

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76630; File No. SR-NYSEArca-2015-76]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Global Currency Gold Fund Under NYSE Arca Equities Rule 8.201

December 11, 2015.

On August 28, 2015, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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 shares of the Global Currency Gold Fund under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on September 16, 2015.<sup>3</sup> On September 29, 2015, the Exchange submitted Amendment No. 1 on the proposed rule change.<sup>4</sup> On October 28, 2015, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> The Commission has not received any comments on the proposal, as modified by Amendment No. 1. This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

<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. 75900 (September 11, 2015), 80 FR 55674 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange: (1) Identified weightings of each currency referenced in the Index; (2) supplemented its description of the method of calculation for the Spot Rate; (3) clarified when the Fund may suspend the right of redemption or postpone the redemption settlement date. Amendment No. 1 is available at: <http://www.sec.gov/rules/sro/nysearca/2015/34-75900-amendment1.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 75945, 80 FR 57645 (Sept. 24, 2015). The Commission designated a longer period within which to take action on the proposed rule change and designated December 15, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

### I. The Exchange's Description of Proposal<sup>8</sup>

The Exchange proposes to list and trade ("Shares") of the Global Currency Gold Fund (the "Fund"),<sup>9</sup> a series of the Global Gold Currency Trust ("Trust"), under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares.<sup>10</sup>

The Sponsor of the Fund and the Trust will be WGC USA Asset Management Company, LLC (the "Sponsor"). BNY Mellon Asset Servicing, a division of The Bank of New York Mellon, will be the Fund's administrator ("Administrator"), transfer agent ("Transfer Agent") and custodian ("Custodian") and will not be affiliated with the Trust, the Fund or the Sponsor.

Although investors will purchase Shares with U.S. dollars, the Fund is designed to provide investors with the economic effect of holding gold in terms of a specific basket of major, non-U.S. currencies, such as the euro, Japanese yen and British pound (each, a "Reference Currency"), rather than the U.S. dollar. Specifically, the Fund will seek to track the performance of the Global Gold Index (ex-USD), less Fund expenses. The Global Gold Index (ex-USD), or the "Index", represents the daily performance of a long position in physical gold and a short position in each of the Reference Currencies, and is designed to measure daily gold bullion returns as though an investor had invested in Gold<sup>11</sup> in terms of the Reference Currencies reflected in the Index.

The Fund is a passive investment vehicle and is designed to track the performance of the Index. The Fund's holdings generally will consist entirely of Gold, and substantially all of the Fund's Gold holdings will be delivered by authorized participants in exchange for Shares. The Fund will not hold any of the Reference Currencies, and generally will not hold U.S. dollars

<sup>8</sup> A complete description of the proposal can be found in the Notice. See Notice, *supra* note 3 (available at: <http://www.sec.gov/rules/sro/nysearca/2015/34-75900.pdf>).

<sup>9</sup> On August 28, 2015, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 ("1933 Act") relating to the Fund (File No. 333-206640) ("Registration Statement"). The Fund will not be registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act. 15 U.S.C. 80a-1.

<sup>10</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

<sup>11</sup> "Gold" means gold bullion meeting the requirements of London Good Delivery Standards.

(except from time to time in very limited amounts to pay expenses).

The Administrator will determine the net asset value ("NAV") of the Shares each Business Day, unless there is a market disruption or extraordinary event.<sup>12</sup> The NAV of the Shares represents the aggregate value of the Fund's assets (which include gold payable, but not yet delivered, to the Fund) less its liabilities (which include accrued but unpaid fees and expenses). The NAV of the Fund will be calculated based on the price of Gold per ounce applied against the number of ounces of Gold owned by the Fund. The number of ounces of Gold held by the Fund is adjusted up or down on a daily basis to reflect the U.S. dollar value of currency gains or losses based on changes in the value of the Reference Currencies against the U.S. dollar. The number of ounces of Gold held by the Fund also reflects the amount of Gold delivered into (or out of) the Fund on a daily basis by authorized participants creating and redeeming Shares. In determining the Fund's NAV, the Administrator generally will value the Gold held by the Fund based on the LBMA Gold Price PM<sup>13</sup> for an ounce of Gold (though other sources may be used if the LBMA Gold Price PM is delayed or unavailable). Although the Fund will not hold the Reference Currencies, the Gold Delivery Provider<sup>14</sup> generally will value the Reference Currencies based on the rates in effect as of the WMR FX Fixing Time.<sup>15</sup> Unless there is a market

<sup>12</sup> See Notice, *supra* note 3 at 55678.

<sup>13</sup> The Index values Gold on a daily basis using the "Gold Price." The Gold Price generally is the LBMA Gold Price PM (though other sources may be used if the LBMA Gold Price PM is delayed or unavailable). The "LBMA Gold Price" means the price per troy ounce of Gold stated in U.S. dollars as set via an electronic auction process run twice daily at 10:30 a.m. and 3:00 p.m., London time each Business Day as calculated and administered by ICE Benchmark Administration Limited ("IBA") and published by LBMA on its Web site. The "LBMA Gold Price PM" is the 3:00 p.m. LBMA Gold Price. IBA, an independent specialist benchmark administrator, provides the price platform, methodology and the overall administration and governance for the LBMA Gold Price. *Id.*

<sup>14</sup> The Fund will deliver Gold to, or receive Gold from, the Gold Delivery Provider each Business Day. The amount of Gold transferred will be equivalent to the Fund's profit or loss as if the Fund had exchanged the Reference Currencies, in the proportion in which they are reflected in the Index, for U.S. dollars in an amount equal to the Fund's declared holdings of Gold on such day. The Fund does not intend to enter into any other Gold transactions other than with the Gold Delivery Provider (except that the Fund may sell Gold to cover Fund expenses), and the Fund does not intend to hold any Reference Currency or enter into any currency transactions. See Notice, *supra* note 3 at 55675.

