

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89310; File No. SR-NYSEArca-2020-59)

July 14, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to Permit the Listing and Trading of Shares of the United States Gold and Treasury Investment Trust Under NYSE Arca Rule 8.201-E

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 30, 2020, NYSE Arca, Inc. (“NYSE Arca” or “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 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 (1) to amend NYSE Arca Rule 8.201-E (“Commodity-Based Trust Shares”) to permit a trust to hold (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash, and to issue and redeem shares for such commodity and/or cash; and (2) to list and trade shares of the United States Gold and Treasury Investment Trust under NYSE Arca Rule 8.201-E as proposed to be amended. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 Exchange proposes (1) to amend NYSE Arca Rule 8.201-E (“Commodity-Based Trust Shares”) to permit a trust to hold (a) a specified commodity deposited with the Trust (defined below), or (b) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash, and (2) to list and trade shares (“Shares”) of the United States Gold and Treasury Investment Trust (“Trust”) under NYSE Arca Rule 8.201-E as proposed to be amended.⁴

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended.⁵ The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.⁶

⁴ On May 8, 2020, the Trust filed Amendment No. 1 to its registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (File No. 333-235913) (the “Registration Statement”). The description of the operation of the Trust and the Shares herein is based, in part, on the Registration Statement.

⁵ 15 U.S.C. 80a-1.

⁶ 17 U.S.C. 1.

The sponsor of the Trust is Wilshire Phoenix Funds LLC (“Sponsor”). The “Trustee” is Delaware Trust Company and the “Gold Custodian” is JPMorgan Chase Bank, N.A. The Bank of New York Mellon will be the administrator (“Administrator”), transfer agent (“Transfer Agent”) and cash and treasury custodian (“Treasury Custodian”) of the Trust. Foreside Fund Services, LLC will be the Trust’s marketing agent (“Marketing Agent”).

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2-E(j)(5) and 8.201-E of other precious metals and gold-based commodity trusts, including the GraniteShares Gold Trust;⁷ Merk Gold Trust;⁸ ETFS Gold Trust;⁹ ETFS Platinum Trust¹⁰ and ETFS Palladium Trust (collectively, the “ETFS Trusts”);¹¹ APMEX Physical-1 oz. Gold Redeemable Trust;¹² Sprott Gold Trust;¹³ SPDR Gold Trust (formerly, streetTRACKS

⁷ Securities Exchange Act Release No. 81077 (July 5, 2017) (SR-NYSEArca-2017-55) (order approving listing and trading shares of the GraniteShares Gold Trust under NYSE Arca Equities Rule 8.201).

⁸ Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137).

⁹ Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40).

¹⁰ Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR-NYSEArca-2009-95).

¹¹ Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR-NYSEArca-2009-94).

¹² Securities Exchange Act Release No 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18)

¹³ Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113).

Gold Trust); iShares Silver Trust;¹⁴ iShares COMEX Gold Trust;¹⁵ Long Dollar Gold Trust;¹⁶ Euro Gold Trust, Pound Gold Trust and Yen Gold Trust;¹⁷ and the Gold Trust.¹⁸ Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (“NYSE”)¹⁹ and listing of iShares COMEX Gold Trust and iShares Silver Trust on the American Stock Exchange LLC.²⁰ In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.²¹

¹⁴ See Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing on the Exchange of the iShares Silver Trust).

¹⁵ See Securities Exchange Act Release No.56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the street TRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

¹⁶ See Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR-NYSEArca-2016-84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

¹⁷ See Securities Exchange Act Release No. 80840 (June 17, 2017) (SR-NYSEArca-2017-33) (order approving listing and trading of shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust under NYSE Arca Equities Rule 8.201).

¹⁸ See Securities Exchange Act Release No.81918 (October 23, 2017), 82 FR 49884 (October 27, 2017) (SR-NYSEArca-2017-98) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of The Gold Trust under NYSE Arca Rule 8.201-E).

