

## II. Docketed Proceeding(s)

1. *Docket No(s)*.: CP2022–88; *Filing Title*: USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 16, Filed Under Seal; *Filing Acceptance Date*: July 31, 2023; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: August 8, 2023.

2. *Docket No(s)*.: CP2023–104; *Filing Title*: USPS Notice of Amendment to Priority Mail, Parcel Select & Parcel Return Service Contract 1, Filed Under Seal; *Filing Acceptance Date*: July 28, 2023; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: August 8, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98033; File No. SR–NYSEARCA–2023–48]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend a Representation Regarding the VanEck Merk Gold Trust

August 1, 2023.

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 July 19, 2023, 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 amend a representation regarding the VanEck Merk Gold Trust. 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 Commission has previously approved a proposed rule change relating to listing and trading on the Exchange of shares of the Trust (the “Shares”) under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares).<sup>4</sup> The Commission subsequently noticed for immediate effectiveness a proposed rule change to replace references to the “London Gold Fix” in the Prior Order with the “LBMA Gold Price.”<sup>5</sup> Pursuant to the Prior Notice, the Trust currently uses the LBMA Gold Price as the benchmark price for purposes of calculating the net asset value (“NAV”) of the Shares of the Trust.

The Exchange now proposes to amend the representation in the Prior Notice to replace references to the “LBMA Gold Price” with the “Solactive Gold Spot Index” (the “Index”). Pursuant to this proposed rule change, the Trust would use the Solactive Gold Spot Index as the benchmark price for purposes of calculating the NAV of Shares of the Trust.

According to the Trust’s current registration statement on Form S–3,<sup>6</sup>

<sup>4</sup> See Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEARCA–2013–137) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the Merk Gold Trust Pursuant to NYSE Arca Equities Rule 8.201) (the “Prior Order”).

<sup>5</sup> See Securities Exchange Act Release No. 74544 (March 19, 2015), 80 FR 15840 (March 25, 2015) (SR–NYSEARCA–2015–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the LBMA Gold Price as a Replacement for the London Gold Fix for Certain Gold Related Exchange Traded Products) (the “Prior Notice”).

<sup>6</sup> On May 12, 2023, the Trust filed Post-Effective Amendment No. 1 to its registration statement on

Solactive AG (“Solactive” or the “Index Calculator”) owns, calculates, and disseminates the Index. The Index is a U.S. Dollar denominated index that aims to provide a price fixing for the gold spot price for London delivery gold bullion quoted as U.S. Dollars per Troy Ounce (“XAU”) and determined as of the time trading closes on the New York Stock Exchange (“NYSE”).<sup>7</sup> The Index calculates gold bullion fixing prices by taking Time Weighted Average Prices (“TWAP”)<sup>8</sup> of XAU trading prices provided via ICE Data Services (“IDS”) data feed.<sup>9</sup>

Specifically, according to the Registration Statement, the Index uses a TWAP calculation to determine an average price that is time-weighted, using prices of actual transactions (“Trade Ticks”) for two specified time periods around the scheduled close of trading on the NYSE (generally, 4:00 p.m. Eastern Time) on each day that the NYSE is open for trading.<sup>10</sup> The TWAP is derived for (1) the period ahead of the fixing (“Time Period 1”), which consists of the five minutes before the close of trading, and (2) the period directly after the fixing (“Time Period 2”), which consists of the six seconds after the close of trading. The TWAPs for Time Period 1 and Time Period 2 are each multiplied by their respective weightings, with 90% weighting given to Time Period 1 and 10% weighting given to Time Period 2. When added together, the two TWAPs result in a

Form S–3 (the “Registration Statement”) (File No. 333–238022).

<sup>7</sup> Solactive calculates the Index pursuant to the Index Guideline publicly available at [https://www.solactive.com/wp-content/uploads/2023/02/Solactive\\_Gold\\_Spot\\_Index\\_Methodology\\_Guideline\\_20230206.pdf](https://www.solactive.com/wp-content/uploads/2023/02/Solactive_Gold_Spot_Index_Methodology_Guideline_20230206.pdf). Index data are publicly available at <https://www.solactive.com/indices/?index=DE000SLOFW35>.

