

*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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at [https://www.theice.com/publicdocs/regulatory\\_filings/ICE\\_Clear\\_Europe\\_PAI\\_and\\_MTMM\\_Proposed\\_Changes.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICE_Clear_Europe_PAI_and_MTMM_Proposed_Changes.pdf).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2012-05 and should be submitted on or before April 16, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66627; File No. SR-NYSEARCA-2012-18]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the APMEX Physical—1 oz. Gold Redeemable Trust Pursuant to NYSE Arca Equities Rule 8.201

March 20, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 5, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the APMEX Physical—1 oz. Gold Redeemable Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 to list and trade Units ("Units") of the Trust under NYSE Arca Equities Rule 8.201.<sup>4</sup> Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."<sup>5</sup> The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the ETFs Gold Trust<sup>6</sup>, as well as the Sprott Physical Gold Trust.<sup>7</sup> In addition, the Commission has approved listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.<sup>8</sup> Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange ("NYSE") and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.<sup>9</sup>

<sup>4</sup> See the Registration Statement for the Trust on Form F-1, filed with the Commission on December 23, 2011 (No. 333-178745) (as amended, the "Registration Statement"). The descriptions of the Trust, the Units and the gold market contained herein are based, in part, on the Registration Statement.

<sup>5</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

<sup>6</sup> Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEARCA-2009-40).

<sup>7</sup> Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEARCA-2009-113).

<sup>8</sup> See Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEARCA-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust); 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>9</sup> See Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of streetTRACKS Gold Trust on NYSE); 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).

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

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

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

<sup>5</sup> 17 CFR 200.30-3(a)(12).

APMEX Precious Metals Management Services, Inc. is the manager of the Trust ("Manager"),<sup>10</sup> Computershare Trust Company of Canada is the trustee of the Trust ("Trustee"),<sup>11</sup> and RBC Dexia Investor Services ("RBC Dexia") Trust is the custodian of the Trust ("Custodian")<sup>12</sup> and the valuation agent for the Trust ("Valuation Agent").<sup>13</sup>

According to the Registration Statement, the investment objective of

<sup>10</sup> The Manager is a Delaware corporation and is a wholly-owned subsidiary of Apmex, Inc. (formerly known as American Precious Metals Exchange, Inc.) (the "parent company"). The parent company is an Internet-based company that sells a selection of precious metals in bar and coin form to the public, primarily in the United States. The Manager is responsible for the day-to-day activities and administration of the Trust. The Manager manages, or causes to be managed at the expense of the Trust, the Trust pursuant to the management agreement, as authorized under the amended and restated trust agreement. Additional details regarding the Manager are set forth in the Registration Statement.

<sup>11</sup> The Trustee is a trust company existing under the federal laws of Canada. The Trustee holds title to the Trust's assets and has exclusive authority over the assets and affairs of the Trust. The Trustee has a fiduciary responsibility to act in the best interest of the unitholders. Additional details regarding the Trustee are set forth in the Registration Statement.

<sup>12</sup> RBC Dexia is a trust company existing under the federal laws of Canada, and is a jointly-owned subsidiary of the Royal Bank of Canada and Dexia N.V./S.A. RBC Dexia is affiliated with a broker-dealer. RBC Dexia has represented to the Exchange that it has put in place and will maintain the appropriate information barriers and controls between itself and the broker dealer affiliate so that the broker dealer affiliate will not have access to information concerning the composition and/or changes to the Trust's holdings that are not available on the Trust's Web site. The Custodian will act as custodian for the assets that the Trust owns and will appoint a gold custodian as sub-custodian to hold the 1 oz. gold coins, as described below. The Custodian is responsible for the property of the Trust (cash, cash equivalents (as described below) and gold coins) that the Custodian, its affiliates or appointed sub-custodians directly hold. The Bank of Nova Scotia, a sub-custodian of RBC Dexia, will act as gold custodian for the 1 oz. gold coins that the Trust owns. The Custodian is responsible for and bears the risk of loss of, and damage to, the Trust's 1 oz. gold coins that it deposits with the Bank of Nova Scotia (the "Gold Custodian"), regardless of whether they are actually in possession of the gold custodian, subject to certain limitations based on events beyond the control of the Custodian. The Manager, with the consent of the Trustee, may determine to change the custodial arrangements of the Trust. The Trust represents that the agreement with the Custodian does not limit the options the Custodian may use for storage, although the Custodian must comply with the law and regulations as promulgated by the federal government of Canada and the Province of Ontario. Currently, the Custodian has decided to store the gold with the Bank of Nova Scotia which bank attests that it meets all applicable legal and regulatory requirements. Additional details regarding the Custodian and the gold custodian are set forth in the Registration Statement.

<sup>13</sup> The Trust's Valuation Agent will calculate the value of the net assets of the Trust on a daily basis and reconciles all purchases and redemptions of Units to determine the net asset value ("NAV"), as described further below.

the Trust is to invest and hold substantially all of its assets in 1 oz. gold coins. The assets of the Trust will consist of 1 oz. American Gold Eagle bullion coins and 1 oz. Canadian Gold Maple Leaf bullion coins, although the Trust is also permitted to purchase 1 oz. gold bullion bars and rounds. The Trust seeks to provide a secure, convenient and exchange-traded investment alternative for investors interested in holding 1 oz. gold coins. The Trust believes that investing in 1 oz. gold coins has several advantages over investing in bullion, including (i) 1 oz. gold coins contain a known quantity of gold that is guaranteed by the government issuing them, whereas gold bullion has no such guarantee; (ii) it is a crime to tamper with 1 oz. gold coins, so those receiving them have more confidence as to the amount of gold the coin contains; (iii) because the amount of gold contained in each unit is small (1 oz.), redemptions for the underlying precious metal can be done at lower amounts than similar investments in gold bullion; and (iv) if an investor chooses to redeem the investor's interests in the Trust, the investor would receive 1 oz. gold coins, the value of which is known since the precious metals it contains are of a known and fixed quantity, as opposed to bullion, the value of which would have to be re-determined for the benefit of a transferee when the investor wanted to transfer it. The Trust does not anticipate making regular cash distributions to unitholders. The Trust is neither an investment company registered under the Investment Company Act of 1940<sup>14</sup> nor a commodity pool for purposes of the Commodity Exchange Act.<sup>15</sup>

