

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50792; File No. SR-Amex-2004-38)

December 3, 2004

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 2, 3 and 4 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of the iShares® COMEX Gold Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 24, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 9, 2004, Amex amended its proposal; however, the Exchange withdrew this amendment on November 17, 2004. On November 10, 2004 the Exchange submitted a second amendment.³ On November 16, 2004, the Exchange submitted a third amendment.⁴ On December 1, 2004, the Exchange submitted a fourth amendment.⁵ The Commission is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 2, dated November 10, 2004 (“Amendment No. 2”). In Amendment No. 2, the Exchange revised the proposed rule text and corresponding description. Amendment No. 2 replaced Amex’s original filing in its entirety.

⁴ See Amendment No. 3, dated November 16, 2004 (“Amendment No. 3”). In Amendment No. 3, the Exchange proposed clarifying changes to certain aspects of Amendment No. 2 and modified the proposed rule text.

⁵ See Amendment No. 4, dated December 1, 2004 (“Amendment No. 4”). In Amendment No. 4, the Exchange provided additional description of the creation and redemption process for the Gold Trust shares and made clarifying changes to the proposed rule text. Amendment No. 4 replaced Amex’s amended proposal in its entirety.

publishing this notice to solicit comments on the proposed rule change, as amended, 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 under new Amex Rules 1200A *et seq.* iShares® COMEX Gold Trust Shares (“Gold Shares”). The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

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Exchange Rules

Commodity-Based Trust Shares

Rule 1200A. (a) Applicability. The Rules in this Section are applicable only to Commodity-Based Trust Shares. In addition, except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Trust Issued Receipt rules and the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Commodity-Based Trust Shares are included within the definition of “security” or “securities” as such terms are used in the Constitution and Rules of the Exchange.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

- (1) Commodity-Based Trust Shares. The term “Commodity-Based Trust Shares” means a security (a) that is issued by a trust (the “Trust”)

that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.

(2) Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

Commentary

.01 A Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the Trust.

.02 The Exchange requires that members and member organizations provide to all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-based Trust Shares.

.03 Transactions in Commodity-Based Trust Shares will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series, as specified by the Exchange.

.04 (a) Limit Orders -- Members and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same Commodity-Based Trust, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Commodity-Based Trust Shares on a regular or continuous basis. In determining whether a member or

beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same Commodity-Based Trust Shares; the multiple acquisition and liquidation of positions in the same Commodity-Based Trust Shares during the same day; and the entry of multiple limit orders at different prices in the same Commodity-Based Trust Shares.

(b) Members and member organizations may not enter, nor permit the entry of, orders into the Exchange's order routing system if those orders are (i) created and communicated electronically without manual input (i.e., order entry by public customers or associated persons of members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent) and (ii) eligible for execution through the Exchange's automatic execution system for Commodity-Based Trust Shares. Nothing in this paragraph, however, prohibits members from electronically communicating to the Exchange orders manually entered by customers into front-end communication systems (e.g., Internet gateways, on-line networks, etc.).

Designation of an Underlying Commodity

Rule 1201A. The Exchange may list and trade Commodity-Based Trust Shares based on an underlying commodity. Each issue of a Commodity-Based Trust Share shall be designated as a separate series and shall be identified by a unique symbol.

Initial and Continued Listing

Rule 1202A. Commodity-Based Trust Shares will be listed and traded on the Exchange subject to application of the following criteria:

(a) Initial Listing--The Exchange will establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Listing--The Exchange will remove from listing Commodity-Based Trust Shares under any of the following circumstances:

(i) if following the initial twelve month period following the commencement of trading of the shares, (A) the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity-Based Trust Shares for 30 or more consecutive trading days; (B) if the Trust has fewer than 50,000 receipts issued and outstanding; or (C) if the market value of all receipts issued and outstanding is less than \$1,000,000;

(ii) if the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;

(iii) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis; or

(iv) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Commodity-Based Trust Shares issued in connection with such Trust be removed from Exchange listing. A Trust

may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

(c) Term -- The stated term of the Trust shall be as stated in the Trust prospectus. However, a trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee--The following requirements apply:

1. The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
2. No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

(e) Voting--Voting rights shall be as set forth in the applicable Trust prospectus.

Commentary

.01 The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading Commodity-Based Trust Shares designated on different underlying commodities.

Specialist Prohibitions

Rule 1203A. Rule 175(c) shall be deemed to prohibit an equity specialist, his member organization, or any other member, limited partner, officer, or approved person thereof

from acting as a market maker or functioning in any capacity involving market-making responsibilities in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives. However, an approved person of an equity specialist that has established and obtained Exchange approval of procedures restricting the flow of material, non-public market information between itself and the specialist member organization pursuant to Rule 193, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Commodity-Based Trust Shares on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Commentary

.01 In connection with Commodity-Based Trust Shares, Commentaries .01, .02 and .07 of Rule 170 shall not apply to the trading of Trust Shares for the purpose of bringing the price of the Trust Shares into parity with the value of the underlying commodity on which the Trust Shares are based, with the net asset value of the Trust comprising the Shares or with a futures contract on the underlying commodity on which the Trust Shares are based. Such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.