<sup>8</sup> TWAP is a widely used measure in the financial industry to calculate the average price of a security or traded asset over a specific time period. TWAP is calculated by dividing the total trade value by the total trading time, thereby providing an average price that reflects market conditions over a defined timeframe. The TWAP methodology helps mitigate the impact of large trades on market prices by providing an average price based on numerous current market transactions and mitigates the effects of erroneous or spurious pricing data points, which effects can significantly lower the level of confidence in single transaction data points at a specific time. Different weightings can be selected for the TWAP methodology to provide a check on average prices derived before a local market closing, for instance, by overweighting prices immediately after the local market close.

<sup>9</sup> Solactive receives real-time data via IDS’s “Spot Gold (Also Loco London Gold)” data feed. The spot gold prices utilized by the Index are those for gold bullion deliverable in London. The Trust’s gold is also valued on a loco London basis.

<sup>10</sup> The NYSE’s trading hours and holidays observed are available at: <https://www.nyse.com/markets/hours-calendars>.

<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.

single price sum that is the Index price.<sup>11</sup>

For any calculation day  $t$ , the Index ( $Index_t$ ), is determined as described

above following the below mathematical formula:

$$Index_t = 0.9 * TWAP_{t, \text{TWAP FIXING START TIME, TWAP END TIME}}^{XAU} + 0.1 * TWAP_{t, \text{TWAP END TIME, TWAP FIXING END TIME}}^{XAU}$$

With:

$$Index_{\text{START DATE}} = 100$$

$$TWAP_{t, \text{TIME PERIOD 1}}^{XAU} = \frac{\sum_{k=1}^{N1} P_{t,k}^{XAU}}{N1}$$

$$TWAP_{t, \text{TIME PERIOD 2}}^{XAU} = \frac{\sum_{k=1}^{N2} P_{t,k}^{XAU}}{N2}$$

TIME PERIOD 1 : The Time Period between TWAP FIXING START TIME and TWAP END TIME.

TIME PERIOD 2 : The Time Period between TWAP END TIME and TWAP FIXING END TIME.

N1: Total Number of Ticks in the TIME PERIOD 1 as of the CALCULATION DAY  $t$ .

N2: Total Number of Ticks in the TIME PERIOD 2 as of the CALCULATION DAY  $t$ .

$P_{t,k}^{XAU}$  : The Tick Value (using TRADE ticks) of XAU corresponding to the Tick number  $k$  as  $t$ .

The sponsor of the Trust, Merk Investments LLC (the ‘‘Sponsor’’), believes that the Index will provide an improved benchmark price for purposes of determining the NAV of Shares of the Trust. Specifically, the Sponsor believes that replacing the LBMA Gold Price with the Index for calculating the NAV of the Shares may reduce the impact of timing differences between the basis for NAV calculation and market price for the Shares, as well as promote market liquidity, and would promote consistency between the NAV calculation and market price of the Shares by shifting the gold spot price determination to the end of the NYSE trading day (including because a significant amount of gold bullion trading (loco London) occurs after the close of London bullion trading). In addition, the Sponsor does not expect that the adoption of the Index will result in any unexpected, abrupt, or radical change in the value of the Trust’s gold because both the LBMA Gold Price and the Index report the price in U.S. Dollars of a Troy Ounce of gold bullion deliverable in London, just at different times.

According to the Registration Statement, the LBMA Gold Price is calculated by the ICE Benchmark Administration (the ‘‘IBA’’), which

determines a gold price fixing for the London bullion market. Whereas the LBMA Gold Price is calculated twice daily (at 10:30 a.m. London Time and 3:00 p.m. London Time), the Index is calculated once daily no later than 30 minutes after the close of trading at the NYSE, which timing is more closely aligned with the close of trading in the Shares on a given trading day.<sup>12</sup> Whereas the LBMA Gold Price is determined through an auction process involving a varying daily group of participants (currently, representing a subset of 16 direct participants) and is conducted by the IBA,<sup>13</sup> the Index is calculated by Solactive based on thousands of transaction prices for gold bullion spot during Time Periods 1 and 2, as captured by IDS from identifiable and IDS-accepted data contributors.<sup>14</sup> As noted above, while both the LBMA Gold Price and the Index price represent actual transactions in London gold bullion spot, they mainly differ in the timing of the fixing window.

