

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–021, and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91669; File No. SR–NYSEArca–2021–25]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the iShares® Gold Trust Micro Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

April 26, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on April 15, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of iShares® Gold Trust Micro under NYSE Arca Rule 8.201–E. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of

the Exchange, 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 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 shares (“Shares”) of the iShares Gold Trust Micro (the “Trust”) under NYSE Arca Rule 8.201–E.<sup>4</sup> Under NYSE Arca Rule 8.201–E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (“UTP”) “Commodity-Based Trust Shares.”<sup>5</sup>

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended.<sup>6</sup> The Trust is not a commodity pool for purposes of the Commodity Exchange Act of 1936, as amended (the “Commodity Exchange Act”).<sup>7</sup>

The sponsor of the Trust is iShares Delaware Trust Sponsor LLC (“Sponsor”). The trustee is The Bank of New York Mellon (“Trustee”) and the custodian is JPMorgan Chase Bank N.A., London branch (“Custodian”).

On December 20, 2018, the Securities and Exchange Commission (“Commission”) issued a notice of filing and effectiveness of the Exchange’s proposal to list and trade shares of the iShares® Gold Trust Micro under NYSE Arca Rule 8.201–E.<sup>8</sup> On January 30,

<sup>4</sup> The Trust has filed a registration statement on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a), dated February 26, 2021 (File No. 333–253614) (the “Registration Statement”). The description of the operation of the Trust and the Shares herein is based, in part, on the Registration Statement.

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

<sup>6</sup> 15 U.S.C. 80a–1.

<sup>7</sup> 17 U.S.C. 1.

<sup>8</sup> See Securities Exchange Act Release No. 84881 (December 20, 2018), 83 FR 67400 (December 28, 2018) (SR–NYSEArca–2018–94).

2020, the Trust withdrew its registration statement on Form S–1 upon which the Exchange’s previous filing (SR–NYSEArca–2018–94) was based.<sup>9</sup> The Exchange, therefore, is submitting this proposed rule change to permit listing and trading of the Shares based on the Trust’s Registration Statement dated February 26, 2021. Shares of the Trust have not commenced trading on the Exchange.

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2–E(j)(5) and 8.201–E of other precious metals and gold-based commodity trusts, including the Wilshire wShares Enhanced Gold Trust;<sup>10</sup> the United States Gold and Treasury Investment Trust;<sup>11</sup> GraniteShares Gold MiniBAR Trust;<sup>12</sup> GraniteShares Gold Trust;<sup>13</sup> Merk Gold Trust;<sup>14</sup> ETFs Gold Trust,<sup>15</sup> ETFs Platinum Trust<sup>16</sup> and ETFs Palladium Trust (collectively, the “ETFs Trusts”);<sup>17</sup> APMEX Physical-1 oz. Gold Redeemable Trust;<sup>18</sup> Sprott Gold Trust;<sup>19</sup> SPDR Gold Trust (formerly, streetTRACKS Gold Trust); iShares Silver Trust;<sup>20</sup> iShares COMEX Gold

<sup>9</sup> See iShares® Gold Trust Micro, Request to Withdraw Registration Statement on Form S–1 (January 30, 2020) (File No. 333–228469).

<sup>10</sup> See Securities Exchange Act Release No. 85 FR 67401 (October 16, 2020), 83 FR 48877 (October 22, 2020) (SR–NYSEArca–2020–59) (order approving listing and trade shares of the Wilshire wShares Enhanced Gold Trust under NYSE Arca Rule 8.201–E under NYSE Arca Rule 8.201–E).

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

<sup>12</sup> Securities Exchange Act Release No. 84257 (September 21, 2018), 83 FR 48877 (September 27, 2018) (SR–NYSEArca–2018–55) (order approving listing and trading shares of the GraniteShares Gold MiniBAR Trust under NYSE Arca Equities Rule 8.201).

<sup>13</sup> Securities Exchange Act Release No. 81077 (July 5, 2017), 82 FR 24181 (July 11, 2017) (SR–NYSEArca–2017–55) (order approving listing and trading shares of the GraniteShares Gold Trust under NYSE Arca Equities Rule 8.201).

<sup>14</sup> Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137).

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

<sup>16</sup> Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

<sup>17</sup> Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

<sup>18</sup> Securities Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18).

<sup>19</sup> Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113).

<sup>20</sup> See Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24,

<sup>32</sup> 17 CFR 200.30–3(a)(12).

