

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59781; File No. SR-NYSEArca-2009-28)

April 17, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the ETFS Silver Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 6, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange proposes to list and trade shares (“Shares”) of the ETFS Silver Trust (the “Trust”) pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyx.com](http://www.nyx.com), at the Exchange’s principal office and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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

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

specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (“UTP”) “Commodity-Based Trust Shares.”<sup>3</sup> The Commission has previously approved listing on the Exchange under Rule 8.201 shares of the iShares Silver Trust and the streetTRACKS Gold Trust,<sup>4</sup> and, prior to their listing on the Exchange, approved listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as “NYSE Amex LLC”).<sup>5</sup> In addition, the Commission has approved trading of the iShares Silver Trust and the streetTRACKS Gold Trust on the Exchange pursuant to UTP.<sup>6</sup>

The Trust will issue ETFS Silver Shares (“Shares”) which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the

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

<sup>4</sup> See Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing on the Exchange of the iShares Silver Trust); 56224 (August 8, 2007) 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust).

<sup>5</sup> See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72).

<sup>6</sup> See Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

Trust is for the Shares to reflect the performance of the price of silver bullion, less the Trust's expenses.<sup>7</sup>

ETF Services USA LLC is the sponsor of the Trust,<sup>8</sup> Bank of New York Mellon is the trustee of the Trust ("Trustee"),<sup>9</sup> and HSBC Bank U.S.A., N.A. is the custodian of the Trust ("Custodian").<sup>10</sup>

The Exchange represents that the Shares satisfy the requirements of Rule 8.201 and thereby qualify for listing on the Exchange.<sup>11</sup>

#### Global Over-The-Counter Market

According to the Registration Statement, the global trade in silver consists of Over-the-Counter ("OTC") transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

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<sup>7</sup> See the Registration Statement for the ETF Silver Trust on Form S-1, filed with the Commission on March 20, 2009 (No. 333-156307). The descriptions of the Trust, the Shares and the silver market contained herein are based on the Registration Statement.

<sup>8</sup> See email from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated April 14, 2009.

<sup>9</sup> The Trustee is generally responsible for the day-to-day administration of the Trust. This includes (1) selling the Trust's silver as needed to pay the Trust's expenses (silver sales are expected to occur approximately monthly in the ordinary course), (2) calculating the net asset value ("NAV") of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and The Depository Trust Company ("DTC") and (4) monitoring the Custodian.

<sup>10</sup> The Custodian is responsible for the safekeeping of the Trust's silver deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian also facilitates the transfer of silver in and out of the Trust through silver accounts it will maintain for Authorized Participants and the Trust. The Custodian is a market maker, clearer and approved weigher under the rules of the London Bullion Market Association ("LBMA").

<sup>11</sup> With respect to application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

The OTC silver market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London (the biggest venue), New York and Zurich.

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the LBMA, the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market. The eleven market-making members of the LBMA are: Barclays Bank plc, Deutsche Bank AG, HSBC Bank USA, N.A. (through its London branch), Goldman Sachs International, JPMorgan Chase Bank, ScotiaMocatta (a division of the Bank of Nova Scotia), Société Générale, Mitsui & Co. Precious Metals Inc., Bear Stearns Forex Inc., Royal Bank of Canada, and UBS AG. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery and other factors. Bullion dealers customize transactions to meet clients' requirements. 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. Mining companies, central banks, manufacturers of jewelry and industrial products, together with investors and speculators, tend to transact their business through one of these market centers. Centers such as Dubai and several cities in the Far East also transact substantial OTC market business, typically involving jewelry and small bars (1 kilogram or less). Bullion dealers have offices around the world and most of the world's major bullion dealers are either members or associate members of the LBMA. Of the eleven market-making members of the LBMA, six offer clearing services. There are a further 59 full members, plus a number of associate members

around the world. These numbers may change from time to time as new members are added and existing members drop out.