¹⁹ See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of street TRACKS Gold Trust on NYSE).

²⁰ See Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

²¹ 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

Proposed Amendment to NYSE Arca Rule 8.201-E

Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (“UTP”) “Commodity-Based Trust Shares.”²² Rule 8.201-E(c)(1) currently states that such securities are issued by a trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and may be redeemed in the same specified minimum number by a holder for the quantity of the underlying commodity. The Exchange proposes to amend Rule 8.201-E(c)(1) to provide as follows: “The term “Commodity-Based Trust Shares” means a security (a) that is issued by a trust (“Trust”) that holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, U.S. Department of Treasury securities and/or cash; (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/or cash; 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 and/or cash.”

The Commission has previously approved listing and trading on the Exchange of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole

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).

²² Commodity-Based Trust Shares are securities issued by a trust that represents investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Rule 8.201-E (c)(1) defines the term “Commodity-Based Trust Shares” as follows: “The term “Commodity-Based Trust Shares” means a security (a) that is issued by a trust (“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.”

or part.²³ The Exchange believes the proposed change will provide a trust issuing Commodity-Based Trust Shares and holding a specified commodity with the flexibility to issue or redeem shares partially or wholly for cash. Such alternative would allow a trust to structure the procedures for issuance and redemption of shares in manner that as determined by the issuer, may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than, or in addition to, the underlying commodity upon requesting the issuance or redemption of shares. In addition, the proposed change will accommodate a trust's holding U.S. Department of Treasury securities (such as U.S. Treasury Bills ("T-Bills")) in addition to a specified commodity in order to achieve its investment objective. The Exchange, therefore, believes the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange further proposes to amend Rule 8.201–E(c)(2) to state that the term “commodity” is defined in Section 1a(9) of the Commodity Exchange Act (rather than Section

²³ See, e.g., Securities Exchange Act Release Nos. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113) (approving listing on the Exchange of Sprott Physical Gold Trust); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR-NYSEArca-2010-84) (approving listing on the Exchange of the Sprott Physical Silver Trust); 68430 (December 13, 2012) (SR-NYSEArca-2012-111) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201; 82448 (January 5, 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); 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (order approving listing and trading shares of the APMEX Physical-1 oz. Gold Redeemable Trust); 50603 October 28, 2004 (SR-NYSE-2004-22) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares).

1(a)(4) as currently referenced in Rule 8.201–E (c)(2)) to reflect an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.²⁴

Operation of the Trust²⁵

According to the Registration Statement, the Trust will have no assets other than (a) physical gold bullion (“Physical Gold”) and (b) short term duration T-Bills in proportions that seek to closely replicate the Gold Treasury Index (the “Index”), as described below. The Trust will also hold U.S. dollars for short periods of time in connection with (i) the purchase, sale and/or maturity of T-Bills, (ii) the purchase and sale of Physical Gold, (iii) creations and redemptions of Shares (as described below), and (iv) to pay fees and expenses of the Trust.

The investment objective of the Trust is for the Shares to closely reflect the Index, which is published by the “Index Calculation Agent”, less the Trust’s liabilities and expenses. The amount of Physical Gold and T-Bills held by the Trust will be determined by the Index. On the last business day of each month (the “Rebalance Date”), the Index will dynamically calculate its weightings of Physical Gold, and T-Bills based on the volatility of gold and the volatility of the U.S. equity markets utilizing a mathematically derived passive rule-based methodology as discussed further below. The Trust, to closely replicate the Index, will rebalance its holdings in Physical Gold and T-Bills on a monthly basis for consistency with the Index weights.²⁶

²⁴ Public Law 111–203, 124 Stat. 1900 (2010).

²⁵ The description of the operation of the Trust, the Shares and the gold market contained herein is based, in part, on the Registration Statement. See note 4, supra.

