

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82593; File No. SR-NYSEArca-2017-140)

January 26, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to List and Trade Shares of the Perth Mint Physical Gold ETF Trust Pursuant to NYSE Arca Rule 8.201-E

I. Introduction

On December 11, 2017, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to list and trade shares (“Shares”) of the Perth Mint Physical Gold ETF Trust (“Trust”) under NYSE Arca Equities Rule 8.201-E. The proposed rule change was published for comment in the Federal Register on December 28, 2017.<sup>3</sup> The Commission has not received any comments on the proposed rule change. This order approves the proposed rule change.

II. The Description of the Proposed Rule Change<sup>4</sup>

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201-E,<sup>5</sup> which governs the listing and trading of Commodity-Based Trust Shares on the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 82372(Dec. 21, 2017), 82 FR 61601 (“Notice”).

<sup>4</sup> A more detailed description of the Trust and the Shares, as well as investment risks, Share creation procedures for authorized participants, Share redemption procedures for authorized participants and certain beneficial owners, NAV calculation, availability of information and fees, among other things, is included in the Registration Statement, infra note 5.

<sup>5</sup> On August 30, 2017, the Trust submitted to the Commission its draft registration statement on Form S-1 (“Registration Statement”) under the Securities Act of 1933 (15 U.S.C. 77a).

Exchange.<sup>6</sup> The Shares will represent units of fractional undivided beneficial interest in and ownership of the Trust. The Trust's primary objective will be to provide investors with an opportunity to invest in gold through the Shares, have the gold securely stored by Gold Corporation and, if requested by an investor, deliver Physical Gold<sup>7</sup> to such investor in exchange for its Shares.<sup>8</sup>

The sponsors of the Trust will be Gold Corporation ("Custodial Sponsor") and Exchange Traded Concepts, LLC ("ETC" or the "Administrative Sponsor" and, together with the Custodial

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<sup>6</sup> A "Commodity-Based Trust Share" is a security (a) that is issued by a 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. See NYSE Arca Equities Rule 8.201(c)(1).

<sup>7</sup> "Physical Gold" is defined as London Bars and all gold products without numismatic value and having a gold purity of at least 99.5% (including coins, cast bars and minted bars).

<sup>8</sup> According to the Registration Statement, the Trust does not trade in gold futures contracts on COMEX or on any other futures exchange. Because the Trust does not trade in gold futures contracts on any futures exchange, the Trust is not regulated by the CFTC under the Commodity Exchange Act as a "commodity pool," and is not operated by a CFTC-regulated commodity pool operator. Investors in the Trust do 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 do not benefit from the protections afforded to investors in gold futures contracts on regulated futures exchanges.

Sponsor, the “Sponsors”<sup>9</sup> and Gold Corporation will also serve as custodian of the Trust’s gold bullion (in such capacity, “Custodian”).<sup>10</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposed rule change to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>12</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 and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The last-sale price for the Shares will be disseminated over the Consolidated Tape. There is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services. Investors may obtain gold pricing information on a 24-

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<sup>9</sup> Gold Corporation, doing business as the Perth Mint, is a Western Australian Government owned statutory body corporate established by the Gold Corporation Act 1987 (Western Australia). ETC is an Oklahoma limited liability company majority owned by Cottonwood ETF Holdings LLC. ETC is a registered investment adviser and provides investment advisory services to domestic and international equity and fixed income ETFs.

<sup>10</sup> As Custodian of the Trust’s gold bullion, Gold Corporation will be responsible for the safekeeping of the Trust’s gold and supplying inventory information to the Trustee and the Sponsors. The Custodian will also be responsible for facilitating the transfer of gold in and out of the Trust and facilitating the shipment of Physical Gold to Delivery any beneficial owner (who is not an authorized participant) who wishes to surrender Shares in exchange for Physical Gold.

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

hour basis based on the spot price for an ounce of gold from various financial information service providers.<sup>13</sup>

Additionally, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>14</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Exchange has surveillance-sharing agreements with significant, regulated markets for trading futures on gold. Specifically, according to the Exchange: (1) the most significant gold futures exchanges in the U.S. is COMEX, a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group ("CME Group"); (2) ICE Futures US ("ICE") also lists gold futures;<sup>15</sup> and (3) the CME Group and ICE are members of the ISG,<sup>16</sup> which will allow NYSE Arca to obtain surveillance information from COMEX and ICE. Both COMEX and ICE are regulated by the U.S.

