

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50603; File No. SR-NYSE-2004-22]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares

October 28, 2004.

#### I. Introduction

On June 7, 2004, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change to list and trade streetTRACKS® Gold Shares ("Shares"), which represent units of fractional undivided beneficial interests in and ownership of the streetTRACKS® Gold TrustSM ("Trust"). The proposed rule change was published for comment in the **Federal Register** on June 17, 2004.<sup>3</sup> On September 13, 2004, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> On October 28, 2004, the Exchange filed Amendment No. 2 to the proposal.<sup>5</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the Exchange's rule change as amended.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 49849 (June 10, 2004), 69 FR 31437 (June 17, 2004) ("Notice").

<sup>4</sup> See Amendment No. 1 that reflects certain amendments to the Registration Statement about the addition of a marketing agent, a wholly-owned subsidiary of State Street Corporation, and changes to fees and expenses.

<sup>5</sup> In Amendment No. 2, the Exchange (1) requested accelerated approval of the proposal, as amended; (2) clarified that the Exchange, via a Web site link to the Trust's Web site, would disseminate at least every 15 seconds an updated indicative spot price of gold and Intraday Indicative Value ("IIV"); (3) clarified that the continuous dissemination of the updated indicative spot price of gold and IIV via the Exchange's Web site link to the Trust's Web site were a condition of continued listing of the Shares; (4) confirmed that the NYSE would file a proposed rule change before exempting the shares from the Exchange's "Market-on-Close/Limit-on-Close/Pre-opening Price Indications" Policy; (5) clarified additional information about the Shares to be provided on the Exchange's Web site, via a link to the Trust's Web site; and (6) clarified proposed rule text relating to Investment Company Units ("ICUs") and provisions in the information circular given to members, describing the Shares.

#### II. Description of Proposal

The NYSE proposes to list and trade shares in a new type of trust that will hold gold as its sole asset. The value of each Share, which will correspond to a fixed amount of gold,<sup>6</sup> will fluctuate with the spot price of gold. In effect, purchasing Shares in the Trust will provide investors a new mechanism to participate in the gold market. To facilitate trading of the new product, the NYSE has proposed new Rules 1300 and 1301 that will govern the trading of Shares on the Exchange.<sup>7</sup> Information about the liquidity, depth, and pricing mechanisms of the international gold market, management and structure of the Trust, and description of the Shares follows below.

##### A. Description of the Gold Market

The global trade in gold consists of over-the-counter ("OTC") transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. In its filing with the Commission, the NYSE provided a description of the world-wide gold market as well as a description of the characteristics of gold supply and demand. The global gold market consists of the following components, described briefly below.<sup>8</sup>

##### The OTC Market

The OTC market trades on a 24-hour per day continuous basis and accounts for most global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's "buy" and "sell" prices. According to the Registration Statement, the period of greatest liquidity in the gold market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four hours each New York business day morning.

<sup>6</sup> Initially, each Share will correspond to one-tenth of a troy ounce of gold. The amount of gold associated with each Share is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

<sup>7</sup> The applicability of the new rules is expressly limited to the Shares. As set forth in the Notice for the proposal, the proposed rules incorporate by reference other NYSE rules governing ICUs and, in addition, set forth guidelines for member organizations acting as specialist in the Shares.

<sup>8</sup> For more information on the gold market and gold supply and demand, see the Notice, *supra* note 3.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association ("LBMA"), a trade association of participants in the London Bullion market.

The Exchange states that there are no authoritative published figures for overall world-wide volume in gold trading. There are certain published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five members offering clearing services.<sup>9</sup> The Exchange notes that the monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day. The Exchange also notes that the COMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million troy ounces per day.<sup>10</sup>

##### Futures Exchanges

The Exchange states that the most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange ("TOCOM").<sup>11</sup> Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. According to the Exchange, as a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit

<sup>9</sup> Information regarding clearing volume estimates by the LBMA can be found at [http://www.lbma.org.uk/clearing\\_table.htm](http://www.lbma.org.uk/clearing_table.htm). The three measures published by LBMA are: volume, the amount of metal transferred on average each day measured in million of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

<sup>10</sup> Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at [http://www.nymex.com/jsp/markets/md\\_annual\\_volume6.jsp#2](http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2). The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

<sup>11</sup> The Exchange notes that there are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

#### Gold Market Regulation

There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur in some capacity. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority ("FSA") as provided by the Financial Services and Markets Act 2000 ("FSM Act"). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

The Exchange states that participants in the United States OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the United States, the Commodity Futures Trading Commission, an independent government agency with the mandate to regulate commodity futures and option markets in the United States, regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices.