<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.

Trust (now known as iShares Gold Trust);<sup>21</sup> Long Dollar Gold Trust;<sup>22</sup> Euro Gold Trust, Pound Gold Trust and Yen Gold Trust;<sup>23</sup> and The Gold Trust.<sup>24</sup> Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (“NYSE”)<sup>25</sup> and listing of iShares COMEX Gold Trust and iShares Silver Trust on the American Stock Exchange LLC.<sup>26</sup> In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.<sup>27</sup>

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange.<sup>28</sup>

#### Operation of the Trust<sup>29</sup>

According to the Registration Statement, the Trust will seek to reflect generally the performance of the price of

2008) (SR-NYSEArca-2008-124) (order approving listing on the Exchange of the iShares Silver Trust).

<sup>21</sup> See Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (order approving listing on the Exchange of the street TRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

<sup>22</sup> See Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR-NYSEArca-2016-84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

<sup>23</sup> See Securities Exchange Act Release No. 80840 (June 17, 2017) (SR-NYSEArca-2017-33) (order approving listing and trading of shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust under NYSE Arca Equities Rule 8.201).

<sup>24</sup> See Securities Exchange Act Release No. 81918 (October 23, 2017), 82 FR 49884 (October 27, 2017) (SR-NYSEArca-2017-98) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of The Gold Trust under NYSE Arca Rule 8.201-E).

<sup>25</sup> See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of street TRACKS Gold Trust on NYSE).

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

<sup>27</sup> See Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (order 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) (order approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

<sup>28</sup> With respect to the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

<sup>29</sup> The description of the operation of the Trust, the Shares and the gold market contained herein is based, in part, on the Registration Statement. See note 4, *supra*.

gold before payment of the Trust’s expenses and liabilities. The Trust will issue Shares which represent units of fractional undivided beneficial interest in the net assets of the Trust.

The Trust will not trade in gold futures, options or swap contracts on any futures exchange or over the counter (“OTC”). The Trust will not hold or trade in commodity futures contracts, “commodity interests”, or any other instruments regulated by the Commodity Exchange Act. The Trust will take delivery of physical gold that complies with the London Bullion Market Association (“LBMA”) gold delivery rules.

The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in gold. Although the Shares are not the exact equivalent of an investment in gold, they are intended to provide investors with an alternative that allows a level of participation in the gold market through the securities market.

#### Operation of the Gold Market

The global trade in gold consists of OTC transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

The OTC gold market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London, New York, and Zurich.

According to the Registration Statement, most OTC market trades are cleared through London. The LBMA plays an important role in setting OTC gold trading industry standards. A London Good Delivery Bar (as described below), which is acceptable for settlement of any OTC transaction, will be acceptable for delivery to the Trust in connection with the issuance of Baskets.

The most significant gold futures exchange in the U.S. is COMEX, operated by Commodities Exchange, Inc., a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group (the “CME Group”). Other commodity exchanges include the Tokyo Commodity Exchange (“TOCOM”), the Multi Commodity Exchange Of India (“MCX”), the Shanghai Futures Exchange, ICE Futures US (the “ICE”), and the Dubai Gold & Commodities Exchange. The CME Group and ICE are members of the Intermarket Surveillance Group (“ISG”).

Although the Trust will not invest in gold futures, information about the gold futures market is relevant as such markets contribute to, and provide evidence of, the liquidity of the overall market for gold.

#### The London Gold Bullion Market

According to the Registration Statement, most trading in physical gold is conducted on the OTC market, predominantly in London. LBMA coordinates various OTC-market activities, including clearing and vaulting, acts as the principal intermediary between physical gold market participants and the relevant regulators, promotes good trading practices and develops standard market documentation. In addition, the LBMA promotes refining standards for the gold market by maintaining the “London Good Delivery List,” which identifies refiners of gold that have been approved by the LBMA.

In the OTC market, gold bars that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of an LBMA-acceptable refiner) and appearance described in “The Good Delivery Rules for Gold and Silver Bars” published by the LBMA are referred to as “London Good Delivery Bars.” A London Good Delivery Bar (typically called a “400 ounce bar”) must contain between 350 and 430 fine troy ounces of gold (1 troy ounce = 31.1034768 grams), with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar. A London Good Delivery Bar must also bear the stamp of one of the refiners identified on the London Good Delivery List.