Securities Accounts and Orders of Specialists

Rule 1204A. (a) The member organization acting as specialist in Commodity-Based Trust Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be

reported to the Exchange (See Rule 170). In addition, the member organization acting as specialist in Commodity-Based Trust Shares must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Commodity-Based Trust Shares shall trade in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (See, e.g. Rule 31), the member organization acting as a specialist in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, member organization, limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

(c) In connection with trading the underlying physical commodity, related commodity futures or options on commodity futures or any other related commodity

derivative (including Commodity-Based Trust Shares), the specialist registered as such in Commodity-Based Trust Shares shall not use any material nonpublic information received from any person associated with a member, member organization or employee of such person regarding trading by such person or employee in the physical commodity, commodity futures or options on commodity futures, or any other related commodity derivatives.

Limitation of Exchange Liability

Rule 1205A. Neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; net asset value; or other information relating to the purchase, redemption or trading of Commodity-Based Trust Shares, resulting from any negligent act or omission by the Exchange or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity.

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Amex Company Guide

Section 140. Original Listing Fees

Stock Issues – No Change

Issues Listed Under Section 106 (Currency and Index Warrants) and Section 107 (other Securities) – No Change

Warrants – No Change.

Bonds – No Change.

Index Fund Shares, Trust Issued Receipts, Commodity-Based Trust Shares and Closed-End Funds – The original listing fee for Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200, Commodity-Based Trust Shares listed under Rule 1200A and Closed-End Funds listed under Section 101 of the Company Guide is \$5,000 for each series or Fund, with no application processing fee.

Special Shareholder Rights Plans – No Change.

Section 141. Annual Fees

Stock Issues; Issues Listed Under Sections 106 and 107; [and] Rules 1200 (Trust Issued Receipts) and 1200A (Commodity-Based Trust Shares); and Closed-End Funds

Shares Outstanding	Fees
5,000,000 shares or less	\$15,000 (minimum)
5,000,001 to 10,000,000 shares	17,500
10,000,001 to 25,000,000 shares	20,000
25,000,001 to 50,000,000 shares	22,500
In excess of 50,000,000 shares	30,000 (maximum)

The Board of Governors or its designee may, in its discretion, defer, waive or rebate all or any part of the applicable annual listing fee specified above excluding the fees applicable to issues listed under Sections 106 and 107 and rule 1200 (Trust Issued Receipts); and Closed-End Funds.

Issues Listed Under Rule 1000A (Index Fund Shares)

Shares Outstanding	Fees
1,000,000 shares or less	\$6,500 (minimum)
1,000,001 to 2,000,000 shares	7,000
2,000,001 to 3,000,000 shares	7,500
3,000,001 to 4,000,000 shares	8,000
4,000,001 to 5,000,000 shares	8,500
5,000,001 to 6,000,000 shares	9,000
6,000,001 to 7,000,000 shares	9,500
7,000,001 to 8,000,000 shares	10,000
8,000,001 to 9,000,000 shares	10,500
9,000,001 to 10,000,000 shares	11,000
10,000,001 to 11,000,000 shares	11,500
11,000,001 to 12,000,000 shares	12,000

12,000,001 to 13,000,000 shares	12,500
13,000,001 to 14,000,000 shares	13,000
14,000,001 to 15,000,000 shares	13,500
15,000,001 to 16,000,000 shares	14,000
In excess of 16,000,000 shares	14,500 (maximum)

The annual fee is payable in January of each year and is based on the total number of all classes of shares (excluding treasury shares) and warrants according to information available on Exchange records as of December 31 of the preceding year. (The above fee schedule also applies to companies whose securities are admitted to unlisted trading privileges.)

In the calendar year in which a company first lists, the annual fee will be prorated to reflect only that portion of the year during which the security has been admitted to dealings and will be payable within 30 days of the date the company receives the invoice, based on the total number of outstanding shares of all classes of stock at the time of original listing.

The annual fee for issues listed under Rule 1000A (Index Fund Shares), [and] Rule 1200 (Trust Issued Receipts) and Rule 1200A (Commodity-Based Trust Shares) is based upon the number of shares of a series of Index Fund Shares, [or] Trust Issued Receipts or Commodity-Based Trust Shares outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an open-end management investment company, or for multiple series of Trust Issued Receipts and/or Commodity-Based Trust

Shares, the annual listing fee is based on the aggregate number of shares in all series outstanding at the end of each calendar year.

The annual fee for a Closed-End Fund listed under Section 101 of the Company Guide is based upon the number of shares outstanding of such Fund at the end of each calendar year. For multiple Closed-End Funds of the same sponsor, the annual listing fee is based on the aggregate number of shares outstanding of all such Funds at the end of each calendar year.

Bond Issues – No Change.

Late Fee – No Change.