The Exchange represents that the Units satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.<sup>16</sup>

#### *Operation of the Gold Bullion Market*

According to the Registration Statement, the global gold market is influenced by several industries, organizations and activities which may be categorized as banking, governmental, mining, manufacturing and investment. For example:

- Multi-national bullion banks provide a variety of bullion-related products and services to the global gold market, including physical purchases

and sales, gold leasing, hedging and gold deposits.

- Governments, through central bank activities for each nation, buy, sell and hold gold reserves.

- Mining companies produce gold directly and combine with other companies that produce gold as a by-product and companies that are scrap merchants and gold recyclers to provide a supply of gold.

- Manufacturers which use gold in the process of making or constructing a final product, including products in the industrial community, electronic products, dental applications and jewelry, combine to provide demand for gold.

- Investment activities of individuals, corporations, pooled accounts, exchange traded funds and other investment oriented trading activity combine to provide demand for gold.

Gold can be purchased in a physical form in almost every country in the world. The most popular forms of gold ownership include coins, most commonly in one ounce gold coins of a known fineness, struck by sovereign governments including the United States, Canada, South Africa, Australia, Austria and others, along with bars and rounds also commonly containing one ounce or less in a known or expressed fineness, provided by major gold refiners including Johnson & Matthey, Produits Artistiques Métaux Précieux, Credit Suisse and others. Physical gold can be purchased in the United States through most precious metal or coin dealers and over the Internet, while in Europe and other parts of the world, purchases can also be made through banks and other financial institutions.

Physical gold is paid at the time of delivery and generally the prices track the world price of gold directly plus a small premium for manufacturing and distribution costs. The owner of the gold has a responsibility to store and insure the gold, but that is at the discretion of the owner. Private depositories and bank safe deposit vaults are available for annual fees.

Sources of gold supply include both mine production and recycling of existing previously mined gold. Gold mine production constitutes the largest portion of gold supplied into the market annually. Gold scrap, from jewelry and other manufactured products, is the second largest source of annual gold supply. Although many central banks have recently been purchasing gold rather than selling, central bank sales have historically accounted for a significant supply of gold coming into the marketplace.

<sup>14</sup> 15 U.S.C. 80a-1.

<sup>15</sup> 17 U.S.C. 1 [sic].

<sup>16</sup> With respect to 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).

Mine production includes gold produced from a primary or a secondary deposit. For the five years ended December 31, 2010, gold from net mining activity (gold from mining producers less hedging by producers) has been relatively stable at a level of between approximately 2,031 metric tons and approximately 2,686 metric tons per year. Notwithstanding this steady production, this supply represents only approximately 58% to 63% of the total annual demand for gold. During the seven quarters ended September 30, 2011, with rising prices and, accordingly, greater incentive for mining, net mining activity is providing from 57% to 75% of the total demand for gold.

According to the Registration Statement, central banks, as well as other governmental agencies, have historically retained gold as a strategic asset. However, since 1989, the governmental segment has been a net seller of gold to the private sector until the fourth quarter of 2010. For the five years ended December 31, 2010, central bank sales of gold have declined from approximately 370 metric tons in 2006, or approximately 10% of total annual supply of 3,574 metric tons, turning to negative supply, or otherwise a factor in demand, to approximately 77 metric tons in 2010, a significant turnaround from a source of supply to a source of demand. In the seven quarters ended September 30, 2011, central bank sales have provided a source of demand, not a source of supply, except for the fourth quarter of 2010, ranging from the provision of demand of as much as approximately 148 metric tons in the third quarter of 2011, to a swing as a source of supply of approximately 18 metric tons in the fourth quarter of 2010. Overall for 2010, central banks provided a net of approximately 77 metric tons of demand, not supply, in the global market.

According to the Registration Statement, as a result of the swing from net seller in 2006 to a net buyer in 2010, these central banks have ceased providing a supply of gold to the market and have become a consumer of gold in the market. This dramatic shift may have significant impact on supply and demand relationships in the future.

Industrial gold demand includes production for electronic devices, dental applications and other uses. Gold has manufacturing properties that include malleability, resistance to corrosion and conductivity that make the metal ideal for a variety of electronic components such as smartphones and notebooks and in emerging technology such as nanoparticles. During the five years

ended December 31, 2010, industrial demand has been as high as 466 metric tons per year to as low as 410 metric tons per year and has represented as much as 13% of total annual demand and as low as 11% of total annual demand. For the seven quarters ended September 30, 2011, industrial demand has increased from 114 metric tons in the first quarter of 2010 to 120 metric tons in the third quarter of 2011, with a high of 120 metric tons in the third quarters of 2010 and 2011.

Gold jewelry continues to be the primary source of gold demand worldwide, although in 2009, institutional demand exceeded jewelry demand. India is the most significant market for gold jewelry demand followed by China, the United States and Saudi Arabia. For the five years ended December 31, 2010, jewelry demand has been between 50% and 69% of the total annual demand. For the seven quarters ended September 30, 2011, jewelry demand has varied from 418 metric tons in the second quarter of 2010 to 558 metric tons in the first quarter of 2011. As a portion of total demand during the seven quarters ended September 30, 2011, jewelry has represented between 38% and 60% of total demand.