The LBMA Gold Price and the Index are based on the same London delivery gold spot, but at different times from a larger 24-hour market trading period. Both the LBMA Gold Price and the Index establish gold bullion spot prices loco London taken from the same continuous stream of data for such

prices and differ only in that they reflect different snapshots at different times.<sup>15</sup> On the same day, the LBMA Gold Price and the Index price may differ because of changes in the conditions of the gold spot market between the two different fixing times. However, when such price moves occur, use of the Index as a benchmark would facilitate the calculation of an NAV for Shares of the Trust that is aligned with and accounts for activity around the close of trading in such Shares. The Sponsor thus believes that using the Index rather than the LBMA Gold Price as the benchmark to calculate the NAV of the Shares could provide a timelier value of the NAV calculation and promote consistency between the NAV and market price of the Shares.<sup>16</sup>

The Sponsor believes that using the Index, which is calculated based on timing that better mirrors the trading hours of the Shares, to calculate the NAV of the Shares would be beneficial for market makers and liquidity providers for the Shares by allowing them to manage their overnight risk exposure more effectively. The Sponsor has analyzed the daily trading volume of the Shares between November 16, 2022 and May 30, 2023, as measured in five minute increments. This analysis revealed that, over the 133 trading days

<sup>11</sup> The Sponsor believes that it is unlikely that, on any given trading day for the Shares, there would be no Trade Ticks recorded for XAU in either Time Period 1 or Time Period 2, such that the Index calculation could not be performed on such day. Trade Ticks representing XAU are the closing prices for London delivery gold bullion transactions posted in a 24-hour, global, over-the-counter gold bullion market, which is not subject to trading suspensions, trading halts, or market closures. Trade Ticks in Time Periods 1 and 2 thus reflect a comprehensive view of the gold spot market for London delivery gold that includes more market

participants than the LBMA Gold Price. In the unlikely event that IDS is unable to publish pricing information for XAU, for whatever reason, during either Time Period 1 or Time Period 2 on a given trading day, the last available Index calculation will be used in accordance with Solactive’s published and publicly available disruption policy.

<sup>12</sup> The Trust currently utilizes the 3:00 p.m. London Time LBMA Gold Price and only resorts to the 10:30 a.m. London Time LBMA Gold Price if the afternoon price is not available.

<sup>13</sup> IBA operates the technology platform that facilitates the electronic auction process to determine the LBMA Gold Price.

<sup>14</sup> Contributors to the data feed include national central banks, large international banks that are recognized gold bullion trading or custody banks, and international bullion trading firms.

<sup>15</sup> LBMA Gold Prices are reflected in the XAU data feed utilized by the Index (although they are reported outside of the Index’s Time Periods 1 and 2).

<sup>16</sup> Shares of the Trust are only created and redeemed in kind.

during this period, Share trading volume was on average 17.2% higher in the five minutes before the close of trading on the NYSE than during the rest of the trading day. As expected, the analysis revealed that Share trading volume is also generally higher when London and New York trading overlap, but that there was a consistent and significant increase in Share trading volume immediately before the close of trading on the NYSE. Increased trading before market close generally reflects hedging in the Shares by market makers and other major market participants to mitigate overnight market risk arising from their exposure to the Shares. The relative staleness of the LBMA Gold Price at the time the Trust calculates its NAV contributes to the uncertainty that major market participants contend with in managing their overnight market risk, which could result in lower liquidity for the Shares.

Market risk uncertainty is further heightened on days when the London gold bullion market is closed altogether, but the Shares continue to trade on the NYSE. Further, whereas the IBA observes a U.K. banking holiday schedule, the Shares of the Trust are traded on the Exchange, which observes a U.S. market calendar. As a result, there are days on which the IBA does not hold an auction because the U.K. markets are closed, but the Shares continue to trade on the Exchange. On such days and on days when there is significant movement in the market between the calculation of the LBMA Gold Price and the close of trading in the Shares, the NAV of the Shares of the Trust is not updated, while the market pricing of Shares of the Trust will generally continue to reflect activity in the gold spot market represented by XAU. In addition, in some cases, an NAV based on a stale LBMA Gold Price may give the perception of tracking error when none exists.

Aligning the calculation of the NAV of the Shares with the close of trading in the Shares would also promote a NAV calculation that takes into account important liquidity events because the close of NYSE trading is generally the most liquid time of the trading day for Shares of the Trust. Closing the timing gap between the Trust's benchmark price determination and the close of trading in the Shares and subsequent NAV calculation could improve liquidity in the Shares by enabling market makers and liquidity providers to better manage risk and help reduce investor confusion stemming from any erroneous perceived tracking error. Moreover, market participants, including market makers, are unlikely to

be confused or otherwise negatively impacted by the Trust's use of the Index instead of the LBMA Gold Price. Instead, because market participants already primarily rely on the gold spot price represented by XAU to inform their trading of Shares, the proposed change to the Index would align with current market participant expectations on how to value the Trust's gold.