NOTE: No Change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Section 1200A et seq. for the purpose of

permitting the listing and trading of Trust Issued Receipts (i.e., Trust Shares)⁶ based on commodity interests. In particular, the Amex initially proposes to list iShares COMEX⁷ Gold Trust (the “Gold Trust” or “Trust”) Shares that represent beneficial ownership interests in the net assets of the Trust consisting primarily of gold. The trustee of the Trust will not actively manage the gold held by the Trust, and therefore, a holder of Gold Shares will not be hedged to protect against the price volatility of the underlying gold.⁸

Under Amex Rule 1201, the Exchange may approve for listing and trading TIRs based on one or more securities.⁹ The Amex proposes to list for trading Gold Shares under proposed Rule 1200A et seq.

⁶ A Trust Issued Receipt or “TIR” is defined in Exchange Rule 1200(b) as a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

⁷ COMEX is a division of the New York Mercantile Exchange, Inc. (“NYMEX”) where gold futures contracts are traded.

⁸ The Exchange submits that Gold Shares may be used as a price discovery mechanism for gold from 1:30 pm to 4:15 p.m. New York time. The open outcry trading hours of the COMEX gold futures contract is from 8:20am to 1:30pm New York time Monday through Friday. NYMEX ACCESS®, an electronic trading system, is open for price discovery on COMEX gold futures contracts from 2:00 p.m. Monday afternoon until 8:00 a.m. Friday morning New York time; and from 7:00 p.m. Sunday night until Monday morning at 8:00 a.m. New York time.

⁹ The Exchange defines a “security” or “securities” to include stocks, bonds, options, and other interests or instruments commonly known as securities. See Article I, Section 3(j) of the Amex Constitution.

Introduction

In September 1999, the Exchange adopted rules for the listing and trading of TIRs.¹⁰ TIRs are negotiable receipts issued by trusts that represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. Since that time the Exchange has listed seventeen (17) TIRs under the trade name of HOLDRS, representing a wide variety of industry sectors and the market as a whole.

To accommodate the listing of additional TIRs, the Exchange in September 2000 revised the existing listing criteria and trading rules to permit the listing and trading of TIRs pursuant to Rule 19b-4(e) under the Act (the "Generic Listing Standards").¹¹

Because of the structure of the Gold Trust, representing an interest in underlying gold, the current Generic Listing Standards cannot be used by the Exchange to list this product. However, the Exchange submits that the Gold Shares may be listed for trading pursuant to proposed Rule 1200A et seq., subject to Commission review and approval.

Under proposed Rule 1201A, the Exchange may list and trade trust shares based on an underlying commodity (the "Commodity-Based Trust Shares"). For each separate

¹⁰ See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) ("TIR Approval Order").

¹¹ 17 CFR 240.19b-4(e). Rule 19b-4(e), adopted by the Commission on December 8, 1998, permits the Exchange to list and trade new derivative securities products without a rule change provided the Exchange has in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

and discrete commodity interest that may underlie a trust, the Exchange will submit a filing pursuant to Section 19(b) of the Act¹² subject to Commission review and approval.

The Gold Shares will conform to the initial and continued listing criteria under proposed Rule 1202A.¹³ The Gold Trust will be formed under a depositary trust agreement, among Bank of New York (“BNY”), the Trustee, Barclays Global Investors, N.A. (“Barclays”), the Sponsor, all depositors, if any, and the holders of Gold Shares.¹⁴

The Exchange notes that the Commission has permitted the listing and trading of products linked to the performance of an underlying commodity or commodities.¹⁵

¹² 15 U.S.C. 78s(b).

¹³ Proposed Rule 1202A for Commodity-Based Trust Shares tracks but is not identical to current Rule 1202 relating to TIRs. The initial listing standards set forth in Rule 1202(a) provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section “Criteria for Initial and Continued Listing,” the Exchange expects the minimum number of Gold Shares required to be outstanding at the time of trading to be 150,000. This section, *infra*, specifically details the initial and continued listing standards for Commodity-Based Trusts such as the Gold Trust.

¹⁴ The trust is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (the “1940 Act”).

¹⁵ See Securities Exchange Act Release Nos. 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (approving the listing and trading of commodity index preferred or debt securities (ComPS) on various agricultural futures contracts and commodities indexes); 36885 (February 26, 1996), 61 FR 8315 (March 4, 1996)(approving the listing and trading of ComPS linked to the value of single commodity); 35518 (March 21, 1995), 60 FR 15804 (March 27, 1995) (approving the listing and trading of commodity indexed notes or COINS); and 43427 (October 10, 2000), 65 FR 62783 (October 19, 2000) (approving the listing and trading of inflation indexed securities). See also Central Fund of Canada (Registration No. 033-15180) (closed-end fund listed and traded on the Amex that invests in gold) and Salmon Phibro Oil Trust (Registration No. 033-33823) (trust units listed and traded on the Amex that held the right to a forward contract for the delivery of crude oil).

Description of the Gold Market

In its filing with the Commission, the Exchange made the following representations regarding the worldwide gold market. The gold market is a global marketplace consisting of both over-the-counter (“OTC”) transactions and exchange-traded products. The OTC market generally consists of transactions in spot, forwards, options and other derivatives, while exchange-traded transactions consist of futures and options. A description of each of the OTC and exchange-traded markets for gold as well as the regulation is set forth below.