#### B. Trust Management and Structure

The Exchange proposes to list and trade Shares, which represent units of fractional undivided beneficial interest

in and ownership of the Trust. The purpose of the Trust is to hold gold bullion.<sup>12</sup> The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Trust is not a registered investment company under the Investment Company Act of 1940 ("1940 Act") and is not required to register under such Act.

World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,<sup>13</sup> is the sponsor of the Trust ("Sponsor"). The Bank of New York is the trustee of the Trust ("Trustee"), HSBC Bank USA, an indirect wholly owned subsidiary of HSBC Holdings plc, is the custodian of the Trust ("Custodian"), and State Street Global Markets LLC, a wholly-owned subsidiary of State Street Corporation, is the Marketing Agent of the Trust (the "Marketing Agent"). The Marketing Agent and Custodian are registered broker-dealers. The Custodian and Marketing Agent and their affiliates, and affiliates of the Trustee, may act as Authorized Participants or purchase or sell gold or Shares for their own account as agent for their customer and for accounts over which they exercise investment discretion.<sup>14</sup> The Exchange states, that to the extent deemed appropriate by these entities, information barriers will exist between the Custodian, Marketing Agent, Trustee, and their affiliates transacting in the gold cash market or the Shares; however, the Exchange is not requiring such information barriers. UBS Securities LLC is to be the initial purchaser of the Shares ("Initial Purchaser"), as described below. The Sponsor, Trustee, Custodian and Initial

<sup>12</sup> The Exchange states that the Commission has permitted the listing of prior products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.*, Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants). The Exchange also states that there are other securities trading on regulated markets that invest in commodities or in royalty interests based on commodities. *See, e.g.*, Central Fund of Canada (Registration No. 033-15180) (symbol CEF); Hugoton Royalty Trust (Registration No. 333-68441) (symbol HGT).

<sup>13</sup> The World Gold Council is a not-for-profit association registered under Swiss law.

<sup>14</sup> *See infra* note 18.

Purchaser are not affiliated with one another or with the Exchange.

#### C. Trust Expenses and Management Fees

Generally, the assets of the Trust (*e.g.*, gold bullion) will be sold to pay Trust expenses and management fees. In Amendment No. 1, the NYSE amended the proposal to reflect an increase in these management fees.<sup>15</sup> These expenses and fees will reduce the value of an investor's Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include (1) fees paid to the Sponsor, (2) fees paid to the Trustee, (3) fees paid to the Custodian, (4) fees paid to the Marketing Agent, and (5) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and NYSE listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the NAV of the Trust.

#### D. Description and Characteristics of the Shares

##### 1. Liquidity

The Exchange states that the Shares may trade at a discount or premium relative to the NAV per Share because of non-concurrent trading hours between the major gold markets and the NYSE. While the Shares will trade on the NYSE until 4:15 p.m. New York time, liquidity in the OTC market for gold will be reduced after the close of the COMEX at 1:30 p.m. New York time. During this time, trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the OTC gold market.

Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the underlying gold held by the Trust. The Exchange states that the arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts, and can be expected to operate efficiently in the case of the Shares and gold.

##### 2. Creation and Redemption of Trust Shares

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (such aggregation referred to as a "Basket"). Authorized Participants are the only persons that may place orders to create and redeem

<sup>15</sup> *See* Amendment No. 1, *supra* note 4.

Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Shares for resale.

Authorized Participants purchasing a Basket must make an in-kind deposit of gold ("Gold Deposit"), together with, if applicable, a specified cash payment ("Cash Deposit",<sup>16</sup> and together with the Gold Deposit, the "Creation Basket Deposit"). The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment ("Cash Redemption Amount"<sup>17</sup> and together with the gold, the "Redemption Distribution").

