

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90216; File No. SR-NYSEArca-2020-59)

October 16, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to Permit the Listing and Trading of Shares of the Wilshire wShares Enhanced Gold Trust Under Amended NYSE Arca Rule 8.201-E

I. Introduction

On June 30, 2020, 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: (1) amend NYSE Arca Rule 8.201-E to (a) permit a trust to hold (i) a specified commodity or (ii) a specified commodity and cash; (b) permit a trust that holds a specified commodity deposited with the trust to issue and redeem shares for such commodity and/or cash; and (c) state that the term “commodity” is defined in Section 1a(9) of the Commodity Exchange Act; and (2) list and trade shares of the Wilshire wShares Enhanced Gold Trust under NYSE Arca Rule 8.201-E, as proposed to be amended. The proposed rule change was published for comment in the Federal Register on July 20, 2020.<sup>3</sup>

On August 17, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, and, on August 18, 2020, the Exchange withdrew Amendment No. 1 to the proposed rule change. On September 1, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a

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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. 89310 (July 14, 2020), 85 FR 43932 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.<sup>5</sup> On September 21, 2020, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>6</sup> On October 13, 2020, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>7</sup> The Commission has received no comment letters on the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 3

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.

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<sup>5</sup> See Securities Exchange Act Release No. 89724, 85 FR 55535 (September 8, 2020). The Commission designated October 18, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> Amendment No. 2, which amended and replaced the proposed rule change in its entirety, is available at: <https://www.sec.gov/comments/sr-nysearca-2020-59/srnysearca202059-7801813-223658.pdf>.

<sup>7</sup> Amendment No. 3 amended and replaced the proposed rule change, as modified by Amendment No. 2, in its entirety. When the Exchange filed Amendment No. 3 with the Commission, it also submitted Amendment No. 3 as a comment letter to the filing, which is publicly available on the Commission's website.

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, cash; (2) to list and trade shares (“Shares”) of the Wilshire wShares Enhanced Gold Trust (“Trust”) under NYSE Arca Rule 8.201-E as proposed to be amended; and (3) 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.<sup>8</sup>

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended.<sup>9</sup> The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>10</sup>

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 custodian (“Cash Custodian”) of the Trust. Foreside Fund Services, LLC will be the Trust’s marketing agent (“Marketing Agent”).

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<sup>8</sup> On September 10, 2020, the Trust filed pre-effective Amendment No. 2 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. The Shares will not begin trading until the Securities and Exchange Commission (“Commission”) declares the Registration Statement effective.

<sup>9</sup> 15 U.S.C. 80a-1.

<sup>10</sup> 17 U.S.C. 1.

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 MiniBAR Trust;<sup>11</sup> GraniteShares Gold Trust;<sup>12</sup> Merk Gold Trust;<sup>13</sup> ETFs Gold Trust;<sup>14</sup> Sprott Gold Trust;<sup>15</sup> SPDR Gold Trust (formerly, streetTRACKS Gold Trust); iShares Silver Trust;<sup>16</sup> iShares COMEX Gold Trust;<sup>17</sup> ; and the Gold Trust.<sup>18</sup> Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (“NYSE”)<sup>19</sup> and listing of iShares COMEX Gold Trust

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<sup>11</sup> Securities Exchange Act Release No. 84257 (September 21, 2018), 83 FR 48877 (September 27, 2018) (SR-NYSEArca-2018-55) (order approving listing and trading of shares of the GraniteShares Gold MiniBAR Trust Pursuant to NYSE Arca Rule 8.201-E).

<sup>12</sup> 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).

<sup>13</sup> Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137).

<sup>14</sup> Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40).

<sup>15</sup> Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113).

<sup>16</sup> 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).

<sup>17</sup> 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).

<sup>18</sup> 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).

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

and iShares Silver Trust on the American Stock Exchange LLC.<sup>20</sup> In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to unlisted trading privileges (“UTP”).<sup>21</sup>

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 UTP “Commodity-Based Trust Shares.”<sup>22</sup> 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 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.

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

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<sup>20</sup> 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).

<sup>21</sup> See Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

<sup>22</sup> 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.”

holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, 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 or part.<sup>23</sup> 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

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<sup>23</sup> 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), 77 FR 75239 (December 19, 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), 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); 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), 69 FR 64614 (November 5, 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).

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 cash 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 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.<sup>24</sup>

#### Operation of the Trust<sup>25</sup>

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

The investment objective of the Trust is for the Shares to closely reflect the Index, which will be published by Solactive AG (the “Index Calculation Agent”), less the Trust's liabilities

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<sup>24</sup> Public Law 111–203, 124 Stat. 1900 (2010).