(a) The OTC Market

The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads – the differential between a dealer’s buy and sell prices. The period of greatest liquidity in the gold market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in London, New York and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four (4) hours each New York business day morning.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London, New York and Zurich. Bullion dealers have offices around the world, and most of the world’s major bullion dealers are either members or associate members of the London Bullion Market Association (“LBMA”), a trade association of participants in the London Bullion market.

There are no authoritative published figures for overall worldwide volume in gold trading. There are published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.¹⁶ The monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day. Through September 2004, the monthly average daily volume has ranged from a high of 17 million to a low of 12.4 million. The COMEX also publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold futures and options contracts was 4.89 million (48,943 contracts) and 1.7 million (17,241 contracts) troy ounces per day, respectively. Through October 2004, the average daily volume for gold futures and options was 6.08 million (60,817 contracts) and 2.01 million (20,173 contracts), respectively.¹⁷

(b) Futures Exchanges

¹⁶ Information regarding clearing volume estimates by the LBMA can be found at http://www.lbma.org.uk/clearing_table.htm. The three measures published by the LBMA are: volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in US dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

¹⁷ Information regarding average daily volume estimates by the COMEX can be found at http://www.nymex.com/jsp/markets.md_annual_volume6.jsp#2. The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

The most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange (“TOCOM”).¹⁸ Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. As a matter of practice, only a small percentage of the future market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as counterparty for each member for clearing purposes.

(c) Gold Market Regulation

There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur. In the United Kingdom, responsibility for the regulation of financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (“FSA”) as provided by the Financial Services and Market Act of 2000 (“FSM Act”). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which

¹⁸ There are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange and the Hong Kong Chinese Gold & Silver Exchange

was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

Participants in the U.S. OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the U.S., the CFTC, an independent governmental agency with the mandate to regulate commodity futures and options markets in the U.S., regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices and fraud.

TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets' prices.

Product Description

Issuances of Gold Shares will be made only in baskets of 50,000 shares or multiples thereof (the "Basket Aggregation" or "Basket"). The Trust will issue and redeem the Gold Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an "Authorized Participant")¹⁹ with the

Society.

¹⁹ An "Authorized Participant" is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company ("DTC") Participant or an Indirect Participant and (iii) has in effect a valid Authorized Participant Agreement.

Sponsor, Barclays and the Trustee, BNY, at the net asset value (“NAV”) per share next determined after an order to purchase Gold Shares in a Basket Aggregation is received in proper form. Following issuance, Gold Shares will be traded on the Exchange similar to other equity securities.

Basket Aggregations will be issued in exchange for a corresponding amount of gold. The basket amount of gold, measured in fine ounces (the “Basket Gold Amount”), will be determined on each business day by the Trustee, BNY. Authorized Participants that wish to purchase a Basket must transfer the Basket Gold Amount to the Trust in exchange for a Basket. Authorized Participants that wish to redeem a Basket will receive the Basket Gold Amount in exchange for each Basket surrendered. The Bank of Nova Scotia (“BNS”) will be the custodian for the Trust and responsible for safekeeping the gold.²⁰ Gold deposited with BNS must either (a) meet the requirements to be delivered in settlement of a COMEX gold futures contract pursuant to the rules adopted by the COMEX or (b) meet the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars as set forth in “The Good Delivery Rules for Gold and Silver Bars” published by the LBMA. Initially, creation of a Basket will require delivery of 5,000 fine ounces of gold. This Basket Gold Amount will decrease over the life of the Trust due to the payment or accrual of fees and other expenses payable by the Trust.

²⁰ If the total value of the Trust’s gold held by the custodian exceeds \$2 billion, then the custodian will be under no obligation to accept additional gold deliveries. In such a case, the trustee will retain an additional custodian.

On each business day, BNY will make available immediately prior to the opening of trading on the Amex, the Basket Gold Amount for the creation of a Basket. BNY will adjust the quantity of gold included in the Basket Gold Amount to reflect sales of gold to cover expenses and any loss of deposited gold that may occur. The Amex will disseminate every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape Association (“CTA”), an amount representing on a per share basis, the current value of the Basket Gold Amount. It is anticipated that the deposit of gold in exchange for Gold Shares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Baskets are then separable upon issuance into identical shares that will be listed and traded on the Amex.²¹ Gold Shares are expected to be traded on the Exchange by professionals as well as institutional and retail investors. Gold Shares may be acquired in two (2) ways: (1) through a deposit of the Basket Gold Amount with the BNY during normal business hours by Authorized Participants, or (2) through a purchase on the Exchange by investors.