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<sup>13</sup> The Exchange states that Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of Gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk). See Notice, *supra* note 3, 82 FR at 61605.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See Notice, *supra* note 3, 82 FR at 61603.

<sup>16</sup> See *id.*

Commodity Futures Trading Commission (“CFTC”).<sup>17</sup> The gold futures market is of significant size and liquidity.<sup>18</sup>

The Commission believes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. NYSE Arca Equities Rule 8.201(e)(2)(v) requires that an intraday indicative value (“IIV,” which is referred to in the rule as the “Indicative Trust Value”) be calculated and disseminated at least every 15 seconds. The IIV will be calculated based on the amount of gold held by the Trust and a price of gold derived from updated bids and offers indicative of the spot price of gold. The Exchange states that the IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>19</sup> The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust’s website.<sup>20</sup> The Trust also will publish the following information on their website: (1) the mid-point of the bid-ask price as of the close of trading (“Bid/Ask Price”), and a calculation of the premium or discount of such price against such NAV; (2) data in chart format displaying the frequency distribution of discounts and

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<sup>17</sup> See <https://www.theice.com/futures-us/regulation> (“ICE Futures U.S. is a Designated Contract Market pursuant to the Commodity Exchange Act and regulated by the CFTC.”); Securities Exchange Act Release No. 68440 (December 14, 2012), 78 FR 75468, 75469 (December 20, 2012) (SR-NYSEArca-2012-28) (COMEX is regulated by the CFTC).

<sup>18</sup> The Commission further notes that it has approved the listing and trading of other Commodity-Based Trust Shares overlying gold. See, e.g., Securities Exchange Act Release No. 81918 (October 23, 2017), 82 FR 49884 (October 27, 2017) (SR-NYSEArca-2017-98); Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 71378 (January 29, 2014) (SR-NYSEArca-2013-137); and Securities Exchange Act Release No. 70195 (August 14, 2013, 2013), 78 FR 51239 (August 20, 2013) (SR-NYSEArca-2013-61).

<sup>19</sup> See Notice, *supra* note 3, 82 FR at 61607.

<sup>20</sup> See *id.*

premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; (3) the Trust’s prospectus, as well as the two most recent reports to stockholders; and (4) the last-sale price of the Shares as traded in the U.S. market.<sup>21</sup> In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Commission also believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market 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> The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily.<sup>23</sup> The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV; if the interruption to the

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<sup>21</sup> See id. at 61606.

<sup>22</sup> See id.

<sup>23</sup> See id.

dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>24</sup>

Additionally, the Commission notes that market makers in the Shares will be subject to the requirements of NYSE Arca Equities Rule 8.201-E(g), which are designed to allow the Exchange to ensure that they do not use their positions to violate the requirements of Exchange rules or applicable federal securities laws.<sup>25</sup>

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

- (1) The Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201-E.<sup>26</sup>
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.<sup>27</sup>
- (3) The Exchange deems the Shares to be equity securities.<sup>28</sup>
- (4) The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>29</sup>

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<sup>24</sup> See id.

<sup>25</sup> Commentary .04 of NYSE Arca Equities Rule 6.3 requires that an ETP Holder acting as a registered market maker in the Shares, and its affiliates, establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

<sup>26</sup> See id.

<sup>27</sup> See id.

<sup>28</sup> See id. The Commission notes that, as a result, trading of the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

<sup>29</sup> See id. at 61607.

- (5) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and 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 federal securities laws applicable to trading on the Exchange.<sup>30</sup>
- (6) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>31</sup>
- (7) 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); (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn

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<sup>30</sup> See id. at 61606. FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See id. at 61606, n.39.

<sup>31</sup> See id. at 61606.

the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV 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 gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.<sup>32</sup>

- (8) All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.<sup>33</sup>
- (9) The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust 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 Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m).<sup>34</sup>

This approval order is based on all of the Exchange's representations -- including those set forth above and in the Notice -- and the Exchange's description of the Trust.

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<sup>32</sup> See id. at 61607.

<sup>33</sup> See id. See also NYSE Arca Rule 8.201-E(e)(2)(vii).

<sup>34</sup> See Notice, supra note 3, at 61607.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act<sup>35</sup> and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>36</sup> that the proposed rule change (SR- NYSEArca-2017-140), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

Robert W. Errett  
Deputy Secretary

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<sup>35</sup> 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k-1(a)(1)(C)(iii), respectively.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-3(a)(12).