The Exchange states that certain Authorized Participants are expected to have the facility to participate directly in the gold bullion market and the gold futures market. The Sponsor believes that the size and operation of the gold bullion market make it unlikely that an Authorized Participant's direct activities in the gold or securities markets will impact the price of gold or the price of the Shares. The Exchange states that each Authorized Participant is (i) regulated as a broker-dealer regulated

under the Act and registered with the National Association of Securities Dealers, Inc. ("NASD"), or (ii) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Act or registered with the NASD, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.<sup>18</sup> Certain Authorized Participants will be regulated under federal and state banking laws and regulations. The Exchange states that each Authorized Participant will have its own set of rules and procedures, internal controls, and information barriers as it determines is appropriate in light of its own regulatory regime. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

The total amount of gold and any cash required for the creation or redemption of each Basket will be in the same proportion to the total assets of the Trust (net of accrued and unpaid fees, expenses and other liabilities) on the date the Purchase Order is properly received as the number of Shares to be created in respect of the Creation Basket Deposit bears to the total number of Shares outstanding on the date the Purchase Order is received. Except when aggregated in Baskets, the Shares are not redeemable. The Trust will impose transaction fees in connection with creation and redemption transactions.

The Trustee will determine the NAV<sup>19</sup> and daily adjusted NAV ("ANAV") of the Trust on each business day at the earlier of the London PM Fix for such day or 12 p.m. New York time.<sup>20</sup> In determining the Trust's NAV and ANAV, the Trustee will value the gold held by the Trust based on the London PM Fix price for a troy ounce of gold. Once the value of the gold has been determined, the Trustee will

determine the ANAV of the Trust by subtracting all accrued fees (other than the fees to be computed by reference to the ANAV or custody fees based on the value of the gold held by the Trust), expenses, and other liabilities of the Trust from the total value of the gold and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). Then the ANAV of the Trust is used to compute the Trustee's, the Sponsor's, and Marketing Agent's fees.<sup>21</sup> To determine the Trust's NAV, the Trustee will subtract from the ANAV the amount of estimated accrued but unpaid fees that are based on the ANAV (e.g., the Trustee's, the Sponsor's and Marketing Agent's fees) and the amount of custody fees, which are based on the value of the gold held by the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE.

UBS Securities LLC, the Initial Purchaser, is expected to purchase 100,000 Shares, which will comprise the seed Basket. The Initial Purchaser has, subject to conditions, also agreed to purchase 900,000 Shares, which comprise the initial Baskets. The Trust will receive all proceeds from the offering of the seed Basket and the initial Baskets in gold bullion. In connection with the offering and sale of the initial Baskets, the Initial Purchaser will be paid a fee by the Sponsor at the time of its purchase of the initial Baskets. In addition, the Initial Purchaser may receive commissions/fees from investors who purchase Shares from the initial Baskets through their commission/fee-based brokerage accounts.

### 3. Information About Underlying Gold Holdings

The last sale price for the Shares will be disseminated over the Consolidated Tape. There is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. In most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 20 minutes).

The Exchange states that investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and

<sup>16</sup> The amount of any required Cash Deposit will be determined as follows: (1) The fees, expenses and liabilities of the Trust will be subtracted from any cash held or receivable by the Trust as of the date an Authorized Participant places an order to purchase one or more Baskets ("Purchase Order"); (2) the remaining amount will be divided by the number of Baskets outstanding and then multiplied by the number of Baskets being created pursuant to the Purchase Order. If the resulting amount is positive, that amount will be the required Cash Deposit. If the resulting amount is negative, the amount of the required Gold Deposit will be reduced by a number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Purchase Order date. Fractions of an ounce of gold of less than 0.001 of an ounce included in the Gold Deposit amount will be disregarded.

<sup>17</sup> The Cash Redemption Amount is equal to the excess (if any) of all assets of the Trust other than gold less all estimated accrued but unpaid fees, expenses, and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's order to redeem one or more Baskets ("Redemption Order"). The Trustee will distribute any positive Cash Redemption Amount through DTC to the account of the Authorized Participant at DTC. If the Cash Redemption Amount is negative, the credit to the Authorized Participant's unallocated account ("Authorized Participant Unallocated Account") will be reduced by the number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Redemption Order date. Fractions of a fine ounce of gold included in the Redemption Distribution of less than 0.001 of an ounce will be disregarded. Redemption Distributions will be subject to the deduction of any applicable tax or other governmental charges due.