Retail and institutional investment demand includes government gold coin production, medals and other coin and bar production, gold bar hoarding, increases in gold on deposit for exchange traded funds and other gold fund investments and other physical investment demand. For the five years ended December 31, 2010, investment demand has grown from 830 metric tons in 2006 to 1,518 metric tons in 2010. During the seven quarters ended September 30, 2011, investment demand has fluctuated from 248 metric tons in the first quarter of 2010 to a high of 575 metric tons in the second quarter of 2010. For the seven quarters ended September 30, 2011, investment demand has provided from 27% to 52% of total demand.

Gold is traded around the world daily on a 24 hour basis. Gold can be owned directly or indirectly in several ways and traded in several different markets depending on the form of gold ownership or rights to own the underlying gold.

#### *Determining Value of Gold Coins*

According to the Registration Statement, the Valuation Agent will determine the fair market value of the 1 oz. American Gold Eagle bullion

coins<sup>17</sup> and the 1 oz. Canadian Gold Maple Leaf bullion coins<sup>18</sup> by using the closing price information provided by Bloomberg Finance LP. The closing price of each coin is separately recognized by Bloomberg as COINGEAG and COINGCML, respectively, determined by the mid-point between the high bid and low ask for that coin on the applicable date.<sup>19</sup> Bloomberg's quotations are based on information provided by the Certified Coin Exchange. The Certified Coin Exchange is an electronic exchange for coins that obtains bid and ask information from its member dealers, of which there are more than 500, that post over 100,000 bid and ask prices on a wide variety of coins, including the 1 oz. American Gold Eagle and the 1 oz. Canadian Gold Maple Leaf, at a given time. To the extent that the Trust holds 1 oz. gold bars or rounds, the fair market value is equal to the market value of 1 oz. of gold in the current market, which the Trust will obtain from Bloomberg.

1 oz. gold coins are manufactured and distributed by the United States Mint and the Royal Canadian Mint.<sup>20</sup> Both of these mints offer the 1 oz. gold coins at a price equal to the value of 1 oz. of gold plus a premium. The premium is a percentage of the value of the then applicable price of 1 oz. of gold, and such amount is intended to cover the cost of manufacturing and certain other distribution costs. This premium is set by the respective mints and generally does not change substantially, although

<sup>17</sup> The American Eagle Gold Bullion Coin was authorized by the Bullion Coin Act of 1985 and recorded under United States Code, Title 31, Subtitle IV, Chapter 51, Subchapter II, Section 5112.

<sup>18</sup> The Canadian Gold Maple Leaf is the official gold bullion coin of Canada and is struck by the Royal Canadian Mint and enabled under the Royal Canadian Mint Act, Revised Statutes of Canada 1985, c.-R-9, as amended. The objectives of the Royal Canadian Mint are "to mint coins in anticipation of profit and to carry out other related activities." The Royal Canadian Mint has all the powers of a natural person. The Royal Canadian Mint is a Schedule III-Part II for profit Crown corporation under the Financial Administration Act and operates under the general direction of its board of directors. The Royal Canadian Mint reports to the Canadian Parliament through the Minister of Transport, Infrastructure and Communities.

<sup>19</sup> Information relating to gold coin prices is updated by Bloomberg each business day as of 4:30 p.m. Eastern time.

<sup>20</sup> According to the Registration Statement, the American Gold Eagle and the Canadian Gold Maple Leaf, are two of the most recognized forms of gold in the world. These 1 oz. gold coins are struck by the United States and Canadian Governments so that there are a sufficient number of coins available to meet the demand for them, and are backed by the full faith and credit of the respective countries as to the quality of the coins. These 1 oz. gold coins are primarily distributed through qualifying financial institutions and large bullion dealers that meet the criteria of the respective issuing countries.

the price of the 1 oz. of gold changes with market conditions.

Each of the mints offers the 1 oz. gold coins to a group of authorized distributors, which are approved by the respective mint.<sup>21</sup> Each of the mints has established a set of criteria that must be met by prospective and current authorized distributors. The authorized distributors for the United States Mint include eight companies, of which three are publicly traded banks, four are units of publicly traded companies, and one is a private company.<sup>22</sup> There are six authorized distributors for the Royal Canadian Mint, of which one is a unit of a publicly traded bank, three are units of publicly traded companies and two are private companies.<sup>23</sup>

Based on the supply chain from the respective mints, the authorized distributors set their prices based on current market conditions, creating a spread between the purchase price of the 1 oz. gold coins from the mints and the selling price of such distributors with such selling price based on current market demand. Since the market value of the 1 oz. gold coins are primarily based on the price of 1 oz. of gold, and, further, since all of the coins from the respective mints are identical, the selling price of all the authorized distributors is substantially similar in what is a competitive commodity market. Generally, these authorized distributors (or "primary dealers") offer the 1 oz. gold coins to wholesalers and to larger retail sellers.

The Trust will hold substantially all of its assets in the 1 oz. American Gold Eagle bullion coin and the 1 oz.

Canadian Gold Maple Leaf bullion coin.<sup>24</sup>

The United States Mint charges the authorized purchasers a premium of 3% over the price of gold on the 1 oz American Gold Eagle. The Royal Canadian Mint does not disclose or publish the premium for the 1 oz. Gold Maple Leaf.<sup>25</sup>

Each of the mints has established a set of criteria that must be met by prospective and current authorized distributors. The United States Mint publishes the application to become an authorized purchaser online at <http://www.usmint.gov/consumer/index.cfm?action=AmericanEagles>, while the Royal Canadian Mint does not publish any of its criteria.