#### The London Bullion Market

Although the market for physical silver is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the “London Good Delivery Lists,” which are the lists of LBMA accredited melters and assayers of silver. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.<sup>12</sup>

The term “loco London” silver refers to silver physically held in London that meets the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of a LBMA acceptable refiner) and appearance set forth in “The Good Delivery Rules for Gold and Silver Bars” published by the LBMA. Silver bars meeting these requirements are described in the Trust’s prospectus as “London Good Delivery Bars.” The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. A London Good Delivery must contain between 750 ounces and 1100 ounces of silver with a minimum fineness (or purity) of 999.0 parts per 1000. A London Good Delivery Bar must also bear the stamp of one of the refiners who are on the LBMA-approved list. Unless otherwise specified, the silver spot price

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<sup>12</sup> Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

always refers to that of a London Good Delivery Bar. Business is generally conducted over the phone and through electronic dealing systems.

Once daily during London trading hours there is a fix (“London Fix”) which provides reference silver prices for that day’s trading. According to the Registration Statement, many long-term contracts will be priced on the basis of the London Fix, and market participants will usually refer to this price when looking for a basis for valuations. The London Fix is the most widely used benchmark for daily silver prices and is quoted by various financial information sources.

Three market making members of the LBMA conduct the Silver Fixing meeting under the chairmanship of The Bank of Nova Scotia-ScotiaMocatta by telephone at 12:00 noon London time each working day. The other two members of the Silver Fixing are Deutsche Bank AG and HSBC Bank USA, NA.

Orders are placed either with one of the three fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a “trying price,” reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The silver price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. According to the Registration Statement, the London Fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

### Futures Exchanges

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

### Market Regulation

The global silver markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the 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 Markets Act 2000 (“FSM Act”). Under this 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 was established by market participants in conjunction with the Bank of England.

The 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 the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (METI), the regulatory authority that oversees the operations of the TOCOM.

According to the Registration Statement, the Trust will not trade in silver futures contracts on COMEX or on any other futures exchange. The Trust will take delivery of physical silver that complies with the LBMA silver delivery rules. Because the Trust will not trade in silver futures contracts on any futures exchange, the Trust will not be regulated by the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act ("CEA") as a "commodity pool," and will not be operated by a CFTC-regulated commodity pool operator. Investors in the Trust will not receive the regulatory protections afforded to investors in regulated commodity pools, nor may COMEX or any futures exchange enforce its rules with respect to the Trust's activities. In addition, investors in the Trust will not benefit from the protections afforded to investors in silver futures contracts on regulated futures exchanges.

#### Product Description

The activities of the Trust will be limited to (1) issuing Baskets (as defined below) of Shares in exchange for the silver deposited with the Custodian as consideration, (2) selling silver as necessary to cover the Sponsor's Fee, Trust expenses not assumed by the Sponsor and other liabilities, and (3) delivering silver in exchange for Baskets of Shares surrendered for

redemption. The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of silver.

The investment objective of the Trust is for the Shares to reflect the performance of the price of silver bullion, less the Trust's expenses. The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in silver. An investment in physical silver requires expensive and sometimes complicated arrangements in connection with the assay, transportation, warehousing and insurance of the metal. Although the Shares will not be the exact equivalent of an investment in silver, they provide investors with an alternative that allows a level of participation in the silver market through the securities market.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the CEA, as administered by the CFTC. According to the Registration Statement, the Trust is not a commodity pool for purposes of the CEA, and the Sponsor and Trustee are not subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

#### Creation and Redemption Process

Issuances of Shares will be made only in baskets of 100,000 shares or multiples thereof ("Baskets").<sup>13</sup> The Trust will issue and redeem Baskets daily, by or through registered broker-dealers that have entered into participant agreements (each, an "Authorized Participant")<sup>14</sup> with

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<sup>13</sup> Initially, each Share represents one ounce of silver.

<sup>14</sup> An "Authorized Participant" is a person who (1) is a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, (2) is a participant in DTC, (3) has entered into a Participant Agreement with the Trustee and the

the Trustee. 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 silver and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined net asset value (“NAV”) of 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.