<sup>18</sup> The Commission notes that as of October 1, 2003, the temporary exemption for banks from the definition of "dealer" under the Exchange Act expired. Accordingly, banks that act as Authorized Participants should consider whether they are "dealers" under the federal securities laws. See Exchange Act Section 3(a)(5); Securities Exchange Act Release No. 47364 (February 14, 2003).

<sup>19</sup> The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include accrued expenses).

<sup>20</sup> According to the Exchange, the London fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources.

<sup>21</sup> The Custodian's fee is not calculated based on ANAV, but rather the value of the gold held by the Trust.

Bloomberg, Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. The Exchange states that complete real-time data for gold futures and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. The Exchange also notes that there are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Washington Post*. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.<sup>22</sup> Current gold spot prices are also available with bid/ask spreads from gold bullion dealers.

In addition, the NYSE, via a link to the Trust's Web site, will provide at no charge continuously updated bids and offers indicative of the spot price of gold on its own public Web site, <http://www.nyse.com>.<sup>23</sup> The Trust Web site will also provide an a calculation of the

estimated NAV (also known as the Intraday Indicative Value or "IIV") of a Share as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. Comparing the IIV with the last sale price of the Shares helps an investor to determine whether, and to what extent, Shares may be selling at a premium or a discount to NAV. Notwithstanding that they will be provided free of charge, the indicative spot price and IIV per Share will be provided on an essentially real-time basis.<sup>24</sup> The Trust Web site will also provide the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The IIV as of the close of the prior business day and the midpoint of the bid-ask price<sup>25</sup> in relation to such IIV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such IIV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will also provide the last sale price of the Shares as traded in the United States market, subject to a 20-minute delay.<sup>26</sup>

#### *E. Initial Share Issuance and Continued Listing*

It is anticipated that a minimum of three Baskets will be outstanding at the commencement of trading on the Exchange. The number of Shares per Basket is 100,000.

The Exchange's applicable continued listing criteria require it to delist the Shares if any of the following occur: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the

Custodian, Marketing Agent, or the Exchange, or the Exchange stops providing the hyperlink on the Exchange's Web site to any such unaffiliated gold value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

The Exchange's original listing fee applicable to the listing of the Trust will be \$5,000. The annual continued listing fee for the Trust will be \$2,000.

#### *F. Exchange Trading Rules and Policies*

New NYSE Rule 1300 ("Equity Gold Shares") deals with the trading of the Shares. New NYSE Rule 1300(c) establishes that the Shares are included in the definition of "securities" under NYSE Rule 3 and are subject to all applicable trading rules. New NYSE Rule 1300(a) states that, for purposes of NYSE Rule 13 ("Definitions of Orders"), NYSE Rule 36.30 ("Communications Between Exchange and Members" Offices"), NYSE Rule 98 ("Restrictions on Approved Person Associated With a Specialist's Member Organization"), NYSE Rule 104 ("Dealings by Specialists"), NYSE Rule 105(m) ("Guidelines for Specialists" Specialty Stock Option Transactions Pursuant to Rule 105"), NYSE Rule 460.10 ("Specialists Participating in Contests"), NYSE Rule 1002 ("Availability of Automatic Feature"), NYSE Rule 1005 ("Orders May Not Be Broken Into Smaller Accounts"), and all other rules that refer to ICUs, the Shares will be treated the same as ICUs. New NYSE Rule 1300(b) adapts NYSE Rule 105(m) ("Guidelines for Specialists" Specialty Stock Option Transactions Pursuant to Rule 105") to the Shares. As is the case with ICUs, an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof is prohibited from acting as a market maker or functioning in any capacity involving market-making responsibilities in the physical gold, gold futures or options on gold futures, or any other gold derivatives. However, an approved person of an equity specialist entitled to an exemption from NYSE Rule 105(m) under NYSE Rule 98 may act in a market making capacity, other than as a specialist in the Shares on another market center, in physical gold, gold futures or options on gold futures, or any other gold derivatives. Additionally, the Exchange does not currently intend