Following the enactment of the Financial Markets Act 2012, the Prudential Regulation Authority of the Bank of England is responsible for regulating most of the financial firms that are active in the bullion market, and the Financial Conduct Authority is responsible for consumer and competition issues. Trading in spot, forwards and wholesale deposits in the bullion market is subject to the Non-Investment Products Code adopted by market participants.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust will create and redeem Shares on a continuous basis in “Baskets” of 50,000 Shares. Only “Authorized Participants”, which are

registered broker-dealers who have entered into written agreements with the Sponsor and the Trustee, can deposit gold and receive Baskets in exchange. Upon the deposit of the corresponding amount of gold with the Custodian, and the payment of the Trustee's applicable fee and of any expenses, taxes or charges, the Trustee will deliver the appropriate number of Baskets to the DTC account of the depositing Authorized Participant. The Sponsor and the Trustee will maintain a current list of Authorized Participants. Gold deposited with the Custodian must meet the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars as set forth in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA. Orders to create or redeem Shares must be placed by 3:59 p.m. Eastern Time ("ET").

The "Basket Gold Amount" necessary for the creation of a Basket will change from day to day.<sup>30</sup> On each day that NYSE Arca is open for regular trading, the Trustee will adjust the quantity of gold constituting the Basket Gold Amount as appropriate to reflect sales of gold, any loss of gold that may occur, and accrued expenses. The computation is made by the Trustee as promptly as practicable after 4:00 p.m., E.T. The Trustee will determine the Basket Gold Amount for a given day by multiplying the net asset value ("NAV") by the number of Shares in each Basket (50,000) and dividing the resulting product by that day's LBMA Gold Price PM.

The Trustee intends to make available on each business day through the same channels used to disseminate the actual Basket Gold Amount determined by the Trustee as indicated above an indicative basket gold amount ("Indicative Basket Gold Amount") for the next business day. Authorized Participants may use that Indicative Basket Gold Amount as guidance regarding the amount of gold that they may expect to have to deposit with the Custodian in respect of purchase orders placed by them on such next business day and accepted by the Trustee. The agreement entered into with each Authorized Participant provides, however, that once a purchase order has been accepted by the Trustee, the Authorized Participant will be required to deposit with the Custodian the Basket Gold Amount determined by

the Trustee on the effective date of the purchase order.

#### Redemption of Baskets; Withdrawal of Gold

According to the Registration Statement, Authorized Participants, acting on authority of the registered holder of Shares, may surrender Baskets in exchange for the corresponding Basket Gold Amount announced by the Trustee. Upon the surrender of such Shares and the payment of the Trustee's applicable fee and of any expenses, taxes or charges, the Trustee will deliver to the order of the redeeming Authorized Participant the amount of gold corresponding to the redeemed Baskets. The amount of gold necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust.

Unless otherwise agreed to by the Custodian, gold is delivered to the redeeming Authorized Participants in the form of physical bars only (except that any amount of less than 430 ounces may be transferred to an unallocated account of or as ordered by, the redeeming Authorized Participant).

#### Net Asset Value

According to the Registration Statement, the NAV of the Trust will be obtained by subtracting all accrued fees, expenses and other liabilities of the Trust on any day from the total value of the gold and all other assets of the Trust on that day; the NAV per Share will be obtained by dividing the NAV of the Trust by the number of Shares outstanding on the date the computation is made. On each day on which NYSE Arca is open for regular trading, the Trustee will determine the NAV as promptly as practicable after 4:00 p.m., E.T. The Trustee will value the Trust's gold on the basis of that day's LBMA Gold Price PM. If there is no LBMA Gold Price PM on any day, the Trustee is authorized to use the most recently announced LBMA Gold Price AM unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate as a basis for evaluation.

#### Availability of Information Regarding Gold

Currently, the "Consolidated Tape Plan" does not provide for dissemination of the spot price of a commodity such as gold over the consolidated tape. However, there will be disseminated over the consolidated tape the last sale price for the Shares. In

addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

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

Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).