²⁶ With respect to the 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 Gold Treasury Index

The Index is calculated and published by the Index Calculation Agent. The Index value using the London Bullion Market Association (“LBMA”) Gold Price PM (defined below)²⁷ will be calculated and published daily each business day at approximately 5:00 p.m. (Eastern time (“E.T.")). The current Index value will be disseminated by one or more major market vendors at least every 15 seconds during the Exchange’s Core Trading Session (normally 9:30 a.m. to 4:00 p.m. Eastern time (“E.T.)).

The Exchange, the Index Calculation Agent or a third party financial data provider will calculate an intraday indicative value for the Shares (“IIV”) every fifteen seconds during the Exchange’s Core Trading Session.²⁸

According to the Registration Statement, the Index has two components: (i) a notional component representing Physical Gold (the “Physical Gold Component”) and (ii) a notional component representing T-Bills (the “Treasury Component”).

On each Rebalance Date, the Index rebalances its weighting of the Physical Gold Component and the T-Bill Component utilizing a mathematically derived passive rules-based methodology. This methodology employs realized volatility of the LBMA Gold Price PM²⁹ and volatility measures of the U.S. equity markets utilizing a look-back period, among other parameters. At the end of each month, the Index Calculation Agent calculates the Index’s new weights for the Physical Gold Component and the T-Bill Component based on the immediately

²⁷ See note 33, infra.

²⁸ For purposes of this filing, the IIV is the value referenced in NYSE Arca Rule 8.201-E(e)(2)(v).

²⁹ See note 33, infra.

preceding period's LBMA Gold Price PM (defined below) and volatility measures of the U.S. equity markets.

According to the Registration Statement, the new percentage weight for the Physical Gold Component will generally be lower than the prior month if realized volatility is higher than during the previous calculation, and vice versa. In addition, during times of distress within the U.S. equity markets, as signaled by volatility measures, the Index will calculate a higher weight for the overall exposure to gold. The weights of the Physical Gold Component and the T-Bill Component will never be negative. The weight for the Physical Gold Component will not exceed 100%. The combined weights of the Physical Gold Component and the T-Bill Component will always sum to 100%, and if the weight of the Physical Gold Component is 100%, then the weight of the T-Bill Component will be zero.

On each Rebalance Date, following the calculation of the weighting of the components of the Index, the Trust will rebalance its assets in order to closely replicate the Index. The Index's weight for the Physical Gold Component is always positive and therefore represents a long position in Physical Gold to the extent of the percentage of Physical Gold represented in the Index.

Index Components

Physical Gold Component

The Physical Gold Component of the Index is a notional component representing Physical Gold. The price of Physical Gold used to determine the weighting of the Physical Gold Component and the T-Bill Component of the Index, as well as the value of Physical Gold held by the Trust, will be based on the LBMA Gold Price PM. If such day's LBMA Gold Price PM is not

available, the LBMA Gold Price AM (defined below) is used.³⁰ If no LBMA Gold Price (defined below) is available for the day, the Administrator values the Trust's gold based on the most recently announced LBMA Gold Price PM or LBMA Gold Price AM.

T-Bill Component

The T-Bill Component of the Index is a notional component representing T-Bills, which are short-term U.S. Treasury securities.³¹

The Trust's Net Asset Value ("NAV") and the NAV per Share

According to the Registration Statement, the Trust's NAV will be equal to the sum of the value of the "Physical Gold Holdings"³² and the "Treasury and Cash Holdings,"³³ less the expenses and liabilities of the Trust. The NAV per Share, which will be calculated by the Administrator on each business day, is equal to the Trust's NAV divided by the number of outstanding Shares.

In accordance with the Trust's valuation policy and procedures, the Administrator will generally determine the price of the Trust's Physical Gold by reference to the LBMA Gold Price PM.³⁴

³⁰ See note 33, infra.

³¹ U.S. Treasury securities are debt obligations issued by, and backed by the full faith and credit of the U.S. government. U.S. Treasury securities are highly liquid, have low volatility, and generally come in three varieties based on maturity: (i) Treasury bills; (ii) Treasury notes; and (iii) Treasury bonds.