The total deposit required to create each Basket (the “Creation Basket Deposit”) will be an amount of silver and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to purchase is properly received as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. The Sponsor anticipates that in the ordinary course of the Trust’s operations a cash deposit will not be required for the creation of Baskets.<sup>15</sup>

The amount of the required silver deposit is determined by dividing the number of ounces of silver held by the Trust by the number of Baskets outstanding, as adjusted for estimated accrued but unpaid fees and expenses, as described in the Registration Statement.

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Sponsor, and (4) has established an Authorized Participant Unallocated Account with the Custodian.

<sup>15</sup> The amount of any required cash deposit is determined as follows. The estimated unpaid fees, expenses and liabilities of the Trust accrued through the purchase order date are subtracted from any cash held or receivable by the Trust as of the purchase order date. The remaining amount is divided by the number of Shares outstanding immediately before the purchase order date and then multiplied by the number of Shares being created pursuant to the purchase order. If the resulting amount is positive, this amount is the required cash deposit. If the resulting amount is negative, the amount of the required silver deposit will be reduced by the number of fine ounces of silver equal in value to that resulting amount, determined at the price of silver used in calculating the NAV of the Trust on the purchase order date.

The Shares will not be individually redeemable but will only be redeemable in Basket size. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (i.e., 100,000 Shares). Redeeming Authorized Participants will receive an allocation of silver to their accounts, in accordance with procedures set forth in the Registration Statement. Shares will be registered in book-entry form through DTC.

The Exchange states that the Creation Basket Deposit necessary for the creation of a Basket will slightly diminish each day depending on the Trust's daily expense accrual and the market price of silver. The initial Creation Basket Deposit will be a specified number of ounces of silver (with each Share initially representing one ounce of silver). On each day that the Exchange is open for regular trading, The Bank of New York Mellon will adjust the quantity of silver constituting the Creation Basket Deposit as appropriate to reflect sales of silver needed for payment of the Sponsor's fee (which is similar to an expense ratio) and any extraordinary expenses or liabilities not assumed by the Sponsor. The Bank of New York Mellon will determine the Creation Basket Deposit for a given business day by subtracting the daily expense accrual from the previous day's total ounces of silver in the Trust and then dividing the number of Baskets outstanding. Fractions of an ounce of silver smaller than .001 will be disregarded.

The creation/redemption process in connection with the Shares is an in-kind exchange of silver for Shares, rather than an exchange of silver for cash. Except for the accrual of the Sponsor's fee or extraordinary expenses or liabilities, the process is based entirely on the delivery of silver in exchange for Shares. Thus, throughout each business day, the Exchange states that the actual number of ounces required for the Creation Basket Deposit usually will not change even though the value of the Creation Basket Deposit may change based on the market price of silver.

Valuation of Silver, Definition of Net Asset Value and Adjusted Net Asset Value (“ANAV”)

According to the Registration Statement, as of the London Fix on each day that the Exchange is open for regular trading or, if there is no London Fix on such day or the London Fix has not been announced by 12:00 noon New York time on such day, as of 12:00 noon New York time on such day (the “Evaluation Time”), the Trustee will evaluate the silver held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust’s silver on the basis of that day’s London Fix or, if no London Fix is made on such day or has not been announced by the Evaluation Time, the next most recent London Fix determined prior to the Evaluation Time will be used, unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate as a basis for evaluation. In the event the Trustee and the Sponsor determine that the London Fix or last prior London Fix is not an appropriate basis for evaluation of the Trust’s silver, they shall identify an alternative basis for such evaluation to be employed by the Trustee.<sup>16</sup>

Once the value of the silver has been determined, the Trustee will subtract all estimated accrued but unpaid fees, expenses and other liabilities of the Trust from the total value of the silver and all other assets of the Trust (other than any amounts credited to the Trust’s reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor’s Fee.

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<sup>16</sup> The Exchange, pursuant to Rule 7.12, has discretion to halt trading in the Shares if the London Fix is not determined or available for an extended time period based on extraordinary circumstances or market conditions.