<sup>22</sup> There may be incremental differences in the gold spot price among the various information service sources. While the Exchange believes the differences in the gold spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of gold or gold-based products, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

<sup>23</sup> The Trust Web site's gold spot price will be provided by The Bullion Desk (<http://www.thebulliondesk.com>). The NYSE will provide a link to the Trust Web site. The Bullion Desk is not affiliated with the Trust, Sponsor, Custodian, or the Exchange. The Exchange states that it has been informed that the gold spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust Web site will indicate that there are other sources for obtaining the gold spot price. In the event that the Trust Web site should cease to provide this indicative spot price from an unaffiliated source (and the intraday indicative value) of the Shares, the NYSE will delist the shares.

<sup>24</sup> The Trust's Web site, to which the Exchange's Web site will link, will disseminate an indicative spot price of gold and the IIV and indicate that these values are subject to an average delay of 5 to 10 seconds.

<sup>25</sup> The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day IIV.

<sup>26</sup> The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

to exempt the Shares from the Exchange's "Market-on-Close/Limit-on-Close/Pre-Opening Price Indications" Policy, although the Exchange may do so in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.<sup>27</sup>

New NYSE Rule 1301 requires trading and information barriers for member organizations acting as specialist in the Shares. Specifically, a member organization acting as specialist in the Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (*see* NYSE Rules 104.12 an 104.13). Such member organization acting as specialist must also report to the Exchange and keep current a list identifying all accounts for trading physical gold, gold futures or options on gold futures, or any other gold derivatives, which the specialist may have or over which it may exercise investment discretion. Under the rule, any trading by the member organization that is the specialist in the Shares of physical gold or gold derivatives in an account over which the member organization controls, directly or indirectly, trading activities or has a direct interest in the profits or losses is prohibited, except to the extent such accounts and trading activities are reported to the Exchange as required under the rule. Furthermore, a member organization that is the specialist in the Shares will be required to make its books, records and other relevant information pertaining to its transactions and those of any member, allied member, approved person, registered or non-registered employee affiliated with the member for its or their own accounts in physical gold and gold derivatives available to the Exchange upon request. In addition, the registered specialist in the Shares will be prohibited from using any material nonpublic information from any person associated with a member or employee of such person regarding trading of physical gold or any gold derivative products.

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 trading is not occurring in gold 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 is subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>28</sup>

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each business day. The minimum trading increment for Shares on the Exchange will be \$0.01.

#### G. Surveillance

The Exchange's surveillance procedures will be comparable to those used for ICUs currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities. In addition, for intermarket surveillance purposes, the Exchange has entered into a reciprocal Memorandum of Understanding ("MOU") with the NYMEX (of which COMEX is a division) for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

The Exchange will also adopt new NYSE Rule 1301 ("Equity Gold Shares: Securities Accounts and Orders of Specialists") to ensure that specialists handling Equity Gold Shares provide the Exchange with all necessary information relating to their trading in physical gold and in gold futures contracts and options thereon or any other gold derivative.<sup>29</sup> As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate

through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

#### H. Suitability

Pursuant to NYSE Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in Shares, such member or member organization should make a determination that such Shares are suitable for such customer. The Exchange states that any recommendation is made with respect to such Shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

#### I. Information Circular

The Exchange will distribute an information circular to its members in connection with the trading in the Shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Share prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information regarding the indicative price of gold and IIV, trading information, and the applicability of suitability rules. The information circular will also explain that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of ounces of gold required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold due to the sale of the Trust's gold to pay the Trust's expenses. The information circular will also reference the fact that there is no regulated source of last sale information regarding physical gold, and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

In the information circular, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Baskets and that Shares are not individually

<sup>28</sup> NYSE Rule 80B.

<sup>29</sup> NYSE Rule 1301 also states that, in connection with trading physical gold, gold futures or options on gold futures or any other gold derivatives (including Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures or options on gold futures, or any other gold derivatives. For the purpose of NYSE Rule 1301, "person associated with a member" shall have the same meaning ascribed to it in Section 3(a)(21) of the Act.