Shortly after 4:00 p.m. each business day, the BNY will determine the NAV for the Trust, utilizing the 1:30 p.m. daily settlement value for the spot month COMEX gold futures contract. At or about 4:00 p.m. each business day, the BNY will determine the Basket Gold Amount for orders placed by Authorized Participants received before 4:00 p.m. that day. The BNY will also at the same time determine an “Indicative Basket Gold Amount” that Authorized Participants can use as an indicative amount of gold to be

²¹ Gold Shares are separate and distinct from the underlying gold comprising the portfolio of the Gold Trust. The Exchange expects that the number of outstanding Gold Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying gold.

deposited for issuance of the Gold Shares on the next business day. Thus, although Authorized Participants place orders to purchase Gold Shares throughout the trading day, the actual Basket Gold Amount is determined at 4:00 p.m. or shortly thereafter.

Shortly after 4:00 p.m. each business day, the BNY, Amex and Barclays (Sponsor) will disseminate the NAV for the Gold Shares, the Basket Gold Amount (for orders placed during the day), and the Indicative Basket Gold Amount (the indicative amount of gold for use by Authorized Participants on the next business day). The Basket Gold Amount, the Indicative Basket Gold Amount, and the NAV are communicated by the BNY to all Authorized Participants via facsimile or electronic mail message and will be available on the Trust's Web site at www.ishares.com. The Amex will also disclose the NAV and Basket Gold Amount on its Web site.

The Basket Gold Amount necessary for the creation of a Basket will change from day to day. The initial Basket Gold Amount is 5,000 fine ounces of gold. On each day that the Amex is open for regular trading, the BNY will adjust the quantity of gold constituting the Basket Gold Amount as appropriate to reflect sales of gold, any loss of gold that may occur, and accrued expenses. The BNY will determine the Basket Gold Amount for a given business day by multiplying the NAV for each Gold Share by the number of Gold Shares in each Basket (50,000) and dividing the resulting product by that day's COMEX settlement price for the spot month gold futures contract. The NAV is calculated by multiplying the fine ounces of gold held by the Trust (after gold has been sold for that day to pay that day's fees and expenses) by the daily settlement value of the COMEX spot month gold futures contract.

The Trust's expense ratio, in the absence of any extraordinary expenses and liabilities, is established at 0.40% of the net assets of the Trust. As a result, the amount of gold by which the Basket Gold Amount will decrease each day will be predictable (i.e. $1/365^{\text{th}}$ of the net asset value of the Trust multiplied by 0.40%). As provided for above, the BNY will disclose and disseminate the Indicative Basket Gold Amount for the next business day. Authorized Participants may use the Indicative Basket Gold Amount as guidance regarding the amount of gold expected to deposit with the custodian, BNS, in connection with the issuance of Gold Shares on such next business day.

As a result, the amount of gold required for the Basket Gold Amount is not disseminated during the trading day to correspond to changes in the value of gold as identified by the COMEX gold futures contract.²² All purchase orders received by the BNY prior to 4:00 p.m. will be settled by depositing with the custodian, BNS, the Basket Gold Amount disseminated by the BNY shortly after 4:00 p.m. Given the predictability of the daily decline in the Basket Gold Amount, BNY and Barclays will announce the Indicative Basket Gold Amount for the next business day, shortly after 4:00 p.m.

Thus, the BNY will disseminate shortly after 4:00 p.m. the amount of gold to be deposited for each Basket (50,000 shares) order properly submitted by Authorized Participants prior to 4:00 p.m. that business day. Before 4:00 p.m., the Authorized Participants may use the Indicative Basket Gold Amount published by Barclays and BNY the day before as guidance in respect of the amount of gold that they may expect to be

²² However, the Amex will disseminate an "Indicative Trust Value" at least every 15 seconds through the facilities of the CTA during the trading day that represents an indicative value for the Gold Shares based on the most last reported trade price in the most actively-traded COMEX gold futures contract.

required to deposit. But if the Indicative Basket Gold Amount published by Barclays and BNY turns out to be incorrect (for example, because the Trust incurred an extraordinary expense such as legal fees in excess of the amount assumed by Barclays), the amount actually determined by BNY will control.

The creation/redemption process in connection with the Gold Shares does not contemplate the existence of cash. Because the process is based entirely on the physical delivery of gold, the actual number of fine ounces required for the Basket Gold Amount will not change even though the value of the Basket Gold Amount may change based on the market price of gold. Therefore, because Authorized Participants will only know the amount of gold to be deposited after the close of trading of the COMEX gold futures contract, the intra-day price fluctuations on the COMEX will not result in the making of gold deposits that are more or less than the amount required for the Basket Gold Amount.

The Exchange believes that Gold Shares will not trade at a material discount or premium to the underlying gold held by the Trust based on potential arbitrage opportunities. Due to the fact that Gold Shares can be created and redeemed only in Basket Aggregations at NAV, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time.