The Sponsor believes that the Index is a suitable replacement for the LBMA Gold Price because it would provide a reliable benchmark for purposes of calculating the NAV of the Shares and a better pricing mechanism in times of market volatility. Specifically, the Sponsor believes that the Index's methodology is reasonably designed to be resistant to potential price manipulation because the Index is based on an average spot price that is time-weighted around the close of trading on the NYSE. As described above, the Index's methodology aims to reflect a closing price for XAU that would be observed at the conclusion of a trading day in Shares of the Trust. By using TWAPs that account for the five minutes leading up to and six seconds immediately following the market close rather than using a single Trade Tick at the exact close, the Index's methodology is intended to minimize the impact of any attempts to manipulate the fixing price by submitting single time orders or any erroneous orders that could result in a NAV that does not fairly reflect the value of the Trust's gold.

In addition, the Index Provider is registered as a benchmark administrator under European Benchmarks Regulation ("BMR") with the German Federal Financial Supervisory Authority and adheres to the IOSCO Principles for Financial Benchmarks ("IOSCO Principles").<sup>17</sup> The BMR requires the

<sup>17</sup> See <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>. The IOSCO Principles are designed to enhance the integrity, the reliability and the oversight of benchmarks by establishing guidelines for benchmark administrators and other relevant bodies in the areas of (1) governance: to protect the integrity of the benchmark determination process and to address conflicts of interest; (2) quality of the benchmark: to promote the quality and integrity of benchmark determinations through the application of design factors; (3) quality of the methodology: to promote the quality and integrity of methodologies by setting out minimum information that should be addressed within a methodology; and (4) accountability mechanisms: to establish complaints processes, documentation requirements and audit reviews. The IOSCO Principles provide a framework of standards that might be met in different ways, depending on the specificities of each benchmark. In addition to a set of high-level principles, the framework offers a subset of more detailed principles for benchmarks having specific risks arising from their reliance on submissions and/or their ownership structure. The IOSCO Principles also call for credible transition policies in case a

Index Provider to have in place a control framework that ensures its benchmarks within scope of the BMR are provided or published and made available in accordance with the BMR. The control framework provides a description of the control activities and further information on how the business and the processes relate to the requirements of the BMR. The Index Provider has an Oversight Committee that is responsible for the integrity of the administration process and oversees its control framework for the process of determining and distributing the indices and benchmarks. The Index Provider is thus subject to a similar level of regulatory scrutiny as the IBA is with respect to the LBMA Gold Price,<sup>18</sup> and, while the Index itself is not a BMR-compliant benchmark, the Index Provider applies the same processes and procedures in calculating the Index as it does to its BMR-compliant benchmarks, including ensuring that the price discovery process for the Index is subject to surveillance by the Index Provider and is auditable and transparent in accordance with the IOSCO Principles (as further discussed below).

Further, the Index is derived from data recorded during Time Periods 1 and 2—a total period of five minutes and six seconds. Thus, the Index calculation reflects several thousand Trade Ticks of actual transactions from hundreds of identifiable and IDS-accepted data contributors for a given calculation day. The Sponsor believes that the broad base of data underlying the Index calculation reduces the potential for price manipulation affecting NAV calculation.

The Sponsor also believes that the Index would provide enhanced transparency to the calculation of the NAV of the Shares. The Index will be calculated and published by the Index Calculator no later than 30 minutes following the close of trading on the NYSE on each business day, disseminated to major financial data providers, and made publicly available via the Trust's website. Solactive has published publicly available guidelines that outline the methodology for the Index calculation, including the formula by which the Index is calculated, such that the calculation could be replicated by anyone with access to the underlying XAU market data. Underlying XAU market data is commonly and broadly

benchmark may cease to exist due to market structure change.