<sup>27</sup> To do so, the Exchange acknowledges it would file a proposed rule change. *See* Amendment No. 2.

redeemable but are redeemable only in Basket-size aggregations or multiples thereof. The information circular will also advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The circular will also discuss any relief if granted by the Commission or the staff from any rules under the Act.

The Information Circular will likewise disclose that the NAV for Trust Shares will be calculated as of the earlier of the London PM Fix for such day or 12 p.m. New York time each day that the NYSE is open for trading.

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act<sup>30</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>31</sup> In particular, the Commission believes that the Exchange will be able to monitor for trading abuses in the Shares and thereby satisfying its obligations under Section 6(b)(1) of the Act<sup>32</sup> to enforce compliance by its members with the Act and its own rules.

#### A. Surveillance

Information sharing agreements with markets trading securities underlying a derivative are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. It is not possible, however, to enter into an information sharing agreement with the OTC gold market. Nevertheless, the Commission believes that the unique liquidity and depth of the gold market, together with the MOU with NYMEX (of which COMEX is a Division) and NYSE Rules 1300(b) and 1301, create the basis for the NYSE to monitor for fraudulent and manipulative practices in the trading of the Shares.

The Commission has previously approved the listing and trading of foreign currency options, for which there is no self-regulatory organization or Commission surveillance of the underlying markets, on the basis that the magnitude of the underlying currency market militated against manipulations through inter-market trading activity.<sup>33</sup> The Commission reasoned that the underlying currency spot market was active and that the inter-bank foreign currency spot market,

in general, "was an extremely large, diverse market comprised of banks and other financial institutions worldwide."<sup>34</sup> The Commission further noted that the foreign currency spot market is supplemented by "equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures."<sup>35</sup> The depth and liquidity of the underlying spot market allayed some of the Commission's concerns with improper trading practices involving the options market and a related market, such as capping, pegging, front-running and mini-manipulation.

The Commission believes that the OTC market for gold has many of the same qualities as the market for foreign currencies. In particular, the gold spot market is extremely deep and liquid. The LBMA estimates that the monthly average daily volume for 2003 ranged from a high of 19 million to a low of 13.6 million troy ounces per day.<sup>36</sup> In addition, COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million ounces per day.<sup>37</sup> In addition, the NYSE has entered into a MOU with NYMEX (of which COMEX is a division), the U.S. market that trades gold futures and options on such futures.

Finally, NYSE Rule 1301 will require that the specialist handling the Shares provide the Exchange with information relating to its trading in physical gold and in gold futures contracts and options or any other gold derivative. These reporting and recordkeeping requirements will assist the exchange in identifying situations potentially susceptible to manipulation. NYSE Rule 1301 will also prohibit the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures or options or gold futures, or any other gold derivatives (including the Shares). In

addition, NYSE Rule 1300(b) will prohibit the specialist in the Shares from being affiliated with a market maker in physical gold, gold futures, or options on gold futures unless information barriers are in place that satisfy the requirements in NYSE Rule 98. The Commission believes that the NYSE can adequately surveil trading in the Shares, notwithstanding the lack of a surveillance sharing agreement with the market trading the product on which Shares are based.

#### B. Dissemination of Information About the Shares

The Commission believes that sufficient venues for obtaining reliable gold price information exist so that investors in the Shares can monitor the underlying spot market in gold relative to the NAV of their Shares. There is a considerable amount of gold price and gold market information available 24 hours per day on public Web sites and through professional and subscription services. In addition, the NYSE, via a link to the Trust's Web site, will provide at no charge continuously updated (at least every 15 seconds) bids and offers indicative of the spot price of gold on its own public Web site, <http://www.nyse.com> from a source unaffiliated with the Sponsor, the Trust, the Custodian, Marketing Agent, or the Exchange.

The Commission also notes that the Trust's Web site is and will be publicly accessible at no charge, and will contain the Share's NAV as of the prior business day, a calculation of the premium or discount of the Bid-Asked Price of the Shares as of close of trading in relation to the closing IIV. Additionally, the Trust's Web site, to which the NYSE will link, will also provide the IIV updated at least every 15 seconds.<sup>38</sup> The Commission believes that dissemination of this information will facilitate transparency with respect to the proposed Shares and diminish the risk of manipulation or unfair informational advantage.