According to the Registration Statement, the correlation of the market value of the 1 oz. American Gold Eagle coin to the gold spot, as reported by Bloomberg Finance L.P., for the period from January 2009 to August 2011 as of the last trading day each month, is 0.978. The correlation of the market value of the 1 oz. Canadian Gold Maple Leaf coin to the gold spot, as reported by Bloomberg Finance L.P., for the period from January 2009 to August 2011 as of the last trading day each month, is 0.976. The data provided by Bloomberg Finance L.P. for the value of the 1 oz. American Gold Eagle Coin and the 1 oz. Canadian Gold Maple Leaf

Coin is the same data that will be used by the Trust to calculate the NAV.

### *Commodity Exchanges*

There are several commodity exchanges around the world that provide the ability to purchase a contract for delivery of a fixed amount of gold in a specified purity, or fineness, with delivery at a specific time in the future. Commodity exchange contracts can be satisfied either financially or by physical delivery. The current delivery month contract trades at a price that approximates the current value of the underlying amount of gold while future delivery months trade at a premium to the current delivery month. Generally, the longer the time until the contract delivery month, the higher the premium per ounce of gold the contract trades relative to the current delivery month. Because the contracts expire and must be satisfied either financially or by physical delivery, there is some action required by the contract owner every month for the current contract.

### *Gold Company Stocks*

Stock exchanges around the world trade the equities of gold mining companies. These publicly traded gold mining companies may or may not have profitable operations and may or may not have ownership or rights to gold mines. The gold mines in which the gold mining companies have exploration rights may or may not be producing gold. The public disclosure of the details and explanations of the operations of the gold mining companies that trade on the exchanges vary in each country and in each trading exchange.

### *Gold Derivatives*

There are several worldwide exchanges that trade gold derivatives. Gold derivatives include options to purchase or sell gold, forwards and other forms of trading rights to buy or sell gold. Such gold derivatives usually carry a fixed price of gold at which the gold must be bought or sold and have a tenor, or fixed timeframe when the right to buy or sell expires. Settlement of the derivative trade is most often completed financially and no physical gold is generally ever bought, sold or delivered. The owner of a derivative holds a right to buy or sell gold and not the physical gold and prices at which these derivatives trade are not directly related to the price of gold, but trade at prices that include the price of gold, the premium of the option, the remaining time before expiration of the option and other factors. Gold futures are traded on the COMEX, an affiliate of the Chicago

<sup>21</sup> The Trust deems authorized distributors to be those entities that have met the criteria established by the U.S. Mint and the Royal Canadian Mint, respectively, in their sole discretion, for the purposes of recognition as a buyer directly from such mint in order to distribute the products of the respective mint into the marketplace. These criteria include financial experience, operations and other criteria, that would be satisfactory to such mint.

<sup>22</sup> Authorized distributors of U.S. gold bullion coins are required to meet specified qualification criteria relating to experience as market-maker in gold coins, tangible net worth and audit by an independent certified public accounting firm. See "Procedures to Qualify for Bulk Purchase of Gold Bullion Coins", available at <http://www.usmint.gov/consumer/GoldAPRequirements.pdf>. The authorized distributors of American Gold Eagles for the United States Mint are published and known to be as follows: A—Mark Precious Metals, Scotia Mocatta, MTB, Prudential Securities, Coins 'N' Things, Commerzbank International, Deutsche Bank, and Tanaka Kinkinzoku.

<sup>23</sup> Although the Royal Canadian Mint does not publicize the requirements to become an authorized distributor or the authorized distributors themselves, the Manager believes that the following entities are authorized distributors of the Canadian Maple Leaf for the mint: A—Mark Precious Metals, Scotia Mocatta, MTB, Prudential Securities, Coins 'N' Things, and Dillon Gage.

<sup>24</sup> According to the Registration Statement, the American Gold Eagle coin contains one troy ounce of gold and, along with other alloys, uses the durable 22-karat standard (0.9167 fine gold or similar) for gold coinage. Each coin contains the stated amount of pure gold, plus small amounts of silver and copper alloys, added for increased hardness and durability. They are struck to the U.S. Mint's exacting standards for quality. Each one troy ounce coin must contain one troy ounce of pure gold, must weigh 1.0909 troy ounces, must have a diameter of 32.70 millimeters and must be 2.87 millimeters thick. The American Gold Eagle is required, by law, to be struck from newly mined sources of gold in the United States. The Canadian Gold Maple Leaf coin contains one troy ounce of gold with a 24-karat fineness of 0.9999. The coins are guaranteed for their weight, purity and fineness by the Government of Canada. The coin has a diameter of 30 millimeters and is 2.8 millimeters thick.

<sup>25</sup> Neither the United States Mint nor the Royal Canadian Mint sells the American Gold Eagle or the Canadian Maple Leaf directly to the public. Although the Web sites of the respective mints (the United States Mint at [http://www.usmint.gov/mint\\_programs/american\\_eagles/index.cfm?Action=american\\_eagle\\_gold](http://www.usmint.gov/mint_programs/american_eagles/index.cfm?Action=american_eagle_gold) and the Royal Canadian Mint at <http://www.mint.ca/store/mint/about-the-mint/bullion-1300002>) discuss the 1 oz. gold coins manufactured by the respective mints, there is no opportunity to purchase directly from the mints. The United States Mint offers a listing of retailers by state and the Royal Canadian Mint offers a form to complete in order to identify a retailer. Neither of the mints offers a list of companies that are authorized purchasers from the respective mint and neither of the mints offers any explanation for premiums or pricing.