<sup>25</sup> 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 8, supra.

and expenses.<sup>26</sup> The amount of Physical Gold and cash held by the Trust will be determined by the methodology of the Index. On the last business day of each month (the “Rebalance Date”), the Index will dynamically calculate its weighting of Physical Gold based on the realized volatility of gold and the realized volatility of the S&P 500 Index according to 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 in tandem with the Index on a monthly basis for consistency with the Index weights and will hold the remainder of its assets in cash.<sup>27</sup>

#### The Wilshire Gold Index

The Index, which is calculated and published by the Index Calculation Agent, will be publicly available from various information service providers, such as Reuters and Bloomberg, on or prior to the date that the Registration Statement is declared effective. The Index value using the London Bullion Market Association (“LBMA”) Gold Price PM (defined below)<sup>28</sup> will be calculated and published daily each business day at approximately 5:00 p.m. (Eastern time (“E.T.”)) 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 (normally 9:30 a.m. to 4:00 p.m. E.T.).

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<sup>26</sup> The Index Calculation Agent is not affiliated with the Sponsor and has represented that it has established and maintains processes and procedures to prevent the use and dissemination of material nonpublic information regarding the Index. The Index Calculation Agent is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers.

<sup>27</sup> 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).

<sup>28</sup> See note 37, infra.

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, which will be available from one or more major market data vendors.<sup>29</sup>

According to the Registration Statement, the Index has a notional component representing Physical Gold (the “Physical Gold Component”) and a cash weighting to the extent that less than 100% of the Index is comprised of the Physical Gold Component (the “Cash Weighting”). In seeking to track the Cash Weighting portion of the Index, the Trust will hold cash.

On each Rebalance Date, the Index rebalances its weighting of the Physical Gold Component and the Cash Weighting according to a mathematically derived, non-discretionary, objective and passive rules-based methodology. This methodology employs a non-discretionary rules-based system that takes into account realized volatility of the LBMA Gold Price PM<sup>30</sup> and the realized volatility of the S&P 500 Index, utilizing a look-back period, among other parameters, each calculated by the Index Calculation Agent. At the end of each month, the Index Calculation Agent, based solely on the application of the non-discretionary rules included in the Index methodology, calculates the Index’s new weighting for the Physical Gold Component

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<sup>29</sup> For purposes of this filing, the IIV is the value referenced in NYSE Arca Rule 8.201-E(e)(2)(v).

<sup>30</sup> See note 37, infra.

based on the immediately preceding period's LBMA Gold Price PM (defined below)<sup>31</sup> and realized volatility of the S&P 500 Index.<sup>32</sup>

According to the Registration Statement, as a result of the application of the non-discretionary rules-based methodology discussed above, the new weighting for the Physical Gold Component will generally be lower than the prior month if realized volatility of Physical Gold is higher than during the previous calculation, and vice versa. In addition, during increased realized volatility within the S&P 500 Index, the Index may calculate a higher weighting for the overall exposure to gold. The weighting of the Physical Gold Component and the Cash Weighting will never be negative. The weighting for the Physical Gold Component will not exceed 100%.<sup>33</sup> The combined weights of the Physical Gold Component and the Cash Weighting will always sum to 100%, and if the weighting of the Physical Gold Component is 100%, then the weighting of the Cash Weighting will be zero.

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<sup>31</sup> According to the Registration Statement, if the Index Calculation Agent, in consultation with the Trust, determines that the LBMA PM Fix has been discontinued, the Index Calculation Agent will substitute for the LBMA Gold Price PM an industry-accepted substitute source for gold prices. If such successor gold price source is substituted in accordance with the foregoing, the Index Calculation Agent, in consultation with the Trust, will make any necessary adjustments to the successor gold prices in a manner consistent with industry practices.

<sup>32</sup> According to the Registration Statement, the Sponsor may use a different reference rate for equity prices (i.e., other than the S&P 500 Index) if the sponsor of the S&P 500 Index discontinues publication of the S&P 500 Index and such sponsor or another entity publishes a successor or substitute index that the Trust determines, in consultation with the Index Calculation Agent, to be a broad-based equity index comparable to the S&P 500 Index (such index being referred to herein as a "Successor Index"). Such Successor Index must be a broad-based equity index similar to the S&P 500 Index in price and volatility history, with similar characteristics and tracking principally the performance of the U.S. equities market.