#### C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to NYSE rules

<sup>38</sup> The Commission notes that the Sponsor, not the Trustee, calculates the Shares' NAV. Similarly, the Sponsor, not the Trustee or an independent third-party calculates the IIV. Concerns about the Sponsor's role in calculating these values are mitigated because of the widely accessible information about the value of gold, which is the sole asset of the Trust.

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>32</sup> 15 U.S.C. 78f(b)(1).

<sup>33</sup> See 1982 Approval Order, *supra* note 12.

<sup>34</sup> See Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 12023-01 (March 15, 1994).

<sup>35</sup> *Id.*

<sup>36</sup> There are no authoritative published figures for overall worldwide volume in gold trading. The LBMA publishes statistics compiled from the six members offering clearing services. Information regarding clearing volume estimates by the LBMA can be found at [http://www.lbma.org.uk/clearing\\_table.htm](http://www.lbma.org.uk/clearing_table.htm).

<sup>37</sup> Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at [http://www.nymex.com/jsp/markets/md\\_annual\\_volume6.jsp#2](http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2). The statistics are based on gold futures contracts, each of which relates to 100 ounces of gold.

including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting/suspension rules and procedures governing the trading of ICUs on the NYSE.<sup>39</sup> The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the information circular the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares.

#### IV. Amendment Nos. 1 and 2

The NYSE has requested that the Commission grant accelerated approval to Amendment Nos. 1 and 2 to the proposed rule change.<sup>40</sup> The Commission believes that the amendments proposed in Amendment No. 1 regarding the Marketing Agent, a registered broker-dealer, certain fees and expenses, and other minor changes to the proposal, provide clarity and additional detail, but do not change the substance of the proposal. Similarly, Amendment No. 2 clarifies the dissemination of the IIV and indicative spot price of gold, additional information about the Shares to be provided on the NYSE Web site, and rule text relating to ICUs and requests accelerated approval of Amendments Nos. 1 and 2. Because these amendments clarify and make other minor changes to the proposal, the Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,<sup>41</sup> to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment No. 1 and No. 2 are 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](mailto:rule-comments@sec.gov). Please include File

Number SR-NYSE-2004-22 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-22 and should be submitted on or before November 26, 2004.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR-NYSE-2004-22), is approved and Amendment Nos. 1 and 2 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>43</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### DEPARTMENT OF STATE

##### [Public Notice 4871]

#### Notice of Meetings; United States International Telecommunication Advisory Committee, International Telecommunication Union Telecommunications Development Advisory Group Preparations

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU). The purpose of these meetings is to prepare for the December 2004 meeting of the Telecommunications Development Advisory Group (TDAG).

An ITAC meeting will be held on Friday, November 19, 2004, at the State Department from 10 a.m. to 12 p.m. to begin preparations for the meeting of the ITU Telecommunications Development Advisory Group, which will take place December 15-17, 2004, in Geneva, Switzerland. An additional meeting is scheduled concerning preparations for the TDAG on Wednesday, December 8, 2004, from 10 a.m. to 12 p.m. All of these meetings will be at the Department of State in Room 2533A.

Members of the public may attend these meetings and are welcome to participate in the discussions, subject to the discretion of the Chair. Directions to meeting location may be determined by calling the ITAC Secretariat at 202 647-2592. Entrance to the State Department is controlled; in order to get precleared for each meeting, people planning to attend should send an e-mail to [mccorklend@state.gov](mailto:mccorklend@state.gov) no later than 48 hours before the meeting. This e-mail should include the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission to the State Department: U.S. driver's license, passport, U. S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: November 1, 2004.

**Doreen McGirr,**

*Director, ITU-D, Bureau of Economic and Business Affairs, Department of State.*

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**BILLING CODE 4710-45-P**

<sup>39</sup> See NYSE Rule 1300.

<sup>40</sup> See Amendments Nos. 1 and 2, *supra* notes 4 and 5.

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 17 CFR 200.30-3(a)(12).