

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84282; File No. SR-NYSEArca-2018-69)

September 25, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend a Representation Relating to the Redemption Procedures Applicable to the Sprott Physical Gold and 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 September 14, 2018, 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 amend a representation relating to the redemption procedures applicable to the Sprott Physical Gold and Silver Trust (“Trust”), as contained in the rule change filed with and approved by the Securities and Exchange Commission (“Commission”) relating to listing and trading of “Units” of the Trust on the Exchange. Units of the Trust are currently listed and traded on the Exchange under NYSE Arca Rule 8.201-E. 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.

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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.

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 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 Units of the Trust under NYSE Arca Rule 8.201-E (“Commodity-Based Trust Shares”).<sup>4</sup> The Exchange proposes to amend a representation relating to the procedure for the redemption of Units of the Trust for gold and silver as contained in the Prior Releases. The Trust’s Units commenced trading on the Exchange on January 16, 2018.

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<sup>4</sup> See, Securities Exchange Act Release Nos. 82116 (November 17, 2107), 82 FR 55898 (November 24, 2107) (SR-NYSEArca-2017-131) (Notice of Filing of Proposed Rule Change to List and Trade Shares of the Sprott Physical Gold and Silver Trust under NYSE Arca Rule 8.201–E) (“Prior Notice”); 82448 (January 5, 2018), 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Sprott Physical Gold and Silver Trust under NYSE Arca Rule 8.201–E) (“Prior Order” and, together with the Prior Notice, the “Prior Releases”).

The manager of the Trust is Sprott Asset Management LP (“Manager”).<sup>5</sup> The Trust custodian for the Trust’s physical gold and silver bullion is the Royal Canadian Mint (“Gold and Silver Custodian”). [sic]

#### Change to Procedure for Redemption of Units for Gold and Silver

The Prior Releases stated that if a “Bullion Redemption Notice”<sup>6</sup> was received by the Transfer Agent from a Unitholder no later than 4:00 p.m., Eastern Time, on the 15<sup>th</sup> day of the month (or, if such day is not a business day, then on the immediately following day that is a business day), the amount of physical gold and silver bullion specified in the Bullion Redemption Notice would be received by armored transportation service carrier for delivery to the Unitholder approximately 10 business days after the end of that month.

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<sup>5</sup> On January 16, 2018, the Trust filed with the Commission a registration statement on Form 8-A under the Exchange Act relating to the Trust (File No. 001-38346) (“Registration Statement”). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

<sup>6</sup> As stated in the Prior Releases, a Unitholder that owns a sufficient number of Units who desires to exercise redemption privileges for physical gold and silver bullion must do so by instructing his, her or its broker, who must be a direct or indirect participant of CDS Clearing and Depository Services Inc. or The Depository Trust Company, to deliver to the Transfer Agent on behalf of the Unitholder a written notice (“Bullion Redemption Notice”) of the Unitholder’s intention to redeem Units for physical gold and silver bullion.

The Prior Notice stated that “[t]he armored transportation service carrier will receive physical gold and silver bullion in connection with a redemption of Units approximately 10 business days after the end of the month in which the Bullion Redemption Notice is processed.” The Exchange proposes to delete the preceding statement in accordance with a pending amendment to the Trust Agreement (the “Amendment”).<sup>7</sup> The Manager represents that the actual timing of receipt of bullion by the armored transportation service carrier varies based on the number of redemption requests received in a given month, the Redemption Amount per request and the proportion of gold and silver bullion redeemed. The Manager represents that, in the event of large numbers or volumes of redemption requests, the Gold and Silver Custodian and the armored transportation service carrier experience severe constraints in performing their required actions within the existing time period (i.e., approximately 10 business days). A high frequency of shipments in a short period of time places a significant strain on the operational and security resources necessary to prepare such shipments, resulting in additional expenses and risk to the Trust and the Gold and Silver Custodian. The Manager and the Gold and Silver Custodian expect that the Amendment will decrease operational expenses and risk caused by the 10 business day term currently provided by the Trust Agreement. The Manager represents that by mitigating such expenses and risk, it is anticipated that the Amendment will allow the Gold and Silver Custodian to continue to provide the Trust with low custody pricing. The Amendment