<sup>18</sup> IBA is compliant with the UK benchmark regulation (MAR 8.3), regulated by the FCA, and has been formally assessed against the IOSCO Principles.

available to a wide group of market participants, including analysts, advisers, traders, and investors at broker-dealers, banks, trading platforms, investment advisers and other financial institutions and investors that trade in gold bullion, as well as to the market makers and authorized participants for the Shares. The Sponsor believes that the Index provides a benchmark that is comprehensible and easily accessible to a wide range of market participants, thus promoting transparency into the valuation process for Shares of the Trust.<sup>19</sup>

Finally, the Sponsor believes that the Index would provide a comprehensive benchmark for purposes of determining the NAV of the Shares of the Trust. The Index calculation is based on XAU market data from IDS, which is a major provider of financial market data to institutions including banks and other asset managers for the pricing of portfolio assets and the execution of asset transactions. Various spot data, including XAU, is available through IDS's data streaming service, which covers 2,700 spot rates, with an average of over 130 million updates per day for all spots provided by IDS. IDS compiles data from over 100 sources, including market makers, execution venues, banks and brokers from across the globe, and every updating Trade Tick of spot streaming data is available via IDS's Integrated Data Viewer service in a file-based format.

The Sponsor believes that data aggregated by IDS provides a reliable basis for the calculation of the Index given the robust quality control and filtering process IDS applies to XAU Trade Ticks to exclude outliers and erroneous pricing. IDS publishes a "Consolidated Feed Wires Protocol" applicable to XAU and other IDS data feeds (the "Protocol"). The Protocol specifies the data series that are associated with XAU.<sup>20</sup> Data in these series include millisecond time-stamped trade prices of XAU submitted by identifiable and IDS-accepted contributors, and Solactive extracts Trade Ticks from this data set to

calculate the Index. IDS's automated processes evaluate XAU trade price contributions to determine the authenticity of the contributor and the validity of the trade price contribution as representative of actual transaction pricing based on contemporary and historical XAU data fields. IDS data evaluation and data integrity processes are designed to filter out any invalid Trade Ticks.

In addition, the Index Provider verifies input data used in the calculation of the Index to ensure the continuous quality of such data, including through automated assessments at the individual data value level as well as plausibility checks at the aggregated index level. The Index Provider also takes supplementary quality control measures by performing in-depth analyses of selected data samples in longer intervals to facilitate additional scrutiny of the data and detection of conduct indicating potential data manipulation. Finally, the Index Provider maintains long-term records of the input data used for each Index determination in order to be able to verify a determination retrospectively.

The Exchange believes the Index will serve as an appropriate replacement to the LBMA Gold Price for purposes of determining the NAV of Shares of the Trust. The Index will be operated by a regulated benchmark administrator and its methodology is transparent, replicable, and auditable. The Index would provide a sound and reasonable basis for the calculation of an NAV that reflects the same gold bullion spot price loco London as the LBMA Gold Price (and thus would generally be very similar to the LBMA Gold Price), but that is more closely aligned with the timing of trading in the Shares. Accordingly, the Index is likely to facilitate a fairer NAV calculation for Shares of the Trust, particularly when market conditions include significant price moves in gold between when the LBMA Gold Price is calculated versus the New York trading close. The Exchange also believes that the Index is an appropriate replacement for the LBMA Gold Price given the anticipated benefits of aligning the timing of the Index calculation with the daily close of trading in the Shares of the Trust, including promoting liquidity by permitting market makers and other liquidity providers to more efficiently manage their risk and promoting consistency with market participants' expectations' on how to value the Trust's gold.

In connection with this proposed rule change, the Sponsor will:

(1) issue a press release informing the public of the date on which the Trust will first use the Index to calculate its NAV;

(2) file the applicable press release with the Commission by means of Form 8-K, which will be available on the Trust's website; and

(3) file an amendment to its registration statement relating to the proposed change.<sup>21</sup>

Except for the change noted above, all other representations made in the Prior Order and Prior Notice remain unchanged, and the Trust will continue to comply with all initial and continued listing requirements.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>22</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 Index will be calculated via a robust and transparent methodology, based on high-quality transaction data from a major financial data provider. The Exchange believes the Index will serve as an appropriate replacement to the LBMA Gold Price for purposes of determining the NAV of the Shares and will provide a sound and reasonable basis for calculation of NAV that is more closely aligned with U.S. trading hours, which would protect investors and the public interest by promoting liquidity and price stability of Shares of the Trust and reduce investor confusion arising from any perceived tracking error based on the timing of the LBMA Gold Price fixing vis a vis the calculation of the Shares' NAV. Specifically, although the LBMA Gold Price and Index price are typically very similar and both reflect gold bullion spot prices loco London, the Index is likely to facilitate a fairer NAV calculation for Shares of the Trust in general and, particularly, on days where there have been significant price moves in gold between when the LBMA Gold Price is calculated versus the New York trading close and would allow the calculation of an NAV on every day that Shares of the Trust trade on the

<sup>19</sup> By contrast, the LBMA Gold Price auction process lacks an equivalent degree of transparency because no direct participant in the daily electronic auction or any other bullion market participant can independently recreate how the auction resulted in a particular price.