<sup>33</sup> Based on the non-discretionary passive rules-based methodology, the calculated weighting for the Physical Gold Component on each Rebalance Date will not be less than 50%.

On each Rebalance Date, the changes to the weighting of the Physical Gold Component and the Cash Weighting, as calculated by the Index Calculation Agent based solely on the application of the rules included in the Index methodology, will be effective for the Index, and the Trust will rebalance its assets in order to closely replicate the new weightings of the Index. The Index’s weighting 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.

The following table illustrates the hypothetical weighting for the Physical Gold Component at a given Rebalance Date under three different scenarios reflecting different assumptions for realized volatility of the LBMA Gold Price PM and S&P 500 Index as indicated below.

	Realized Volatility		Weight of Physical
	of LBMA Gold	Realized Volatility	Gold Component for
	Price PM	of S&P 500 Index	Next Month
Scenario 1	15.0%	12.0%	100.0%
Scenario 2	20.0%	12.0%	75.0%
Scenario 3	20.0%	15.0%	90.0%

### 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 of the Index according to the rules-based methodology, 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.<sup>34</sup> If no LBMA Gold Price (defined below) is available for the day, the Administrator will value the Trust's gold based on the most recently announced LBMA Gold Price PM or LBMA Gold Price AM.

#### Cash Weighting

The Cash Weighting of the Index is intended to represent cash. The Trust will hold cash in proportions represented by the Cash Weighting.

#### 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"<sup>35</sup> and the "Cash Holdings,"<sup>36</sup> 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.<sup>37</sup>

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<sup>34</sup> See note 37, infra.

<sup>35</sup> "Physical Gold Holdings" is defined in the Registration Statement as the Trust's holdings of Physical Gold.

<sup>36</sup> "Cash Holdings" is defined in the Registration Statement as the value of the U.S. dollars held by the Trust.

<sup>37</sup> 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 "LBMA Gold Price AM") and in the afternoon (London time) (the "LBMA Gold Price PM").

The Administrator will determine the value of 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 Transfer Agent to create one or more “Creation Units.” Creation orders must be placed by 9:15 a.m., E.T.<sup>38</sup> Creation Units are issued on the creation order

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<sup>38</sup> 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. 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.

settlement date by 4:00 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 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 Transfer 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 by 4:00 p.m., E.T. on the business day immediately following the redemption order date.

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 by 4:00 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 Regarding Gold

Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg.

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).

#### 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 cash 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 cash.<sup>39</sup>

The website for the Trust ([www.wshares.com](http://www.wshares.com)) will contain the following information, on a per Share basis, for the Trust: (a) the mid-point of the bid-ask price<sup>40</sup> 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 as well as the two most recent reports to shareholders. Finally, the Trust’s website will provide the prior day’s last sale 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 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, the last sale price for the Shares will be disseminated over the Consolidated Tape. In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

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<sup>39</sup> 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.

<sup>40</sup> 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.

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. 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 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](http://www.lbma.org.uk). The Trust's website will also provide the Trust's prospectus, as well as the most recent reports to shareholders.

#### 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 Equity Trading Permit (“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.<sup>41</sup> 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 value occurs. If the interruption to the 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.

### 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.<sup>42</sup> The

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<sup>41</sup> See NYSE Arca Rule 7.12-E.

<sup>42</sup> 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.

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 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>43</sup>

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.

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<sup>43</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

All statements and representations made in this filing regarding (a) the description of the Index, portfolio or reference assets, (b) limitations on Index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing will 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).

The Trust will comply with all initial and continued listing requirements of NYSE Arca Rule 8.201-E as it is proposed to be amended.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in 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 Index value and 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)<sup>44</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 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

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<sup>44</sup> 15 U.S.C. 78f(b)(5).

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.<sup>45</sup> 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 cash 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'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

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<sup>45</sup> See note 23, supra.

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. 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 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](http://www.lbma.org.uk). The Trust's website will also provide the Trust's prospectus, as well as the two most recent reports to shareholders.

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, including the proposed amendment to Rule 8.201-E(c)(1), will enhance competition by accommodating Exchange trading of additional exchange-traded products 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. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>46</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,<sup>47</sup> which requires, among other things, that the Exchange's rules be 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 a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to amend NYSE Arca Rule 8.201-E to (a) permit a trust to hold both a specified commodity and cash and (b) permit a trust that holds a specified commodity deposited with the trust to issue and redeem shares for such commodity and/or cash. The

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<sup>46</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>47</sup> 15 U.S.C. 78f(b)(5).