Gold Shares will not be individually redeemable but will only be redeemable in Basket Aggregations. To redeem, an Authorized Participant will be required to accumulate enough Gold Shares to constitute a Basket Aggregation (i.e., 50,000 shares). An Authorized Participant redeeming a Basket Aggregation will receive the physical gold amount of the Basket announced by the Trustee. Upon the surrender of the Gold Shares

and payment of the applicable Trustee's fee and any expenses, taxes or charges, the BNY will deliver to the redeeming Authorized Participant the amount of gold corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, gold will then be delivered to the redeeming Authorized Participants in the form of physical bars only.²³

When calculating NAV, the BNY will value the gold held by the Trust on the basis of the day's announced COMEX settlement price for the spot month gold futures contract.²⁴ At any point in time, the spot month contract is the futures contract then

²³ If the amount of gold corresponding to the Basket Gold Amount results in an amount that is less than a full gold bar denomination, the Authorized Participant has the ability to take and/or deliver fractional gold bar amounts. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on December 3, 2004.

²⁴ The COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of trading in New York. The daily settlement price for each contract (delivery month) is derived from the daily settlement price for the most active futures contract month that is not necessarily the spot month. This settlement price is the average of the highest and lowest priced trades reported during the last one (1) minute of trading during regular trading hours. For all other gold futures contract months (which may include the spot month), the settlement prices are determined by COMEX based upon differentials reflected in spread trades between adjacent months, such differentials being directly or indirectly related to the most active month. These differentials are the average of the highest and lowest spread trades (trades based upon the differential between the prices for two contract months) reported during the last fifteen (15) minutes of trading during regular trading hours. In the case that there were no such spread trades, the average of the bids and offers for spread transactions during that last fifteen (15) minute period are used. In the case where there are no bids and offers during that time, the contracts are settled at prices consistent with the differentials for other contract months that were settled by the first or second method. If the third method is used, the subcommittee of the COMEX members establishing those settlement prices provides a record of the differentials from other contract months that formed the basis for those settlements.

closest to maturity. If a COMEX settlement price for a spot month gold futures contract is not announced, the Trustee will use the most recently announced spot month COMEX settlement price, unless the Trustee (BNY), in consultation with the Sponsor (Barclays), determines that such price is inappropriate. Once the value of the gold is determined, the BNY will then subtract all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of gold and all other assets of the Trust. This adjusted NAV is then used to compute all fees (including the Trustee and Sponsor fees) that are calculated from the value of Trust assets. To determine the NAV, the BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. The BNY will calculate the NAV per share by dividing the NAV by the number of Gold Shares outstanding.

Gold Shares will be registered in book entry form through DTC. Trading in Gold Shares on the Exchange will be effected until 4:15 p.m. New York Time each business day. The minimum trading increment for such shares will be \$.01.

COMEX Gold Futures Contracts

The price of gold is volatile with fluctuations expected to affect the value of the Gold Shares. The price movement of gold may be influenced by a variety of factors, including announcements from Central Banks regarding reserve gold holdings, agreements among Central Banks, political uncertainties, and economic concerns. The price of gold during the period January 1994 through October 29, 2004 ranged from a high of \$431.05 per ounce in April 2004 to a low of \$251.95 in August 1999. As of October 29, 2004, the spot price per ounce for gold as provided by that day's spot COMEX gold futures contract was \$428.50.

The NYMEX is the world's largest physical commodity futures exchange and the dominant market for the trading of energy and precious metals. The COMEX Division of the NYMEX commenced the trading of gold futures contracts on December 31, 1974. The NYMEX and the COMEX Division are subject to the regulation and oversight of the Commodity Futures Trading Commission ("CFTC"). The Amex states that the CFTC administers the Commodity Exchange Act ("CEA"), which requires commodity futures exchanges, such as the NYMEX, to have rules and procedures to prevent market manipulation, abusive trade practices and fraud. The CFTC conducts regular review and inspection of the NYMEX's enforcement programs.

The trading unit of COMEX gold futures contracts is 100 troy ounces. Gold bars tendered for delivery can be cast in the form of either one bar or three one-kilogram bars. In either form, the gross weight of the bar or bars tendered for each contract must be within a five percent tolerance of the 100 ounce contract, and the bars must assay at not less than 995 fineness, *i.e.*, 99.5% pure gold.

Dissemination of COMEX Gold Futures Information

The daily settlement price for COMEX gold futures contracts is publicly available on the NYMEX Web site at <http://nymex.com>.²⁵ The Exchange on its Web site at

²⁵ As previously stated, the COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of trading of regular trading on the COMEX. NYMEX Rule 3.43 sets forth the composition of the subcommittee requiring that it consist of three (3) members that represent the gold market. Specifically, the Rule calls for the subcommittee to include a floor broker, a floor trader and one who represents the trade. Rule 3.02 provides restrictions on Committee members and others who possess material, non-public information. A Committee Member is prohibited from disclosing for any purpose other than the performance of official duties relating to the Committee, material, non-public information obtained as a result of such

<http://www.amex.com> will include a hyperlink to the NYMEX Web site for the purpose of disclosing gold futures contract pricing. In addition, the Exchange represents that COMEX gold futures prices, options on futures quotes, and last sale information is widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for COMEX gold futures and options is 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 Web site at <http://www.nymex.com>. The contract specifications for COMEX gold futures contracts are also available from the NYMEX at its Web site at <http://nymex.com> as well as other financial informational sources.