<sup>20</sup> The data series set for XAU reports, among other data: trade price; ask price; bid price; current price; millisecond Unix time stamps of last trade/quote update, last trade and last quote; contributor code; city code; region code; high; low; open; and change from yesterday. Solactive uses the trade price data series to calculate the Index. IDS uses the other data received to perform automated quality control checks of each trade price submitted by a contributor.

<sup>21</sup> The Sponsor further represents that it will manage the Trust as described in the Prior Order and Prior Notice and will not implement the changes described herein until the amendment to its registration statement and this proposed rule change are effective and operative.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

Exchange. In addition, the Index, which is calculated in alignment with the close of trading in the Shares on each trading day, provides a pricing mechanism better equipped to respond to market volatility and that includes liquidity at the close of trading in the Shares in an assessment of their NAV. Moreover, because the Index would reflect the gold spot price as represented by XAU, market participants—who already primarily refer to such price to inform their trading in Shares of the Trust—would not be impacted negatively by the proposed change. Instead, because market participants already primarily rely on the gold spot price represented by XAU to inform their trading of Shares, the proposed change to the Index could remove impediments to, and perfect the mechanism of, a free and open market by promoting consistency with current market participant expectations on how to value the Trust's gold.

The proposed rule change is also designed to perfect the mechanism of a free and open market price discovery process and, in general, to protect investors and the public interest because the Index will be administered and disseminated by Solactive, which is unaffiliated with the Sponsor and the Trust, and the Index will be transparent, auditable, and operated by a regulated benchmark administrator that adheres to IOSCO Principles. The guidelines that outline the methodology for the Index calculation are publicly available, including the formula by which the Index is calculated, such that the calculation could be reproduced by anyone with access to the underlying XAU market data, which is itself widely available to market participants. XAU data underlying the Index are submitted by identifiable and IDS-accepted contributors, and IDS evaluates XAU trade price contributions to determine the authenticity of the contributor and the validity of the trade price contribution as representative of actual transaction pricing based on contemporary and historical XAU data fields, as well as to identify and filter out any invalid Trade Ticks. In addition, although the Index is not a BMR-compliant benchmark, the Index Provider applies the same processes and procedures to the Index as it does to its BMR-compliant benchmarks; accordingly, the Index is subject to surveillance and other quality control measures performed by the Index Provider, including data analysis to aid in the identification of conduct indicating potential data manipulation and maintenance of records allowing

the Index Provider to verify historical Index determinations. The Trust will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria set forth in NYSE Arca Rule 8.201–E. Except for the changes noted above, all other facts presented and representations made in Prior Order and Prior Notice remain unchanged.<sup>23</sup>

As noted above, prior to implementing the proposed change, the Sponsor will (1) issue a press release informing the public of the date the Trust will first use the Index to calculate the NAV of the Shares; (2) file the applicable press release with the Commission by means of Form 8–K, which will be available on the Trust's website; and (3) file an amendment to the Trust's registration statement relating to the proposed change. The Exchange believes that such press release and registration statement amendment will protect investors and the public interest by providing notification to investors of the new gold price benchmark prior to the use of the Index by the Trust. The Exchange also believes that the proposed change is designed to protect investors and the public interest because, except for the change noted above with respect to the Index as the new benchmark for the calculation of the NAV for the Shares of the Trust, all other representations made in the Prior Order and Prior Notice remain unchanged, and the Trust will continue to comply with all initial and continued listing requirements.

#### *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 proposed change is not designed to address any competitive issue, but rather would permit the Trust to update the benchmark it uses for purposes of calculating the NAV of Shares from the LBMA Gold Price to the Index. The Exchange does not believe this change will impact intramarket or intermarket competition.

