Reuters and Bloomberg. The New York Mercantile Exchange also provides delayed futures and options information on current and past trading session and market news free of charge on its website. EBS Market provides an electronic trading platform to institutions for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. See id.

<sup>22</sup> See NYSE Arca Equities Rules 8.200(e)(2)(iv) and (v). More generally, NYSE Arca may halt trading in the Units on the Exchange because of market conditions or for reasons that, in the Exchange's view, make trading in the Units inadvisable, including: (1) the extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or (3) in the event that the TSX halts trading in the Units. See id. at 39405. Additionally, trading in the Units will

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.<sup>23</sup> The Exchange will halt trading in the Units if the Manager, on behalf of the Trust, directs the Trust's Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV.<sup>24</sup>

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

- (1) The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.<sup>25</sup>
- (2) The trading surveillance procedures administered by the Financial Industry Regulatory Authority on behalf of the Exchange 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.<sup>26</sup>
- (3) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders ("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: (a) the procedures for purchases and redemptions of Units; (b) 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; (c) the requirement that ETP Holders

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be subject to trading halts caused by extraordinary market volatility pursuant to NYSE Arca's "circuit breaker" rule. See NYSE Arca Equities Rule 7.12.

<sup>23</sup> See Notice, supra note 3, at 39405.

<sup>24</sup> See id.

<sup>25</sup> See id.

<sup>26</sup> See id.

deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (d) 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 (e) trading information.<sup>27</sup>

- (4) A minimum of 100,000 Units will be outstanding at the commencement of trading on the Exchange.<sup>28</sup>

This order is based on the Exchange's representations.

For the forgoing reasons, the Commission believes the Exchange's proposal to list and trade the Units is consistent with the Exchange Act.

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<sup>27</sup> See id.

<sup>28</sup> See id.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>29</sup> that the proposed rule change (SR-NYSEArca-2013-61) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

Kevin M. O'Neill  
Deputy Secretary

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

<sup>30</sup> 17 CFR 200.30-3(a)(12).