To determine the Trust's NAV, the Trustee will subtract the amount of estimated accrued but unpaid fees computed by reference to the ANAV of the Trust and to the value of the silver held by the Trust from the ANAV of the Trust. The resulting figure is the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the Exchange (which includes the net number of any Shares created or redeemed on such evaluation day).

Shortly after 4:00 p.m. E.T. each business day, the Trust will disseminate the NAV for the Shares and the Creation Basket Deposit (for orders properly placed by 4:00 during the day). The Creation Basket Deposit and NAV will be publicly available simultaneously to all market participants and will be communicated to all Authorized Participants via facsimile or electronic mail message and on the Trust's Web site. The Exchange also will disclose the NAV on its Web site.

#### Liquidity

The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by the non-concurrent trading hours between the major silver markets and the Exchange. While the Shares will trade on the Exchange from 4:00 a.m. to 8:00 p.m. E.T., liquidity in the OTC market for silver will be reduced after the close of the major world silver markets, including London, Zurich, and the COMEX. As a result, trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity.

#### Availability of Information Regarding Silver Prices

Although the spot price of silver will not be disseminated over the facilities of CTA, the last sale price for the Shares, as is the case for all equity securities traded on the Exchange will

be disseminated over the CTA's Network B. In addition, there is a considerable amount of silver<sup>17</sup> price and market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London silver fix is also disseminated by various market data vendors and is available from the LBMA's Web site. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures contracts and related options, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.<sup>18</sup> Complete real-time data for silver futures contracts and options prices traded on the COMEX is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at <http://www.nymex.com>. The Exchange also notes that there are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major

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<sup>17</sup> The period of greatest liquidity in the silver market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the COMEX division of the NYMEX. This period lasts for approximately four hours each New York business day morning.

<sup>18</sup> In addition, ICAP's EBS platform also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to market data subscribers. Approximately 1.5 million ounces in gold, 10 million ounces in silver and \$190 billion a day in spot foreign exchange transactions is traded each day over the EBS trading platform. See <http://www.icap.com>.

newspapers, such as The Wall Street Journal. Current silver spot prices are also generally available with bid/ask spreads from silver bullion dealers.<sup>19</sup>

#### Availability of Information Regarding 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 price in relation to the NAV as of the time the NAV is calculated (the "Bid-Asked Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV,<sup>20</sup> within appropriate ranges for each of the four previous calendar quarters; (e) the Creation Basket Deposit; (f) the Prospectus; and (g) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily.

The Exchange also will 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, NAV and the Creation Basket Deposit. The London silver fix price is readily available from the LBMA at <http://www.lbma.org.uk>, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.nyx.com> to the Trust's Web site at <http://www.etfsecurities.com>.

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<sup>19</sup> The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time.

<sup>20</sup> The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

### Dissemination of Indicative Trust Value

The Trustee will calculate the NAV of the Trust once each trading day. In addition, the Trust will cause to be made available on a daily basis the required amount of silver to be deposited in connection with the issuance of Shares in Basket size.

In order to provide updated information relating to the Trust for use by investors, professionals, and Authorized Persons wishing to create or redeem Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Trust Value (“ITV”). The Indicative Trust Value will be disseminated on a per Share basis at least every 15 seconds during the Exchange’s Core Trading Session (9:30 a.m. to 4:00 p.m. ET). The Indicative Trust Value, as calculated by the Exchange or a third party financial data provider, will be calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver from silver dealer pricing.<sup>21</sup> The ITV on a per Share basis disseminated during the Exchange’s Core Trading Session 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 silver 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 Shares trading on the Exchange or the creation or redemption of Shares.

### Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than \$350 million (as adjusted for inflation) at any time after the first anniversary after the Trust’s formation and the Trustee

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<sup>21</sup> See e-mail from Michael Cavalier, Chief Counsel, NYSE Arca, to Christopher W. Chow, Special Counsel, Commission, dated April 9, 2009.

receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares (“Shareholders”) owning at least 75% of the outstanding Shares. Additional termination events are described in the Registration Statement.