#### Availability of Information

The intraday indicative value ("IIV") per Share for the Shares will be disseminated by one or more major market data vendors. The IIV will be calculated based on the amount of gold held by the Trust and a price of gold derived from updated bids and offers indicative of the spot price of gold.<sup>31</sup>

The website for the Trust ([www.ishares.com](http://www.ishares.com)) will contain the following information, on a per Share basis, for the Trust: (a) The prior business day's NAV per Share; (b) Basket Gold Amount; (c) the Official Closing Price;<sup>32</sup> (d) the present day's Indicative Basket Gold Amount; (e) midpoint of the national best bid and the national best offer ("NBBO") as of the time the NAV is calculated ("Bid-Ask Price");<sup>33</sup> (f) calculation of the

<sup>31</sup> The IIV on a per Share basis disseminated during the "Core Trading Session", as defined in NYSE Arca Rule 7.34-E, should not be viewed as a real-time update of the NAV, which is calculated once a day.

<sup>32</sup> The term "Official Closing Price" is defined in NYSE Arca Rule 1.1(l) as the reference price to determine the closing price in a security for purposes of Rule 7-E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

<sup>33</sup> The Commission has issued a notice of filing and immediate effectiveness for an Exchange proposed rule change relating to website dissemination of information regarding Official Closing Price and midpoint of the NBBO for other Exchange-listed trusts of the Sponsor. See

<sup>30</sup> The Basket Gold Amount is the amount of gold (measured in fine ounces), determined on each business day by the Trustee, which Authorized Participants must transfer to the Trust in exchange for a Basket, or will receive in exchange for each Basket surrendered for redemption.

premium or discount of the Official Closing Price against such NAV expressed as a percentage of such NAV; (g) a table showing the number of days the Shares of the Trust traded at a premium or discount during the most recently complete calendar year and the most recently completed calendar quarters since that year; (h) a line graph showing the Shares' premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);<sup>34</sup> (i) the prospectus; and (j) other applicable quantitative information.

In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

#### Criteria for Initial and Continued Listing

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

A minimum of two Baskets or 100,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 1,000 fine ounces of gold. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in

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

Further, NYSE Arca Rule 8.201-E sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be

subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>35</sup> The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>36</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the

<sup>35</sup> See NYSE Arca Rule 7.12-E.

<sup>36</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

Securities Exchange Act Release No. 90547 (December 2, 2020), 85 FR 79060 (December 8, 2020) (SR-NYSEArca-2020-99) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Availability of Information for the iShares Gold Trust and the iShares Silver Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and iShares S&P GSCI Commodity-Indexed Trust under Rule 8.203-E (Commodity Index Trust Shares)).

<sup>34</sup> The Commission has approved an Exchange proposed rule change relating to website dissemination of information regarding dissemination of premium or discount information for other Exchange-listed trusts of the Sponsor. See Securities Exchange Act Release No. 91031 (February 1, 2021), 86 FR 8464 (February 5, 2021) (SR-NYSEArca-2020-98) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Availability of Information for the iShares Gold Trust, the iShares Silver Trust, and the iShares S&P GSCI Commodity-Indexed Trust).

Exchange has in place a comprehensive surveillance sharing agreement.<sup>37</sup>

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through Equity Trading Permit (“ETP”) Holders acting as registered “Market Makers”, in connection with such ETP Holders’ proprietary or customer trades through ETP Holders which they effect on any relevant market. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting

premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core Trading Session and “Late Trading Session” (as defined in NYSE Arca Rule 7.34–E) after the close of the major world gold markets; and (6) 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 Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be 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 Commodity Futures Trading Commission 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>38</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust’s website will provide pricing information for gold spot prices and the Shares. The Trust’s website will provide reliable, accurate and up-to-date pricing information for the Shares consistent with the changes to disseminated information for similar Exchange-listed trusts of the Sponsor previously approved by the Commission in SR–NYSEArca–2020–98.<sup>39</sup> Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust’s website. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk). The Trust’s website will also provide the Trust’s prospectus, as well as the two most recent reports to stockholders. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

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

<sup>37</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>38</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> See note 34, *supra*.

benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical gold.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>40</sup> and Rule 19b-4(f)(6) thereunder.<sup>41</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-25 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2021-25. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-25 and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91672; File No. SR-GEMX-2021-02]

### **Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Exchange Membership Rules and Incorporate by Reference the Membership Rules of The Nasdaq Stock Market LLC**

April 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2021, Nasdaq GEMX, LLC ("GEMX" or "Exchange") 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 Exchange. 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 delete the Exchange's membership rules currently under the General 3 title, incorporate by reference The Nasdaq Stock Market LLC's ("Nasdaq") rules in the General 3 Rule 1000 Series, and other related changes.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, 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.

<sup>40</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>41</sup> 17 CFR 240.19b-4(f)(6).

<sup>42</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.