Mercantile Exchange, Inc., and the Tokyo Commodity Exchange.<sup>26</sup>

### *Gold Funds*

There are several gold funds operating around the world with the majority of the funds traded on public exchanges in the form of open or closed end funds, or alternatively, in exchange traded funds. These publicly traded funds are a form of asset backed securities where the owner of the security holds an undivided interest in the pool of gold that the public fund holds. Generally, the public funds hold gold in safekeeping, and the value of the securities is directly related to the value of the gold that the public fund holds. However, there can be some trading premium or discount to the value of the underlying gold based on current market conditions, the need for liquidity by the owners of the public funds, temporary imbalances of buy or sell orders for the securities, tax treatments of the public funds, or other factors. Generally, the interest in the public funds is bought or sold through brokerage firms with official access to the exchanges on which the securities of the public funds trade.

### *Operation of the Trust*

According to the Registration Statement, the Trust will not hold or trade in commodity futures contracts regulated by the Commodity Exchange Act, as administered by the U.S. Commodity Futures Trading Commission ("CFTC"). According to the Registration Statement, the Trust is not a commodity pool for purposes of the Commodity Exchange Act,<sup>27</sup> and none of the Manager, the Trustee or the underwriters is subject to CFTC regulation as a commodity pool operator or a commodity trading advisor in connection with the Units.

The Trust intends to invest in long-term holdings of 1 oz. gold coins but intends to hold highly liquid investments (consisting of short term certificates of deposit or any U.S. Government Security) or cash [sic] an amount equal to approximately 3% of its total net assets generally to pay expenses and cash redemptions. The Trust does not intend to speculate in gold. The Trust may be required to sell some of its 1 oz. gold coins from time to time in order to replenish the amount

held in cash. The Trust is authorized to issue an unlimited number of Units.

Except with respect to cash and highly liquid investments that the Trust will hold to pay expenses and anticipated redemptions, the Trust expects to own only 1 oz. gold coins. While the Trust, pursuant to its investment guidelines ("Investment Guidelines"), will be permitted to invest up to 20% of its assets in securities other than 1 oz. gold coins, the Manager intends to invest and hold approximately 97% of the total net assets of the Trust in 1 oz. gold coins.<sup>28</sup>

The Manager will not buy and sell 1 oz. gold coins for the Trust through its current parent company, APMEX Precious Metals Exchange, Inc., of which the Manager's officers and directors are officers, or its affiliates.

To purchase all of the 1 oz. gold coins pursuant to the Trust's investment guidelines using the initial public offering proceeds, the Manager will negotiate on behalf of the Trust for multiple transactions with certain authorized distributors; all of such distributors are independent of the Manager and any affiliate of the parent company. These negotiations and related transactions will include the pricing of the 1 oz. gold coins, the proposed terms of payment and certain delivery requirements in each transaction for the 1 oz. gold coins to be received at the gold custodian.<sup>29</sup> For each transaction, the Manager expects that the price per coin for the specified number of coins in the order will be quoted and offered by the distributors at a fixed amount over the price of gold per ounce on a date certain in the future as published by London Gold Market Fixing, or the London PM Fix, although

the Manager may use other processes to establish a fair, competitive market price and related terms.

The process of determining the worldwide price of gold occurs twice daily in London, once in the morning and once in the afternoon, by a committee of five internationally recognized bullion dealers, all of which are members of the London Bullion Market Association. Once the Manager identifies an offer of price and terms as acceptable for a transaction, it will prepare a purchase order for the transaction that specifies the Trust as the buyer and the seller as the identified distributor and will set forth in reasonable detail the price and terms. The Manager will sign the purchase order on behalf of the Trust and deliver it to the selling distributor. In accordance with the terms of the purchase order, funds will be delivered to the selling distributor directly from the Trust. As the physical delivery of the 1 oz. gold coins is completed at the gold custodian, a representative of the Manager will be present. At delivery, the Manager will inspect the 1 oz. gold coins and complete a random review of the count and authenticity of the gold content. Once the Manager is satisfied with the completeness and accuracy of the delivery of the 1 oz. gold coins, the gold custodian will put the 1 oz. gold coins in storage and provide a written report to the Custodian of the details of such receipt.

### *Secondary Market Trading*

The Units may trade in the secondary market on the Exchange at prices that are lower or higher relative to their NAV per Unit. The amount of the discount or premium in the trading price relative to the NAV may be influenced by non-concurrent trading hours between the COMEX, which is the U.S. exchange on which gold for physical delivery is traded, and NYSE Arca and the Toronto Stock Exchange ("TSX"). While the Units will trade on NYSE Arca and the TSX until 4 p.m. Eastern time, liquidity in the global gold market will lessen after the close of the COMEX at 1:30 p.m. Eastern time. As a result, during this time, trading spreads, and the resulting premium or discount to the NAV may widen.

### *Trust Expenses*

The Trust pays the Manager a monthly management fee. Fees payable to the Manager are calculated and accrued daily and will be paid monthly in arrears. Except as otherwise described in the Registration Statement, the Trust is responsible for all costs and expenses incurred in connection with

<sup>26</sup> For additional information regarding the gold bullion market, gold futures exchanges, and regulation of the global gold market, see Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (order approving Exchange listing and trading of the ETFs Gold Trust).

