

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes adding a fee for Market-on-Close ("MOC") and Limit-on-Close ("LOC") orders executed in the Closing Auction. A fee of \$.0005 per share will be charged for all MOC and LOC orders executed in the Closing Auction in NYSE Arca primary listed securities, including all exchange traded funds ("ETFs") and exchange traded notes ("ETNs"). The Exchange also proposes charging a fee of \$.0005 per share for all MOC and LOC orders executed in the Closing Auction in Tape C ETFs and ETNs. Currently, the Exchange does not charge a fee for orders executed in the Closing Auction. Lead Market Makers ("LMMs") executing orders in the Closing Auction in securities in which the firm is registered as the LMM will continue to not be charged a fee. The proposed fee will become operative on May 1, 2009, and will apply to all pricing levels, including tiered and basic rate pricing. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all similarly situated Users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"), in general, and Section 6(b)(4) of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all similarly situated Users.

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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-38 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-2009-38. 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 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 inspection and copying 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 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; 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-2009-38 and should be submitted on or before June 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11358 Filed 5-14-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59896; File No. SR-CBOE-2009-030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Appointments and Obligations of CBSX DPMs

May 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 7, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

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

The filing proposes to modify the CBOE Stock Exchange ("CBSX") Designated Primary Market-Maker ("DPM") appointment and obligation rules. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange'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 Exchange 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 Exchange 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 purpose of this proposed rule change is to modify CBSX Rule 53.54 to provide CBSX with flexibility to commence trading a security without an assigned CBSX DPM.³ Several stock exchanges provide a trading venue for equity securities without assigned specialists or primary market makers. On CBSX, CBSX DPMs do not act as agent for orders submitted to CBSX and the matching of trades is handled by the CBSX system. Accordingly, trading can occur on the CBSX platform without participation by a CBSX DPM. The proposed rule change is not intended to in any way affect existing DPM appointments, instead it will allow CBSX to offer for trading a broader range of national market system securities. There are currently securities not traded on CBSX because CBSX DPMs have opted to not seek assignments in such securities (these are typically low volume securities). The proposed filing will allow CBSX users the ability to trade these stocks on CBSX. The Exchange does not believe that allowing trading in these stocks without a DPM will have an adverse impact on the

Exchange's market in these securities. CBSX will notify participants, via circular, when stocks without assigned DPMs are added for trading.

The filing also proposes to modify the CBSX DPM obligations in Rule 53.56 to not require CBSX DPMs to quote until 8:30 a.m. Chicago time. Currently, CBSX DPMs are obligated to provide opening quotes (trading starts at 8:15 a.m. Chicago time) and to continuously quote throughout the day. As proposed, CBSX DPMs desiring to submit opening quotes could continue to do so, but would not be required to continuously quote until 8:30 Chicago time when trading volumes are more meaningful.

Lastly, the filing proposes to eliminate Rule 53.54(c) which governed the allocation process used by CBSX prior to its initial launch.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular in that it is designed 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

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

The Exchange neither solicited nor received comments on the proposal.

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

Within 35 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 CBOE consents, the Commission will:

- A. By order approve 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2009-030 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-CBOE-2009-030. 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 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 inspection and copying 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 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; 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-CBOE-2009-030 and should be submitted on or before June 5, 2009.

³ A DPM is a Market-Maker with heightened responsibilities for assigned securities.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11360 Filed 5-14-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59895; File No. SR-NYSEArca-2009-40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of ETFs Gold Trust

May 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange proposes to list and trade shares of the ETFs Gold Trust (the “Trust”) pursuant to NYSE Arca Equities Rule 8.201. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’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 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 III 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFs Gold Shares (“Shares”) of the Trust under NYSE Arca Equities Rule 8.201. 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.”³ The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.⁴ Previous 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.⁵ In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust and [sic] on the Exchange pursuant to UTP.⁶ The Commission also has approved listing of the iShares Silver Trust on the Exchange⁷ and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as “NYSE Amex LLC”).⁸

³ 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.

⁴ 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 streetTRACKS 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).

⁵ 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); Securities Exchange Act Release No. 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).

⁶ See Securities Exchange Act Release No. 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).

⁷ See Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing on the Exchange of the iShares Silver Trust)).

⁸ See Securities Exchange Act Release No. 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).

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold bullion, less the expenses of the Trust’s operations.⁹

ETFs Services USA LLC is the sponsor of the Trust (“Sponsor”), The Bank of New York Mellon is the trustee of the Trust (“Trustee”)¹⁰, and HSBC Bank USA, N.A. is the custodian of the Trust (“Custodian”).¹¹

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.¹²

Operation of the Gold Bullion Market

The global trade in gold consists of Over-the-Counter (OTC) transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The OTC market trades on a 24-hour per day continuous basis and accounts for most global gold trading.

⁹ See the Registration Statement for the ETFs Gold Trust on Form S-1, filed with the Commission on March 26, 2009 (No. 333-158221) (“Registration Statement”). The descriptions of the Trust, the Shares and the gold market contained herein are based on the Registration Statement.

¹⁰ The Trustee is generally responsible for the day-to-day administration of the Trust, including keeping the Trust’s operational records. The Trustee’s principal responsibilities include (1) transferring the Trust’s gold as needed to pay the Sponsor’s Fee in gold (gold transfers are expected to occur approximately monthly in the ordinary course), (2) valuing the Trust’s gold and calculating the NAV of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and DTC, (4) selling the Trust’s gold as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor, (5) when appropriate, making distributions of cash or other property to Shareholders, and (6) receiving and reviewing reports from or on the Custodian’s custody of and transactions in the Trust’s gold. The Trustee shall, with respect to directing the Custodian, act in accordance with the instructions of the Sponsor.

¹¹ The Custodian is responsible for safekeeping for the Trust gold deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting its direct subcustodians, if any. The Custodian facilitates the transfer of gold in and out of the Trust through the unallocated gold accounts it will maintain for each Authorized Participant and the unallocated and allocated gold accounts it will maintain for the Trust. The Custodian is responsible for allocating specific bars of gold bullion to the Trust’s allocated gold account. The Custodian will provide the Trustee with regular reports detailing the gold transfers in and out of the Trust’s unallocated and allocated gold accounts and identifying the gold bars held in the Trust’s allocated gold account.

¹² With respect to application of Rule 10A-3 (17 CFR 240.10A-3) under the Securities Exchange of 1934 (“Act”) (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A-3(c)(7).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.