³² "Physical Gold Holdings" is defined in the Registration Statement as the Trust's holdings of Physical Gold.

³³ "Treasury and Cash Holdings" is defined in the Registration Statement as the value of the T-Bills and U.S. dollars held by the Trust.

³⁴ For purposes of calculating the NAV of the Trust, to ascertain the price of Physical Gold held by the Trust, the prices (the "LBMA Gold Price") obtained from auctions conducted by ICE Benchmark Administration ("IBA"), a benchmark administrator appointed by the LBMA, will be used, which are generally conducted in the morning (London time) (the

The Administrator will determine the fair value of T-Bills based on the price of each T-Bill held by the Trust plus any cash, which will be held in U.S. dollars, as of 4:00 p.m., E.T. or as soon thereafter as practicable, on each business day.

On each business day at 4:00 p.m., E.T., or as soon thereafter as practicable (the “Evaluation Time”), the Administrator will evaluate the Physical Gold held by the Trust and calculate and publish the Trust’s Physical Gold Holdings. To calculate the Trust’s Physical Gold Holdings, the Administrator will:

1. Determine the LBMA Gold Price; and
2. Multiply the LBMA Gold Price by the amount of Physical Gold owned by the Trust as of the Evaluation Time on such day.

Creation and Redemption of Shares

On any business day (other than business days on which banking institutions in the United Kingdom are authorized or permitted by law to close for all or part of the day or a day on which the London gold market is closed for all or part of the day), an “Authorized Participant” may place an order with the Marketing Agent to create one or more “Creation Units.” Creation orders must be placed by 9:15 a.m., E.T.³⁵ Creation Units are issued on the creation order

“LBMA Gold Price AM”) and in the afternoon (London time) (the “LBMA Gold Price PM”).

³⁵ The Sponsor represents that, for the Trust to fulfill cash creation and redemption orders on a given business day to reflect the corresponding NAV on that business day, the Trust must execute buy or sell orders at price determination times of the assets used in the NAV calculation. Because the LBMA Gold Price PM fix occurs at 3:00 p.m. London time, which is normally 10:00 a.m., E.T., the cut-off time for creation and redemption orders is 9:15 a.m., E.T. to enable the Trust to buy and sell Physical Gold on that day’s LBMA Gold Price PM. An Authorized Participant’s arbitrage opportunities with respect to the price it must pay for a Creation Unit should not be materially impacted by the requirement that creation and redemption orders must be received by 9:15 a.m. E.T. on a business day. After the order cut-off time of 9:15 a.m., E.T., Authorized Participants can place creation or redemption orders that will occur at the next business day’s NAV.

settlement date as of 2:45 p.m., E.T. on the business day immediately following the creation order date at the applicable NAV per Share on the creation order date, if the required payment has been timely received. Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are not required to register as broker-dealers to engage in securities transactions, and (2) participants in the Depository Trust Company (“DTC”).

The total payment required to create each Creation Unit is an amount of cash equal to the NAV of at least 10,000 Shares of the Trust on the creation order date. The size of a Creation Unit is subject to change.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any business day (other than business days on which the LBMA Gold Price PM or other applicable benchmark price is not announced), an Authorized Participant may place an order with the Marketing Agent to redeem one or more Creation Units. Redemption orders must be placed by 9:15 a.m., E.T.

By placing a redemption order, an Authorized Participant agrees to deliver the Creation Units to be redeemed through DTC’s book-entry system to the Trust not later than the redemption order settlement date as of 2:45 p.m., E.T. on the business day immediately following the redemption order date.

Authorized Participants may also be able to arbitrage by trading gold futures on COMEX (a division of CME Group Inc.), which can be traded from 6:00 p.m. to 5:00 p.m. (E.T.), Sunday through Friday.