#### Criteria for Initial and Continued Listing

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

It is anticipated that a minimum of 100,000 Shares will be required to 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 iShares Silver Trust, the streetTRACKS Gold Trust, the iShares COMEX Gold Trust and exchange-traded funds. It is anticipated that the initial price of a Share will be approximately \$10.00. 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. The minimum trading increment for Shares on the Exchange will be \$0.01.

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

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

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

make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>22</sup>

### Surveillance

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

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

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<sup>22</sup> See NYSE Arca Equities Rule 7.12.

who are members of the ISG.<sup>23</sup> Also, the Exchange has an Information Sharing Agreement with NYMEX for the purpose of sharing information in connection with trading in or related to COMEX silver futures contracts.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable and that silver is a wasting asset); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the ITV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of silver trading during the Core and Late Trading Sessions after the close of the major world silver markets, and (6) 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 (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

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<sup>23</sup> A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org). The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

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

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

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>24</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>25</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Exchange believes that the proposal will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-28 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00

p.m. Copies of such 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2009-28 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5)<sup>27</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The listing and trading of an additional type of commodity-based product should enhance competition among market participants and thereby benefit investors and the marketplace.

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>28</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair

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<sup>26</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange will make available, through the facilities of the CTA, the last sale price information for the Shares. In addition, the Exchange will disseminate each day through the facilities of the CTA the number of Shares outstanding and the ITV on a per-Share basis at least every 15 seconds from 9:30 a.m. to 4:00 p.m. ET. The Web site for the Trust, which will be publicly accessible, contains information related to the NAV, including the Bid-Asked Price, the Creation Basket Deposit, calculation information and data related to the premium or discount of the Bid-Asked Price against the NAV, the Prospectus, and other applicable quantitative information, including trading volume data, NAV, and closing prices. Shortly after 4:00 p.m. ET each business day, the Trust will disseminate the NAV for the Shares, and the Creation Basket Deposit. Information on silver prices and markets is available on public Web sites and through professional and subscription services, and investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers. Complete real-time data for silver futures contracts and options prices traded on the COMEX is available by subscription from information services such as Reuters or Bloomberg, and information on silver is available from published or other public sources. NYMEX also provides delayed futures and options information free of charge.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange has represented that the Trustee will calculate, and the Trust will disseminate, the NAV per Share daily, and make the NAV available to all market participants at the same time. In addition, NYSE Arca Equities Rule

8.201(i) provides that, in connection with trading in an underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivative, including Commodity-Based Trust Shares, an ETP Holder acting as a Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares is restricted from using any material non-public information received from any person associated with such ETP Holder regarding by such person in the underlying physical commodity, related commodity futures or options on commodity futures, or other related commodity derivatives.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 8.201(e)(2) provides that, when the Exchange is the listing market, if the value of the underlying commodity or ITV is no longer calculated or available on at least a 15-second delayed basis, the Exchange would consider suspending trading in the Shares. The Exchange has further represented that trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule. NYSE Arca Equities Rule 8.201(e)(2) also provides that the Exchange may seek to delist the Shares in the event the value of the underlying silver or the ITV is no longer calculated or available as required.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has

represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing Exchange rules governing the trading of equity securities.

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

- (1) The Exchange's surveillance procedures are adequate to deter and detect violations of Exchange rules and applicable federal securities laws.
- (2) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

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

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Exchange's proposal to list and trade the Shares does not present any novel or significant regulatory issues. Previously, the Commission approved a proposal by the Exchange to list and trade shares of another trust that holds silver bullion pursuant to NYSE Arca Equities Rule 8.201.<sup>30</sup>

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

<sup>30</sup> See Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing and trading of shares of the iShares Silver Trust). See also Securities Exchange Act Release No. 53521 (March 20, 2006); 71 FR 14967 (March 24, 2006) (SR-Amex-2005-072) (approving listing and trading of shares of the iShares Silver Trust on the American Stock Exchange LLC).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-NYSEArca-2009-28) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).