Availability of Information Regarding Gold Shares

The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price²⁶ in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (e) data in chart form displaying the frequency

person's participation on the Committee. In addition, no person may trade for his own account or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information that such person knows was obtained from such Committee member in violation of Rule 3.02. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on December 3, 2004.

²⁶ The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the Prospectus; and (g) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily. The Amex also intends to disseminate for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value (as discussed below), recent NAV and shares outstanding. The Exchange will also make available on its Web site daily trading volume, closing prices, and the NAV. The closing price and settlement prices of the COMEX gold futures contracts are also readily available from the NYMEX at <http://www.nymex.com>, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.amex.com> to the Trust's Web site at <http://www.ishares.com>.

Dissemination of Indicative Trust Value

As noted above, the BNY calculates the NAV of the Gold Trust once each trading day. In addition, the BNY causes to be made available on a daily basis the required amount of gold to be deposited in connection with the issuance of Gold Shares in Basket Aggregations. In addition, other investors can request such information directly from the BNY.

In order to provide updated information relating to the Trust for use by investors, professionals and persons wishing to create or redeem Gold Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Trust Value (the "Indicative Trust Value"). The Indicative Trust Value will be disseminated on a per Gold

Share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time through the facilities of the CTA. The Indicative Trust Value will be calculated based on the amount of gold required for creations and redemptions and a price of gold derived from the most recently reported trade price in the active gold futures contract. The prices reported for the active contract month will be adjusted based on the prior day's spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract will not be adjusted.

The Indicative Trust Value will not reflect changes to the price of gold between the close of trading at the COMEX, typically 1:30 p.m. New York time, and the open of trading on the NYMEX ACCESS market at 2:00 p.m. New York time. While the market for the gold futures is open for trading, the Indicative Trust Value can be expected to closely approximate the value per share of the Basket Gold Amount. The Indicative Trust Value on a per Gold Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Trust Value based on the amount of gold required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with Gold Shares trading on the Exchange or the creation or redemption of Gold Shares. In addition, the Trust's Web site at www.ishares.com will also provide continuously updated bids and offers indicative of the spot price of gold in the OTC market for the purpose of disclosing to investors on a real-time basis the underlying or spot price of gold.

Termination Events

The Trust will be terminated if any of the following circumstances occur: (1) the Gold Shares are delisted from the Amex and are not listed for trading on another national securities exchange within five business days from the date the Gold Shares are delisted; (2) holders of at least 75% of the outstanding Gold Shares notify the Trustee that they elect to terminate the Trust; (3) the Trustee resigns and no successor trustee is appointed within 60 days from the date the Trustee provides notice to Barclays of its intent to resign; (4) the SEC finds that the Trust should be registered as an investment company under the 1940 Act, and the Trustee has actual knowledge of the SEC finding; (5) the aggregate market capitalization of the Trust, based upon the closing price for the Gold Trust, was less than \$350 million on each of five (5) consecutive trading days and the Trustee receives, within six (6) months from the last of those trading days, notice that the Sponsor has decided to terminate the Trust; (6) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act and the Trustee has actual knowledge of that determination; or (7) the Trust fails to qualify for treatment, or ceases to be treated, as a grantor trust for U.S. federal income tax purposes and the Trustee receives notice that the Sponsor has determined that the termination of the Trust is advisable.

If not terminated earlier by the Trustee, the Trust will terminate in 2044 on a date to be determined once the Trust is established. Upon termination of the Trust, holders of the Gold Shares will surrender their shares and receive from the Trustee their portion of the underlying gold.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in proposed Rules 1201A and 1202A for initial and continued listing of Gold Shares. The proposed continued listing criteria provides for the delisting or removal from listing of the Gold Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Gold Shares: (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Gold Shares for 30 or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Gold Shares issued and outstanding; or (iii) if the market value of all Gold Shares is less than \$1,000,000.
- If the value of the underlying 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 or the Exchange stops providing a hyperlink on its website to any such unaffiliated gold value.
- The Indicative Trust Value is no longer made available on at least a 15-second delayed basis.
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

It is anticipated that a minimum of 150,000 Gold Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of trust issues receipts, Portfolio Depository Receipts and Index

Fund Shares. It is anticipated that the initial price of a Gold Share will be approximately \$40 per share. The Exchange believes that the anticipated minimum number of Gold Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Trust's objective to seek to provide a simple and cost effective means of making an investment similar to an investment in gold. The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.²⁷

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Gold Trust is \$5,000. In addition, the annual listing fee applicable under Section 141 of the Amex Company Guide will be based upon the year-end aggregate number of shares in all series of Gold Trusts outstanding at the end of each calendar year.