The redemption proceeds from the Trust consist of cash. The amount of cash included in a redemption is equal to the NAV of the number of Creation Unit(s) of the Trust requested in the Authorized Participant's redemption order on the redemption order date. The Transfer Agent will distribute the cash redemption amount at 2:45 p.m., E.T. on the redemption order settlement date through DTC to the account of the Authorized Participant as recorded on DTC's book entry system.

Availability of Information

The IIV for the Shares will be disseminated by one or more major market data vendors on at least a 15-second delayed basis, as required by NYSE Arca Rule 8.201-E(e)(2)(v). The IIV will be calculated based on the amount of Physical Gold and T-Bills held in the Trust's portfolio, which are derived from updated bids and offers indicative of the spot price of gold and market prices of T-Bills.³⁶

The website for the Trust (www.wshares.com) will contain the following information, on a per Share basis, for the Trust: (a) the mid-point of the bid-ask price³⁷ at the close of trading ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website for the Trust will also provide the Trust's prospectus. Finally, the Trust's website will provide the prior day's closing price of the Shares as traded in the U.S. market. In addition, information regarding market price and trading volume of the Shares will be

³⁶ The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

³⁷ The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

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.

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as gold over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares. In addition, 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 on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each business day and will be posted on the Trust's website. The current Index value will be disseminated by one or more major market vendors at least every 15 seconds during the Exchange's Core Trading Session. 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 Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m., E.T.). In addition, the LBMA Gold Price is publicly available at no charge at www.lbma.org.uk. The Trust's website will also provide the Trust's prospectus, as well as the most recent reports to stockholders.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Rule 8.201-E(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading. 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 Trust 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 Rule 7.34-E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Further, NYSE Arca Rule 8.201-E(g) sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201-E(g), 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 gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to 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 (including the Shares).

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. 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.

Trading Halts

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.³⁸ The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. If the IIV or the official Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the official Index

³⁸ See NYSE Arca Rule 7.12-E.

value occurs. If the IIV or the official Index value persists past the trading day in which it occurred, the Exchange will halt trading in the Shares.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁹ 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 federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. 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.

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 Intermarket Surveillance Group (“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

³⁹ 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.

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.⁴⁰

Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

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.

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-E(m).

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

⁴⁰ For a list of the current members of ISG, see www.isgportal.org.

and redemptions of Shares in Creation Units (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 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. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as 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 gold and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

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 basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴¹ 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,

⁴¹ 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Commission has previously approved listing and trading on the Exchange of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole or part.⁴² The Exchange believes the proposed amendment to Rule 8.201-E(c)(1) will provide a trust issuing Commodity-Based Trust Shares and holding a specified commodity with the flexibility to issue or redeem shares partially or wholly for cash. Such alternative would allow a trust to structure the procedures for issuance and redemption of shares in manner that as determined by the issuer, may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than, or in addition to, the underlying commodity upon requesting the issuance or redemption of shares. In addition, the proposed change will accommodate a trust's holding U.S. Department of Treasury Securities (such as T-Bills) in addition to a specified commodity in order to achieve its investment objective. The Exchange, therefore, believes the proposed change will facilitate the listing and trading of additional types

⁴² See note 23, supra.

of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange's proposal to amend Rule 8.201-E (c)(2) to state that the term "commodity" is defined in Section 1a(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently referenced in Rule 8.201-E (c)(2)) reflects an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each business day and will be posted on the Trust's website. The IIV relating to the Shares and the current Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no charge at www.lbma.org.uk. The Trust's website will also provide the Trust's prospectus, as well as the most recent reports to stockholders.

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 in that it will facilitate the listing and trading of an additional type of exchange-traded product related, in part, to physical gold that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

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. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating, in part, to physical gold.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or

- (B) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-NYSEArca-2020-59 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-2020-59. 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-2020-59 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.⁴³

J. Matthew DeLesDernier
Assistant Secretary

⁴³ 17 CFR 200.30-3(a)(12).