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<sup>7</sup> The Commission has previously approved the listing and trading of other gold-based commodity trusts that include a physical redemption feature but do not specify any minimum deadline for physical delivery of the commodity to the redeeming investor following a redemption request. See, e.g., Securities Exchange Act Release Nos. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the Merk Gold Trust Pursuant to NYSE Arca Equities Rule 8.201); 82593 (January 26, 2018), 83 FR 4718 (February 1, 2018) (SR-NYSEArca-2017-140) (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).

thereby may result in narrowing of the spread between the trading price of Units, which price reflects the performance of the trading prices of gold and silver less the expenses of the Trust's operations, and the trading prices of gold and silver in accordance with the Trust's objectives. Pursuant to the terms of the Trust Agreement and the applicable laws of the Province of Ontario, the Amendment is being effected on the ground that it provides added protection or benefit to Unitholders.<sup>8</sup>

The Manager represents that the proposed change described above is consistent with the Trust's investment objective, and will further assist the Manager to achieve such investment objective. Except for the change noted above, all other representations made in the Prior Releases remained unchanged.<sup>9</sup>

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</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.

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<sup>8</sup> The Trust will file an amendment to the Trust Agreement or amended and restated Trust Agreement, as appropriate, in Canada on SEDAR (System for Electronic Document Analysis and Retrieval), the electronic filing system for the disclosure documents of issuers across Canada. In addition, a brief description of the amendment will be included in the Trust's quarterly disclosures. Such filings or disclosures would be furnished to the Commission under cover of Form 6-K in accordance with Rules 13a-1 and/or 13a-3 under the Exchange Act. Pursuant to the terms of the Trust Agreement, a unitholder vote is not required to effect the amendment.

<sup>9</sup> See note 4, supra. All terms referenced but not defined herein are defined in the Prior Releases.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 the Amendment may provide potential benefits to investors by decreasing operational expenses and risk caused by the 10 business day time frame currently provided by the Trust Agreement. The Manager represents that by mitigating such expenses and risk, it is anticipated that the Amendment will allow the Gold and Silver Custodian to continue to provide the Trust with low custody pricing and may result in the narrowing of the spread between the trading price of Units, which price reflects the performance of the trading prices of gold and silver less the expenses of the Trust's operations, and the trading prices of gold and silver in accordance with the Trust's objectives.

The Manager represents that the proposed changes described above are consistent with the Trust's investment objective, and will further assist the Manager to achieve such investment objective. The Manager also represents that all unitholders will be subject to the Amendment; that the Manager has determined that the Amendment will provide added protection or benefit to unitholders; and that the Amendment is being proposed to mitigate the practical constraints associated with the high volume of redemption requests.

Except for the change noted above, all other representations made in the Prior Releases remained unchanged.

**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 Exchange Act. The Exchange believes the proposed rule change, by decreasing the Trust's operational

expenses and risk relating to redemptions, will enhance competition among issues of Commodity-Based Trust Shares relating to physical gold and silver.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the Commission has previously approved

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

the listing and trading of other gold-based commodity trusts that include a physical redemption feature but do not specify any minimum deadline for physical delivery of the commodity to the redeeming investor following a redemption request,<sup>16</sup> and the proposed rule change may provide potential benefits to investors by decreasing operational expenses and risk caused by the 10 business day timeframe (as described above) currently provided by the Trust Agreement. In addition, the Exchange represents that, in the absence of large numbers or volumes of redemption requests or other factors causing delay, the armored transportation service carrier will typically receive physical gold and silver bullion in accordance with the 10 business day time frame contained in the Prior Notice, and the Commission notes that Units of the Trust have commenced trading on the Exchange. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest for these reasons. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>17</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 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>18</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>16</sup> See note 7, supra.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2018-69 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-2018-69. 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 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. Persons submitting comments

are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-69, 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>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).