Information Circular

The Amex will distribute an information circular ("Information Circular") to its members in connection with the trading of Gold Shares. The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the Gold Shares are, how a basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Gold Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination information regarding the per share Indicative Trust Value, trading information and applicable suitability rules. The Information Circular will also explain that the Gold Trust is subject

²⁷ See 17 CFR 240.10A-3(c)(7).

to various fees and expenses described in the Registration Statement, and that the number of ounces of gold required to create a basket or to be delivered upon a redemption of a basket will gradually decrease over time because the Gold Shares comprising a basket will represent a decreasing amount of gold due to the sale of the Gold Trust's gold to pay Trust expenses. The Information Circular 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 Commodity Futures Trading Commission ("CFTC") has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Circular will also notify members and member organizations about the procedures for purchases and redemptions of Gold Shares in baskets, and that Gold Shares are not individually redeemable but are redeemable only in basket-size aggregations or multiples thereof. The Information Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Gold Shares. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Circular will disclose that the net asset value ("NAV") for Gold Shares will be disseminated shortly after 4:00 p.m. each trading day based on the COMEX daily settlement value, which is disseminated shortly after 1:30 p.m. New York time each trading day.

Disclosure

The Information Circular provided to Exchange members and member organizations will inform members and member organizations, prior to commencement

of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Gold Shares directly from the Trust (by delivery of the Basket Gold Amount) will receive a prospectus. Amex members purchasing Gold Shares from the Trust for resale to investors will deliver a prospectus to such investors.

Purchase and Redemptions in Basket Aggregations

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Gold Shares in Basket Aggregations are described in the Prospectus and that Gold Shares are not individually redeemable but are redeemable only in Basket Aggregations or multiples thereof.

Trading Rules

Gold Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in Gold Shares. Gold Shares will trade on the Amex until 4:15 p.m. New York time each business day and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected

by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Gold Shares as eligible for this treatment.²⁸

Gold Shares will be deemed “Eligible Securities”, as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236 which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of Gold Shares made in connection with the creation and redemption of Gold Shares will not be subject to the prohibitions of Amex Rule 190.²⁹ Unless exemptive or no-action relief is available, Gold Shares will be subject to the short sale rule, Rule 10a-1 under the Act.³⁰ If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

The Exchange represents that the Gold Shares will generally be subject to the Exchange’s stabilization rule, Amex Rule 170, except that specialists may buy on “plus ticks” and sell on “minus ticks,” in order to bring the Gold Shares into parity with the

²⁸ See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange’s designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

²⁹ See Commentary .05 to Amex Rule 190.

³⁰ The Gold Trust has requested relief in connection with the trading of Gold Shares from the operation of the short sale rule, Rule 10a-1 under the Act. See 17 CFR 240.10a-1. The requested relief is currently pending with the Commission staff in the Division of Market Regulation. If granted, Gold Shares would be exempt from Rule 10a-1 permitting sales without regard to the “tick” requirements of Rule 10a-1. Rule 10a-1(a)(1)(i) provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an “uptick”) or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a “zero-plus tick”).

underlying gold and/or futures price. Proposed Commentary .01 to proposed Rule 1203A sets forth this limited exception to Amex Rule 170.

The Exchange's surveillance procedures for Gold Shares will be similar to those used for other trust issued receipts and exchange-traded funds ("ETFs") and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

Amex states that the adoption of Rule 1203A relating to certain specialist prohibitions will address potential conflicts of interest in connection with acting as a specialist in the Gold Shares. Specifically, Rule 1203A provides that the prohibitions in Rule 175(c) apply to a specialist in the Gold Shares so that the specialist or affiliated person may not act or function as a market maker in the underlying gold, related gold futures contract or option or any other related gold derivative. An affiliated person of the specialist consistent with Amex Rule 193 (Affiliated Persons of Specialists) may be afforded an exemption to act in a market making capacity, other than as a specialist in the Gold Shares on another market center, in the underlying gold, related gold futures or options or any other related gold derivative. In particular, proposed Rule 1203A provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Gold Shares on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Also, the Exchange states that adoption of Rule 1204A will ensure that specialists handling the Gold Shares provide the Exchange with all the necessary information relating to their trading in physical gold, related gold futures contracts and options thereon or any other gold derivative. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations, and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities 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.

Trading Halts

The Information Circular issued to Amex members will inform them of, among other things, Exchange policies regarding trading halts in Gold Shares. First, the Information Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the Information Circular will advise that, in addition to the parameters set forth in Rule 117, the Exchange will halt trading in Gold Shares if trading in the underlying COMEX gold futures contract is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

Suitability

The Information Circular referenced above will inform members and member organizations of the characteristics of the Gold Trust and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Rule 411, members and member organizations are required in connection with recommending transactions in the Gold Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

Surveillance

Amex represents that its surveillance procedures applicable to trading in the proposed Gold Shares will be similar to those applicable to Trust Issued Receipts, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. The Exchange currently has in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX gold futures contracts. In addition, the Exchange is also in the process of negotiating an Information Sharing Agreement with the NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act³¹ in general and furthers the objectives of Section 6(b)(5)³² in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

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

The Exchange did not receive any written comments on the proposed rule change.

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

Within 35 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 such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-Amex-2004-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street,

NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2004-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Margaret H. McFarland
Deputy Secretary

³³

17 CFR 200.30-3(a)(12).