

particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

As national securities exchanges, each of the CBOE, ISE, NYSE Amex, and NYSE Arca is required under Section 6(b)(1) of the Act¹⁶ to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade ETFs Options will also be subject to best execution obligations and FINRA rules.¹⁷ Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFs Options.¹⁸ Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.¹⁹

ETFs Options will trade as options under the trading rules of each of the exchanges. These rules, among other things, are designed to avoid trading through better displayed prices for ETFs Options available on other exchanges and, thereby, satisfy each exchange's obligation under the Options Order Protection and Locked/Crossed Market Plan.²⁰ Series of the ETFs Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying ETFs Silver and ETF Gold Trusts. Shares of the ETFs Silver and ETFs Gold Trusts must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.²¹ In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price

related to net asset value.²² If the ETFs Silver or ETFs Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFs Options.

CBOE, ISE, NYSE Amex, and NYSE Arca have all represented that they have surveillance programs in place for the listing and trading of ETFs Options. For example, these exchanges may obtain trading information via the ISG from the NYMEX related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, silver or gold. Additionally, the listing and trading of ETFs Options will be subject to the exchanges' rules pertaining to position and exercise limits²³ and margin.²⁴

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ for approving the proposed rule change of CBOE prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that CBOE's proposal is substantively identical to the proposals of ISE, NYSE Amex, and NYSE Arca, which were published for a 21-day comment period and generated no comments. Therefore, the Commission does not believe that the CBOE proposal raises any new regulatory issues different from that of the ISE, NYSE Amex, and NYSE Arca proposals. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²⁶ to approve the CBOE proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule changes (SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110) be, and are hereby, approved and that the proposed rule change (SR-CBOE-2010-007) be, and is hereby, approved on an accelerated basis.

²² See Interpretation and Policy .06 to CBOE Rule 5.3; ISE Rule 502(a)-(b); NYSE Amex Rule 915 Commentary .06; and NYSE Arca Rule 5.3(a)-(b).

²³ See CBOE Rules 4.11 and 4.12; ISE Rules 412 and 414; NYSE Amex Rules 904 and 905; and NYSE Arca Rules 6.8 and 6.9.

²⁴ See CBOE Rule 12.3; ISE Rule 1202; NYSE Amex Rule 462; and NYSE Arca Rules 4.15 and 4.16. See also FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 15 U.S.C. 78s(b)(5).

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61482; File No. SR-NYSEArca-2010-06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes to the Penny Pilot Program

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to designate 75 options classes to be added to the Penny Pilot Program for Options ("Penny Pilot" or "Pilot") on February 1, 2010. There are no changes to the rule text. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, at the Commission's Public Reference Room and on the Commission's Web site at <http://www.sec.gov>.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 15 U.S.C. 78f(b)(1).

¹⁷ See NASD Rule 2320.

¹⁸ See CBOE Rule 9.15; ISE Rule 616; NYSE Amex Rule 926; and NYSE Arca Rule 9.18(g).

¹⁹ See FINRA Rule 2360(b); CBOE Rules 9.7 and 9.9; ISE Rules 608 and 610; NYSE Amex Rule 923; and NYSE Arca Rule 918(b)-(c).

²⁰ See CBOE Rule 6.81; ISE Rule 1902; NYSE Amex Rule 991NY; and NYSE Arca Rule 6.94. Specifically, each of the exchanges is a participant in the Options Order Protection and Locked/Crossed Market Plan.

²¹ 17 CFR 242.600.

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

NYSE Arca proposes to identify the next 75 options classes to be added to

the Penny Pilot effective February 1, 2010. The Exchange recently received approval to extend and expand the Pilot through December 31, 2010.³ In that filing, the Exchange had proposed expanding the Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six months prior to selection, closing under \$200 per share on the Expiration

Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.⁴

NYSE Arca proposes adding the following 75 options classes to the Penny Pilot on February 1, 2010, based on national average daily volume from July 1, 2009 through December 31, 2009:

| Nat'l ranking | Symbol | Company name | Nat'l ranking | Symbol | Company name |
|---------------|--------|---|---------------|--------|--|
| 131 | ABT | Abbott Laboratories | 192 | LEAP | Leap Wireless International Inc. |
| 169 | AEM | Agnico-Eagle Mines Ltd | 205 | LLY | Eli Lilly & Co. |
| 151 | AET | Aetna Inc | 162 | LO | Lorillard Inc. |
| 156 | AFL | Aflac Inc | 152 | LOW | Lowe's Cos Inc. |
| 181 | AKAM | Akamai Technologies Inc | 176 | M | Macy's Inc. |
| 178 | AMAT | Applied Materials Inc | 155 | MCO | Moody's Corp. |
| 117 | AMR | AMR Corp | 217 | MET | MetLife Inc. |
| 166 | ANF | Abercrombie & Fitch Co | 187 | MMM | 3M Co. |
| 172 | APC | Anadarko Petroleum Corp | 140 | MU | Micron Technology Inc. |
| 209 | ATVI | Activision Blizzard Inc | 177 | NUE | Nucor Corp. |
| 145 | BBD | Banco Bradesco SA | 157 | OXY | Occidental Petroleum Corp. |
| 190 | BCRX | BioCryst Pharmaceuticals Inc ... | 158 | PARD | Poniard Pharmaceuticals Inc. |
| 218 | BK | Bank of New York Mellon Corp/ The. | 150 | PEP | PepsiCo Inc/NC. |
| 194 | BRCM | Broadcom Corp | 141 | PM | Philip Morris International Inc. |
| 184 | BTU | Peabody Energy Corp | 185 | PNC | PNC Financial Services Group Inc. |
| 144 | BX | Blackstone Group LP | 216 | QID | ProShares UltraShort QQQ. |
| 200 | CAL | Continental Airlines Inc | 149 | SHLD | Sears Holdings Corp. |
| 211 | CF | CF Industries Holdings Inc | 175 | SLM | SLM Corp. |
| 142 | CMCSA | Comcast Corp | 212 | SLW | Silver Wheaton Corp. |
| 203 | CSX | CSX Corp | 215 | SQNM | Sequenom Inc. |
| 143 | CVS | CVS Caremark Corp | 153 | STEC | STEC Inc. |
| 174 | CX | Cemex SAB de CV | 219 | STX | Seagate Technology. |
| 183 | DD | El du Pont de Nemours & Co ... | 202 | SU | Suncor Energy Inc. |
| 146 | ERTS | Electronic Arts Inc | 207 | TCK | Teck Resources Ltd. |
| 121 | EWJ | iShares MSCI Japan Index Fund | 196 | TEVA | Teva Pharmaceutical Industries Ltd. |
| 186 | FDX | FedEx Corp | 135 | TLT | iShares Barclays 20+ Year Treasury Bond Fund. |
| 118 | FNM | Federal National Mortgage As- sociation. | 214 | TZA | Direxion Daily Small Cap Bear 3X Shares. |
| 182 | FRE | Federal Home Loan Mortgage Corp. | 168 | UAUA | UAL Corp. |
| 179 | GILD | Gilead Sciences Inc | 154 | URE | ProShares Ultra Real Estate. |
| 198 | GLW | Corning Inc | 180 | UTX | United Technologies Corp. |
| 170 | HBC | HSBC Holdings PLC | 204 | WFR | MEMC Electronic Materials Inc. |
| 197 | HES | Hess Corp | 115 | WFT | Weatherford International Ltd. |
| 161 | HL | Hecla Mining Co | 165 | WLP | WellPoint Inc. |
| 193 | HOG | Harley-Davidson Inc | 191 | XLB | Materials Select Sector SPDR Fund. |
| 206 | HON | Honeywell International Inc | 173 | XRX | Xerox Corp. |
| 210 | JOYG | Joy Global Inc | 148 | XTO | XTO Energy Inc. |
| 213 | JWN | Nordstrom Inc | 130 | YRCW | YRC Worldwide Inc. |
| 137 | KFT | Kraft Foods Inc | | | |

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and

perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes to be added to the Pilot in a manner

consistent with prior approvals and filings.

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

³ See Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (order approving SR-NYSEArca-2009-44).

⁴ Index products would be included in the expansion if the underlying index level was under 200.

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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act⁵ and Rule 19b-4(f)(1) thereunder,⁶ in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-2010-06 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-2010-06. 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 Web 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 NYSE Arca's principal office and on its Web site at <http://www.nyse.com>. 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 No. SR-NYSEArca-2010-06 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61496; File No. SR-NYSEArca-2009-113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade the Sprott Physical Gold Trust

February 4, 2010.

I. Introduction

On December 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade units³ of the Sprott Physical Gold Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Each unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of units.

published for comment in the **Federal Register** on January 4, 2010.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade units ("Units") of the Trust under NYSE Arca Equities Rule 8.201. Sprott Asset Management LP is the sponsor or manager of the Trust ("Sponsor" or "Manager").⁵ RBC Dexia Investor Services Trust is the trustee of the Trust. The Royal Canadian Mint is the custodian for the physical gold bullion owned by the Trust and RBC Dexia serves as the custodian of the Trust's assets other than physical gold bullion.

The Units will be issued in an initial public offering. The Trust may issue additional Units: (i) In future offerings if the gross proceeds received by the Trust per Unit is not less than 100% of the most recently calculated net asset value ("NAV") or (ii) by way of a distribution in Units in connection with an income distribution. The Trust will not issue Units on an ongoing or daily basis. At the start of trading, the Trust will issue a minimum of 1,000,000 Units to at least 400 holders ("Unitholders"). The Exchange states that the Units satisfy the remaining criteria of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.⁶

The Trust's investment objective is for the Units to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations. The Trust expects to own only London Good Delivery physical gold bullion. The Trust is not actively managed and does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of gold bullion.

The Exchange states that the Trust does not intend to create additional Units. The Units will be redeemable monthly at the option of the holder for physical gold bullion or for cash subject to the certain conditions. Generally, Units redeemed for physical gold will

⁴ See Securities Exchange Act Release No. 61236 (December 23, 2009), 75 FR 170 ("Notice").

⁵ The Manager is a limited partnership existing under the laws of Ontario, Canada, and acts as manager of the Trust pursuant to the Trust's trust agreement and the management agreement. The Manager provides management and advisory services to the Trust. Additional details regarding the Trust are set forth in the Registration Statement on Form F-1 for the Sprott Physical Gold Trust, filed with the Commission on December 9, 2009 (No. 333-163601) ("Registration Statement").

⁶ With respect to application of Rule 10A-3 under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(1).