#### *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.

<sup>23</sup> See notes 4 & 5, *supra*.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>25</sup>

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)<sup>26</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because the proposed rule change would amend a representation to replace references to the LBMA Gold Price as the benchmark for NAV calculation with references to the Index, which, for reasons discussed above, the Exchange believes is a suitable replacement. Other than amending that representation as specifically discussed herein, all statements in the Prior Order and Prior Notice remain unchanged, and the Trust will continue to comply with all initial and continued listing requirements. For these reasons, and because the proposal raises no novel legal or regulatory issues, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>27</sup>

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>26</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

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 (<https://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-2023-48 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-2023-48. 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 (<https://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 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-48 and should be submitted on or before August 28, 2023.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16712 Filed 8-4-23; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98032; File No. SR-ICEEU-2023-013]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the Collateral and Haircut Procedures

August 1, 2023.

#### I. Introduction

On June 9, 2023, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4,<sup>2</sup> a proposed rule change to amend the ICE Clear Europe Collateral and Haircut Procedures (the "Procedures"). The proposed rule change was published for comment in the **Federal Register** on June 26, 2023.<sup>3</sup> The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

ICE Clear Europe is registered with the Commission as a clearing agency for the purpose of clearing security-based swaps. In its role as a clearing agency for security-based swaps, ICE Clear Europe provides services to its Clearing Members and Clearing Members transfer assets to ICE Clear Europe.<sup>4</sup> For

example, ICE Clear Europe's Clearing Members transfer to ICE Clear Europe cash and other assets as collateral to cover the exposures presented by the positions that ICE Clear Europe clears. ICE Clear Europe communicates such collateral requirements as Initial Margin and Guaranty Fund requirements.<sup>5</sup> ICE Clear Europe generally refers to the assets that it accepts from Clearing Members to cover their Initial Margin and Guaranty Fund requirements as Permitted Cover.<sup>6</sup>

The Procedures describe ICE Clear Europe's operational activities and related governance processes with respect to Permitted Cover. These operational activities include, among other things, enforcing basic eligibility criteria that assets must satisfy to be Permitted Cover, valuing Permitted Cover, and applying haircuts to that value.<sup>7</sup>

The proposed rule change relates to the eligibility criteria that ICE Clear Europe uses to determine whether to accept a particular asset as Permitted Cover. Section 2 of the Procedures sets out the general criteria that all assets must satisfy to be considered Permitted Cover. Among other things, to be considered Permitted Cover an asset must be highly liquid with an active sale or repurchase agreement market with a diverse group of buyers and sellers.

In addition to the general criteria found in Section 2, which applies to all assets submitted as Permitted Cover, Appendix A to the Procedures provides additional eligibility criteria for two specific asset classes: financial instruments and gold. To qualify as

<sup>5</sup> ICE Clear Europe's Clearing Rules note that Initial Margin means "the Permitted Cover required to be provided or actually provided . . . to the Clearing House as collateral for the obligations of a Clearing Member or Sponsored Principal in respect of CDS Contracts . . ." ICE Clear Europe Clearing Rule 101. Guaranty fund contributions serve to secure the obligations of a Clearing Member to ICE Clear Europe and may be used to cover losses sustained by ICE Clear Europe in the event of a default of the Clearing Member. ICE Clear Europe Clearing Rule 1103.

<sup>6</sup> ICE Clear Europe Rule 101 defines "Permitted Cover" as ". . . cash in Eligible Currencies and other assets determined by the Clearing House as permissible for Margin or Guaranty Fund Contributions and includes, where the context so requires, any such cash or assets transferred to the Clearing House and any proceeds of realization of the same. A particular kind of currency or asset may be determined by the Clearing House to be Permitted Cover only in respect of Proprietary Accounts, particular kinds of Customer Accounts, Energy Contracts, Financials & Softs Contracts, F&O Contracts, FX Contracts, CDS Contracts or certain Sets of Contracts."

<sup>7</sup> ICE Clear Europe uses these haircuts to reduce the value of the Permitted Cover. Doing so helps account for a potential decline in value that ICE Clear Europe could face if it had to liquidate the Permitted Cover in stressed market conditions.

<sup>28</sup> 17 CFR 200.30-3(a)(12), (59).

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

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

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the Collateral Haircut Procedures, Exchange Act Release No. 97766 (June 20, 2023); 88 FR 41439 (June 26, 2023) (SR-ICEEU-2023-013) ("Notice").

<sup>4</sup> Capitalized terms not otherwise defined herein have the meanings assigned to them in the Procedures or the ICE Clear Europe Clearing Rules.