

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78521; File No. SR-NYSEArca-2016-108)

August 9, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect a Change in the Permitted Size of a Basket Applicable to Shares of ETFs Physical Silver Shares Issued by the ETFs Silver Trust.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 27, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to reflect a change in the permitted size of a “Basket” applicable to shares of ETFs Physical Silver Shares (“Fund”) issued by the ETFs Silver Trust. The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.201. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the Fund under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares.<sup>4</sup> The Shares are offered by ETFs Silver Trust (the “Trust”).<sup>5</sup> The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. 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.<sup>6</sup> ETF Securities

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<sup>4</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>5</sup> The Trust is registered under the Securities Act of 1933 (“1933 Act”). See Post-Effective Amendment No. 1 on Form S-3 under the 1933 Act for the ETFs Silver Trust, filed with the Commission on August 8, 2014 (No. 333-195514) (“Registration Statement”).

<sup>6</sup> The Commission approved listing and trading of Shares of the Fund on NYSE Arca in Securities Exchange Act Release No. 59781 (April 14, 2009), 74 FR 18771 (April 24, 2009) (SR-NYSEArca-2009-28) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the ETFs Silver Trust) (“Prior Order”); See also Securities Exchange Act Release Nos. 72847 (August 14, 2014), 79 FR 49350 (August 20, 2014) (SR-NYSEArca-2014-88) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change (1) to Reflect a Change to the Value Used by the iShares Silver Trust, ETFs Silver Trust, ETFs White Metals Basket Trust and ETFs Precious Metals Basket Trust with Respect to Calculation of the Net Asset Value of Shares of each Trust; and (2) to Reflect a Change to the Underlying Benchmark for ProShares Ultra Silver and ProShares UltraShort Silver) (“First Prior Notice”); 77830 (May 13, 2016), 81 FR 31671 (May 19, 2016) (SR-NYSEArca-2016-72) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to Procedures Regarding Establishing the LBMA Silver Price) (“Second Prior Notice”).

USA LLC is the sponsor of the Trust (“Sponsor”), The Bank of New York Mellon is the trustee of the Trust and HSBC Bank plc. is the custodian of the Trust. The Fund’s Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.201.

As described in the Prior Order, issuances of Shares will be made only in “Baskets” of 100,000 Shares or multiples thereof. The Exchange proposes to eliminate the representation in the Prior Order regarding the size of a Basket. Going forward, the size of a Basket will be no greater than 100,000 Shares and the size of a Basket will be subject to change, but always equal to or less than 100,000 Shares.<sup>7</sup> The Fund currently plans to change the size of a Basket to 50,000 Shares.<sup>8</sup> The Exchange believes that the change to the size of a Basket will not adversely impact investors or Exchange trading. In addition, a reduction in the size of a Basket may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV.<sup>9</sup>

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<sup>7</sup> The Exchange notes that the Commission has approved the listing and trading of other issues of exchange-traded products for which the size of a “Creation Unit” is subject to change. See e.g., Securities Exchange Act Release Nos. 77522 (April 5, 2016), 81 FR 21420 (April 11, 2016) ( SR-NYSEArca-2015-125) (order approving Exchange listing and trading of Shares of the of RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF under NYSE Arca Equities Rule 8.600); 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (SR-NYSEArca-2015-73) (order approving listing and trading of shares of the Guggenheim Total Return Bond ETF under NYSE Arca Equities Rule 8.600).

<sup>8</sup> The change to size of a Basket will be effective upon filing with the Commission of an amendment to the Trust’s Registration Statement filed pursuant to Rule 424(b)(3) under the 1933 Act, and shareholders will be notified of such change by means of such amendment.

<sup>9</sup> The Exchange notes that the Commission has approved the listing and trading of other issues of exchange-traded products that have applied a minimum “Creation Unit” size of 50,000 shares. See, e.g., Securities Exchange Act Release Nos. 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR-NYSEArca-2011-54) (order approving listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund);

The Sponsor represents that the proposed change to provide that the size of a Basket will be no greater than 100,000 Shares and subject to change, but always equal to or less than 100,000 Shares, as well as to reduce the Basket size to 50,000 Shares, as described above, is consistent with the Fund's investment objective, and will further assist the Sponsor to achieve such investment objective. Except for the change noted above, all other representations made in the Prior Order, the First Prior Notice and the Second Prior Notice remain unchanged.<sup>10</sup> The Fund and the Shares will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.201.

The Sponsor represents that the investment objective of the Fund is not changing.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Except for the changes noted herein, all other facts presented and representations made in the Rule 19b-4 filing underlying the Prior Order, the First Prior Notice and the Second Prior Notice remain unchanged.

## 2. Statutory Basis

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66112 (January 5, 2012), 77 FR 1761 (January 11, 2012) (SR-NYSEArca-2011-80) (order approving listing and trading of Rockledge SectorSAM ETF).

<sup>10</sup> See note 6, *supra*. All terms referenced but not defined herein are defined in the First Prior Notice.

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>11</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that providing for a Basket size of no greater than 100,000 Shares (with the size of a Basket subject to change<sup>11</sup>, but always equal to or less than 100,000 Shares), and changing the Basket size to 50,000 Shares, will not adversely impact investors or Exchange trading. In addition, a reduction in the size of a Basket may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV.

**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 purpose of the Act. The Exchange believes the proposed rule change, by providing that the size of a Basket is subject to change, but always equal to or less than 100,000 Shares, will provide the Fund with additional flexibility in administering the creation and redemption of Shares, which will enhance competition among issues of Commodity-Based Trust Shares.

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

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<sup>11</sup> 15 U.S.C. 78f(b)(5).

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because a reduction in the size of a Basket may provide potential benefits to investors by facilitating additional creation and redemption activity in the Shares, thereby potentially resulting in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to NAV. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>15</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-108 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2016-108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

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

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-108 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).