<sup>27</sup> 7 U.S.C. 1 *et seq.*

<sup>28</sup> The Trust's Investment Guidelines provide that the Trust will invest in and hold a minimum of 80% of the total net assets of the Trust in 1 oz. gold coins and hold no more than 20% of the total net assets of the Trust in cash (such as interest-bearing accounts and short-term certificates of deposit) or any U.S. Government Security, as defined below (except during the 90-day period following the closing of the Trust's initial public offering or additional offerings or prior to the distribution of assets of the Trust, at which times the Trust may hold more than 20% of the total net assets of the Trust in cash (such as interest-bearing accounts and short-term certificates of deposit) and U.S. Government Securities). U.S. Government Security means any direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Act, as exempted securities for the purposes of the Exchange Act.

<sup>29</sup> This procedure will not apply continually and will apply only with respect to the initial public offering, and if the Trust engages in other public offerings for the purchase of gold using the initial public offering proceeds.

the ongoing operation and administration of the Trust including, but not limited to: The fees and expenses payable to and incurred by the Trustee, the Manager, any investment manager, the Custodian, any sub-custodians, including the gold custodian, the registrar and transfer agent, the Valuation Agent and the independent review committee; acquisition, transaction and handling costs for the 1 oz. gold coins (other than the redemption expenses); and storage fees for the 1 oz. gold coins.

#### *Initial Public Offering and Redemption of Units*

The Trust will offer at a minimum, 1,000,000 Units in its initial public offering. Each Unit will represent an equal, undivided ownership interest in the net assets of the Trust attributable to the Units. The Trust may not issue additional Units following the completion of this offering (i) unless the per Unit offering price, after deducting underwriting fees, commissions and offering expenses, will not yield proceeds less than the NAV per Unit, as determined on the business day prior to the pricing of the units to be sold in the offering, or (ii) except by way of Unit distribution in connection with an income distribution.

Unitholders may redeem their Units on a weekly basis, as described below.

#### *Redemption of Units for 1 oz. Gold Coins*

Subject to the terms of the amended and restated trust agreement, a unitholder may redeem Units at its option for 1 oz. gold coins on each Thursday. Unitholders who redeem their Units for 1 oz. gold coins are entitled to receive a redemption price equal to 100% of the aggregate NAV of the redeemed Units determined at 4 p.m., Eastern time, on the Thursday on which NYSE Arca and/or the TSX is open for trading for the week in respect of which the redemption request is processed, or the weekly redemption date and time, less the redemption expenses, or the gold redemption amount. Such redemption requests must be for a minimum redemption amount of at least \$10,000 (the "gold redemption minimum").

A unitholder that owns a sufficient number of Units (a number of Units equal to the gold redemption minimum) who desires to exercise his, her or its redemption privileges for 1 oz. gold coins must do so by instructing the unitholder's broker, who must be a direct or indirect participant of Depository Trust Company in the United States ("DTC"), or CDS Clearing

and Depository Services, Inc. in Canada ("CDS"), to deliver to the registrar and transfer agent, on behalf of the unitholder a written notice (the "gold redemption notice") of the unitholder's intention to redeem Units for 1 oz. gold coins. The Trust's registrar and transfer agent must receive a gold redemption notice no later than 4 p.m., Eastern time, on the third day on which NYSE Arca or the TSX is open for trading prior to the weekly redemption date and time. The Trust will process any gold redemption notice that it receives after that time on the next weekly redemption date, following the date on which the unitholder gives timely notice.

A common carrier will deliver the 1 oz. gold coins to be delivered to a unitholder as a result of a redemption of Units, and the shipping provider will fully insure the 1 oz. gold coins during transit. The Trust will engage the shipping service provider in connection with a redemption. The 1 oz. gold coins can be delivered to any physical address (subject to approval by the Trust). In the event that a redeeming unitholder does not provide an acceptable physical address for delivery of its 1 oz. gold coins in its gold redemption notice, such unitholder may elect to either have up [sic] its 1 oz. gold coins delivered to the Manager for pickup by the unitholder at the office of the Manager or redeem its Units for cash as described below. If the unitholder requests that the 1 oz. gold coins be delivered to the Manager, the risk of loss transfers to the unitholder upon delivery to the Manager. Once the Trust places the 1 oz. gold coins representing the redeemed Units with the shipping service provider, which will fully insure the shipment, the Trust will have completed its responsibilities with respect to the redemption and the redeeming unitholder will bear the risk of loss of, and damage to, such 1 oz. gold coins and seek any redress for any loss or damage from the shipping service provider or the insurance provider, as the case may be. The shipping service provider will receive 1 oz. gold coins in connection with a redemption of Units approximately seven business days after the redemption is processed by the registrar and transfer agent.

#### *Redemption of Units for Cash*

According to the Registration Statement, subject to the terms of the amended and restated trust agreement, a unitholder may redeem Units at its option for cash on a monthly basis. Units redeemed for cash will receive a redemption price equal to 95% of the

lesser of (i) the volume-weighted average trading price of the Units traded on NYSE Arca or, if trading has been suspended on NYSE Arca, the trading price of the Units traded on the TSX, for the last five days on which the respective exchange is open for trading during the month in which the redemption request is processed by the registrar and transfer agent, and (ii) the NAV of the redeemed Units as of 4 p.m., Eastern time, on the last day of the month on which NYSE Arca is open for trading during the month in which the redemption request is processed (in each case, less any applicable taxes). A redeeming unitholder will receive cash redemption proceeds approximately three business days after the end of the month in which the redemption notice is processed. The Trust will retain the remaining 5% of the value of the Units.

The Trust's registrar and transfer agent must receive a redemption notice no later than 4 p.m., Eastern time, on the 15th day of the month in order for the Manager to process such redemption notice that month or, if such day is not a business day, then on the immediately following day that is a business day. The Manager will process any redemption notice to redeem Units for cash that it receives after such time in the next month.