<sup>15</sup> The "WMR FX Fixing Time" is the time the Reference Currency prices are published, which generally is at 4:00 p.m., London Time.

disruption or extraordinary event, NAV generally will be calculated as of 4:00 p.m., London time.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities.<sup>16</sup> The Fund will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares. A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.<sup>17</sup>

Trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>18</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>19</sup>

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>20</sup>

Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through equity trading permit holders ("ETP Holders") acting as registered market makers, in connection with such ETP Holders' proprietary or customer

trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

## II. Proceedings To Determine Whether To Approve or Disapprove SR-NYSEArca-2015-76 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>21</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>22</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission questions whether: (1) The Exchange has sufficiently demonstrated in its filing that the Index is not susceptible to manipulation; and (2) the existing provisions of the Exchange's listing rule are adequate to allow it to surveil for and investigate potential manipulation by ETP Holders registered as market makers. Therefore, the Commission is instituting proceedings to allow for the submission of additional analysis regarding the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>23</sup>

## III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission

invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>24</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 7, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 21, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>25</sup> in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on the following:

1. In general, do commenters believe that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest?

2. What are commenters' views regarding the susceptibility of the price of the Shares to manipulation?

3. The Exchange states that Index values generally are calculated using the published WMR Spot Rate ("Spot Rate") as of 4:00 p.m., London time associated with each Reference Currency, subject to certain adjustments, and notes that other rates may be used if the Spot Rate is delayed or unavailable. The Exchange does not state, however, how the Spot Rate and any replacement rate ("Currency Rates") are calculated.

<sup>24</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>25</sup> *Supra* note 3.

<sup>16</sup> See Notice, *supra* note 3 at 55681.

<sup>17</sup> *Id.*

<sup>18</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> *Id.*

<sup>23</sup> 15 U.S.C. 78f(b)(5).

a. Are the Currency Rates calculated using arm's length transactions and, if so, are such transactions verified, and how? If quotes are used to calculate the Currency Rates, are those arm's length quotes firm?

b. What concerns, if any, do commenters have regarding the Index's susceptibility to manipulation?

4. Are the requirements of NYSE Arca Equities Rule 8.201(g) adequate to allow the Exchange to fulfill its regulatory obligations or, in light of the Shares' exposure to the Reference Currencies, should those requirements be expanded to also apply to market makers' trading accounts for all of the applicable non-U.S. currencies, options, futures or options on futures on such currencies, or any other derivatives based on such currencies?

Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-76 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 Numbers SR-NYSEArca-2015-76. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-76 and should be submitted on or before January 7, 2016. Rebuttal comments should be submitted by January 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-76621; File No. SR-C2-2015-025]**

### **Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Relating to Complex Orders as Modified by Amendment No. 1**

December 11, 2015.

#### **I. Introduction**

On October 13, 2015, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) Amend the rule provisions regarding the initiation of a complex order auction ("COA"), (2) add rule provisions regarding the impact of certain incoming orders and changes in the leg markets on an ongoing COA, and (3) amend the rule provision related to the size of COA responses. On October 26, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 2, 2015.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

<sup>26</sup> 17 CFR 200.30-3(a)(57).

<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. 76274 (October 27, 2015), 80 FR 67446 ("Notice").

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

The Exchange proposes to amend C2 Rule 6.13 and Interpretation and Policy .02 regarding the initiation of a COA. Currently, C2 Participants must affirmatively request that their incoming COA-eligible orders be COA'd.<sup>4</sup> The Exchange proposes to amend C2 Rule 6.13(c)(2) to provide that COA-eligible orders be COA'd by default.<sup>5</sup> Under the proposed rule, Participants would be permitted to request that a COA-eligible order not COA (referred to as a "do-not-COA" request) on an order-by-order basis.<sup>6</sup> The Exchange believes that allowing Participants to make a "do-not-COA" request on an order-by-order basis will better allow them to make decisions regarding the handling of their orders based on market conditions at the time they submit their orders. An order with a "do-not-COA" request, however, may still be COA'd after it has rested on the Complex Order Book ("COB") pursuant to Interpretation and Policy .02.<sup>7</sup>

The Exchange notes that an order with a "do-not-COA" request will still have execution opportunities. The Exchange explains that a "do-not-COA" order may execute automatically upon entry into the System against the leg markets or complex orders on the COB to the extent marketable (in accordance with allocation rules set forth in Rule 6.13).<sup>8</sup> Further, the Exchange notes that an order on the opposite side of, and marketable against, a COA-eligible order may trade against the COA-eligible order if the System receives the order while a COA is ongoing.<sup>9</sup>

Second, the Exchange proposes to add subparagraphs (c)(8)(D) and (E) to C2 Rule 6.13 to describe additional circumstances that will cause a COA to end early.<sup>10</sup> Proposed subparagraph (c)(8)(D) will provide that if an order with a "do-not-COA" request or an order that is not COA-eligible is received prior to the expiration of the Response Time Interval for the original COA and is on the same side of the

<sup>4</sup> See Notice, *supra* note 3, at 67446. The Exchange represents that all Participants have requested that all of their COA-eligible orders process through COA upon entry into the System.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* In light of this proposed change, the Exchange proposes to delete the language in Interpretation and Policy .02(a) that indicates Participants may request that complex orders be processed by COA on a class-by-class basis, as it is no longer necessary. *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 67447.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The proposed rule change makes corresponding changes to the heading and introductory paragraph of subparagraph (c)(8). *Id.*