Commission believes that the proposed changes to the listing standard are consistent with the Act because holding cash will neither dilute the listing criteria nor render the commodity underlying the Commodity-Based Trust Shares more susceptible to manipulation.<sup>48</sup> In addition, the Commission notes that it has approved the listing and trading of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash, in whole or part.<sup>49</sup> Therefore, the Commission believes that these proposed changes to NYSE Arca Rule 8.201-E may enhance competition and allow for increased flexibility without rendering a trust more susceptible to manipulation and, thus, are consistent with Section 6(b)(5) of the Act.

The Exchange also proposes to amend NYSE Arca Rule 8.201-E to correct the reference to the term “commodity” as it is defined in Section 1a(9) of the Commodity Exchange Act. The Commission believes that the proposed clerical correction is consistent with the Act because it updates an obsolete reference.

The Commission believes that the aspect of the proposed rule change to list and trade the Shares pursuant to NYSE Arca Rule 8.201-E, as proposed to be amended, is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The NAV of the Trust will be published 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

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<sup>48</sup> Pursuant to Commentary .04 of NYSE Arca Rule 8.201-E, the Exchange must file separate proposals under Section 19(b) of the Exchange Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares.

<sup>49</sup> 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 shares of the Sprott Physical Gold Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (approving the listing and trading of shares of the streetTRACKS® Gold Shares).

Session. The IIV will be calculated based on the amount of Physical Gold and cash 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 cash. The Index, which is calculated and published by the Index Calculation Agent, will be publicly available from various information service providers, such as Reuters and Bloomberg, on or prior to the date that the Registration Statement is declared effective. The Index value, using the LBMA Gold Price PM, will be calculated and published daily each business day at approximately 5:00 p.m. E.T. 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. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).

Additionally, the website for the Trust will contain the following information, on a per Share basis, for the Trust: (a) the mid-point of the 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 as well as the two most recent reports to shareholders.

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. The Trust's website will provide the prior day's last sale price of the Shares as traded in the U.S. market. 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. While the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as gold over the Consolidated Tape, the last sale price for the Shares will be

disseminated over the Consolidated Tape. In addition, the Exchange represents that there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services. According to the Exchange, investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers.<sup>50</sup>

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 states that it 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 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. The Exchange represents that it 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

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<sup>50</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.

Index value occurs. If the interruption to the 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.

Additionally, the Exchange states that 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).<sup>51</sup>

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

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

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<sup>51</sup> The Exchange confirms that it 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.

- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34-E(a).
- (3) 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.
- (4) 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.<sup>52</sup> 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. These surveillances 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.
- (5) 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

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<sup>52</sup> 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.

- 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.
- (6) 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.
  - (7) The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.
  - (8) 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: (a) the procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (b) 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; (c) how information regarding the Index value and IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) 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 (f) 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, there is no regulated source of last sale information regarding physical gold, and 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.

- (9) The Trust will comply with all initial and continued listing requirements of NYSE Arca Rule 8.201-E, as proposed to be amended.
- (10) A minimum of 100,000 Shares will be required to be outstanding at the start of trading.

In addition, pursuant to Commentary .04 of NYSE Arca Rule 8.201-E, all statements and representations made in this filing regarding (a) the description of the Index, portfolio or reference assets, (b) limitations on Index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing will constitute continued listing requirements for listing the Shares of the Trust on the Exchange. The issuer must notify the Exchange of any failure by the Trust to comply with the continued listing requirements. Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor<sup>53</sup> for

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<sup>53</sup> The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No.

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).

Accordingly, for the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act<sup>54</sup> and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on the Proposed Rule Change, as Modified by Amendment No. 3

Interested persons are invited to submit written views, data, and arguments concerning whether the proposed rule change, as modified by Amendment No. 3, 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-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.

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77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

<sup>54</sup> 15 U.S.C. 78f(b)(5).

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].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the Federal Register. Amendment 3 to the proposed rule change reduced the scope of the proposed rule change by removing references to "cash equivalents" as a permitted holding and as instruments used in the issuance and redemption of shares. Amendment No. 3 to the proposal also provided other clarifications and additional information related to the

proposed rule change. The changes and additional clarifying information in Amendment No. 3 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. The Commission believes that such changes and additional information do not raise unique or novel regulatory issues under the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>55</sup> to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>56</sup> that the proposed rule change (SR-NYSEArca-2020-59), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>55</sup> 15 U.S.C. 78s(b)(2).

<sup>56</sup> Id.

<sup>57</sup> 17 CFR 200.30-3(a)(12).