According to the Registration Statement, the Trust may suspend the right of unitholders to request a redemption of their Units or postpone the date of delivery or payment of the redemption proceeds (whether 1 oz. gold coins and/or cash, as the case may be) for any period during which the Trust determines that conditions exist which render impractical the sale of assets of the Trust or which impair the ability of the Trust or the Valuation Agent to determine the value of the assets of the Trust and the NAV or the redemption amount for the Units. Pursuant to Sections 5.7(2) and 5.7(3) of National Instrument 81-102, the Trust must apply to the Ontario Securities Commission, the securities regulatory authority for the jurisdiction in which the head office of the Trustee is located, for approval to suspend redemptions and must concurrently file a copy of the application with the securities regulatory authority in each of the other Canadian jurisdictions in which the Units will be offered. The Trust may suspend redemptions only after the application is approved by the Ontario Securities Commission and has not been disallowed by any of the other relevant Canadian jurisdictions.<sup>30</sup>

<sup>30</sup> Other Canadian securities regulatory authorities which must be notified are as follows:

In the event of any such suspension, the Trust will issue a press release, and publicly file such press release with the Commission via the Edgar system, with the TSX and with the Canadian securities regulatory authorities on SEDAR, announcing the suspension and will advise all agents of the Trust, as applicable. The suspension may apply to all requests for redemption received prior to the suspension, but as for which payment has not been made, as well as to all requests received while the suspension is in effect. All unitholders making such requests will be advised of the suspension and that the redemption will be effected at a price determined on the first valuation date that the value of the net assets of the Trust per Unit is calculated following the termination of the suspension. All such unitholders will have, and will be advised that during such suspension of redemptions that they have, the right to withdraw their requests for redemption. The suspension will terminate in any event on the first business day on which the condition giving rise to the suspension has ceased to exist or when the Trust has determined that such condition no longer exists, provided that no other condition under which a suspension is authorized then exists, at which time the Trust will issue a press release announcing the termination of the suspension and will advise all agents of the Trust, as applicable. Subject to applicable Canadian and U.S. securities laws, any declaration of suspension made by the Trust will be conclusive.

During any period in which the right of unitholders to request a redemption of their Units for 1 oz. gold coins and/or cash is suspended, the Trust will direct the Trust's Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV. During any such period of suspension, the Trust will not issue or redeem any Units.

#### Termination Events

The Trust does not have a fixed termination date but will dissolve and be subsequently terminated in the event that:

- There are no Units outstanding;
- The Trustee resigns or is removed and no successor trustee is appointed within the time limit prescribed in the amended and restated trust agreement;

- The Manager resigns and no successor manager is appointed and approved by unitholders within the time limit prescribed in the amended and restated trust agreement;

- The Manager is, in the opinion of the Trustee, in material default of its obligations under the amended and restated trust agreement and such default continues for 120 days from the date that the Manager receives notice of such default from the Trustee and no successor manager has been appointed by the unitholders;

- The Manager has been declared bankrupt or insolvent or has entered into liquidation or winding-up, whether compulsory or voluntary (and not merely a voluntary liquidation for the purposes of amalgamation or reconstruction), and no successor manager has been appointed by the unitholders within 90 days from such date;

- The Manager makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency, and no successor manager has been appointed by the unitholders within 90 days of such date; or

- The assets of the Manager have become subject to seizure or confiscation by any public governmental authority, and no successor manager has been appointed by the unitholders within 90 days from such date.

In addition, the Trustee may at any time terminate and dissolve the Trust if, in the opinion of the Trustee, after consulting with the Manager and the independent review committee, the value of the net assets of the Trust has been reduced such that it is no longer economically feasible to continue the Trust and would be in the best interests of the unitholders to terminate the Trust, by giving each holder of Units at the time at least 90 days' notice. To the extent such termination in the discretion of the Manager may involve a matter that would be a "conflict of interest matter" as set forth in applicable Canadian laws, the Manager will refer the matter to the independent review committee established by the Manager for its recommendation. In connection with the termination of the Trust, the Trust will, to the extent possible, convert its assets to cash and, after paying or making adequate provision for all of the Trust's liabilities and expenses, distribute the net assets of the Trust to unitholders, on a pro rata basis, as soon as practicable after the termination date.

#### Valuation of Gold and Definition of NAV

The Valuation Agent will determine the value of the net assets of the Trust and the NAV on each business day, unless the Trust determines that its assets cannot be valued as frequently as a result of the occurrence of a force majeure event, such as a war, earthquake, hurricane, civil disturbance or terrorist act. The value of the net assets of the Trust as of the valuation time on each business day will be the amount obtained by deducting from the aggregate fair market value of the assets of the Trust as of such date an amount equal to the value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units, if any) as of such date. The NAV will be determined by dividing the value of the net assets of the Trust on a date by the total number of Units then outstanding on such date. Registration or transfers of the Units may be made through the book-based system of CDS and/or DTC, each of which hold the Units on behalf of its participants (i.e., brokers), which in turn may hold the Units on behalf of their customers.

#### Intraday Indicative Value

The Trust Web site will provide an intraday indicative value ("IIV") per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m. Eastern time).<sup>31</sup> The IIV will be calculated by:

1. Subtracting the closing spot price of gold for the prior business day from the current applicable spot price of gold (the "Spread");
2. Multiplying the Spread by the aggregate number of the Trust's 1 oz. gold coins for the prior business day (the "Adjustment");
3. Dividing the Adjustment by the aggregate number of units of the Trust outstanding for the prior business day (the "Per Unit Adjustment"); and
4. Adding the Per Unit Adjustment to the NAV per Unit of the Trust for the prior business day.

#### Availability of Information

The Web site for the Trust, which the Trust will launch upon the closing of the initial public offering, will contain the following information, on a per Unit basis, for the Trust:

(a) The midpoint of the bid-ask price at the close of trading in relation to the NAV as of the time the NAV is

<sup>31</sup> The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which will be calculated once a day.

British Columbia Securities Commission, Alberta Securities Commission, Saskatchewan Securities Commission, Manitoba Securities Commission, Autorite des marches financiers, New Brunswick Securities Commission, Nova Scotia Securities Commission, Securities Commission of Newfoundland and Labrador, and Prince Edward Island Securities Office, Office of the Attorney General.



calculated ("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 Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders.

The Trust Web site also will provide the last sale price of the Units as traded in the U.S. market, as well as a breakdown of the holdings of the Trust by coin type.

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 Units, as is the case for all equity securities traded on the Exchange. In addition, there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. The IIV relating to the Units will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>32</sup>

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, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites 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. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Gold coin price information is widely available for free from many precious metals dealers. For example, it is free at [www.APMEX.com](http://www.APMEX.com) with a delay of several minutes. Investors also can obtain gold coin pricing information on

the Certified Coin Exchange Web site at [www.certifiedcoinexchange.com](http://www.certifiedcoinexchange.com).

Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Wall Street Journal*. In addition, the London AM Fix and London PM Fix are publicly available at no charge at [www.thebulliondesk.com](http://www.thebulliondesk.com).

The Trust's daily (or as determined by the Manager in accordance with the amended and restated trust agreement) NAV is posted on the Trust's Web site as soon as practicable. The Exchange will provide on its Web site ([www.nyx.com](http://www.nyx.com)) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

#### *Criteria for Initial and Continued Listing*

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

It is anticipated that a minimum of 1,000,000 Units will be required to be outstanding at the start of trading. The minimum number of Units required to be outstanding is comparable to requirements that have been applied to previously listed shares of the Sprott Physical Gold Trust.<sup>33</sup> The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity.

#### *Trading Rules*

The Exchange deems the Units to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, 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.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units 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 Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>34</sup> The Exchange will halt trading of the Units on the Exchange if trading in the Units is halted on TSX and in the event the Trust directs the Trust's Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV.

#### *Surveillance*

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Units to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Units 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 Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Units 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

<sup>32</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published on CTA or other data feeds.

<sup>33</sup> See note 7, *supra*.

<sup>34</sup> See NYSE Arca Equities Rule 7.12.



options on futures, and any related derivative instruments (including the Units).

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.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. 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. Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Units 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 may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG, including the COMEX.<sup>35</sup>

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

#### *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 Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) NYSE Arca Equities Rule 9.2(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 Units; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units

prior to or concurrently with the confirmation of a transaction; (4) the possibility that trading spreads and the resulting premium or discount on the Units 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 (5) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Units directly from the Trust will receive a prospectus. ETP Holders purchasing Units 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 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, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

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>36</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 Equities Rule 8.201. 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 ISG from other exchanges that are members of ISG or with which the Exchange has entered

into a comprehensive surveillance sharing agreement, including COMEX.

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 Web sites 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. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. In addition, the London AM Fix and London PM Fix are publicly available at no charge at [www.thebulliondesk.com](http://www.thebulliondesk.com). The Trust's daily (or as determined by the Manager in accordance with the amended and restated trust agreement) NAV is posted on the Trust's Web site as soon as practicable. The market value of each coin is separately recognized by Bloomberg as COINGEAG and COINGCML, respectively. Bloomberg's quotations are based on information provided by the Certified Coin Exchange. The Trust's Web site will provide an IIV per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session. The Trust's Web site will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. The Exchange will provide on its Web site a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

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 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 and gold futures information.

<sup>35</sup> A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org). The Investment Industry Regulatory Organization of Canada is a member of ISG.

<sup>36</sup> 15 U.S.C. 78f(b)(5).

### *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.

### *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 (i) as the Commission may designate up to 90 days of such date 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 such 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2012-18 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEARCA-2012-18. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2012-18, and should be submitted on or before April 16, 2012.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-7134 Filed 3-23-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66625; File No. SR-MSRB-2012-04]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule G-43, on Broker's Brokers; Proposed Amendments to Rule G-8, on Books and Records, Rule G-9, on Record Retention, and Rule G-18, on Execution of Transactions; and a Proposed Interpretive Notice on the Duties of Dealers That Use the Services of Broker's Brokers**

March 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 5, 2012, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule

change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the SEC a proposed rule change consisting of (i) proposed MSRB Rule G-43 governing the municipal securities activities of broker's brokers and certain alternative trading systems ("Proposed Rule G-43"), (ii) proposed amendments to MSRB Rule G-8 (on recordkeeping by broker's brokers and certain alternative trading systems), MSRB Rule G-9 (on record retention), and MSRB Rule G-18 (on agency trades and trades by broker's brokers) (collectively, the "Proposed Amendments"); and (iii) a proposed interpretive notice on the duties of brokers, dealers, and municipal securities dealers ("dealers") that use the services of broker's brokers (the "Proposed Notice"). The MSRB requests that the proposed rule change be made effective six months after approval by the Commission.

The text of the proposed rule change is available on the MSRB's Web site at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx), at the MSRB's principal office, and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the MSRB 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 these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### **1. Purpose**

The MSRB decided to consider additional rulemaking concerning broker's brokers and the dealers that use their services due to the important role that broker's brokers play in the provision of secondary market liquidity for retail investors in municipal

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

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

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