

application for registration as a national securities exchange,<sup>7</sup> was not amended to reflect the elimination of Tape A sharing prior to the time when Nasdaq began to trade non-Nasdaq securities as an exchange on February 12, 2007. The proposed rule change will rectify this oversight, and thereby allow Nasdaq to maintain the status quo with respect to market data revenue sharing, as had been Nasdaq's intent. Nasdaq has not distributed any Tape A revenues for system trades.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the change will eliminate an unnecessary charge with respect to trading of non-Nasdaq securities and thereby make Nasdaq's fees for trading these securities more reasonable. Nasdaq further believes that the change with respect to revenue sharing will allow Nasdaq to maintain the status quo with respect to Tape A revenue sharing that had existed prior to Nasdaq beginning to operate as a national securities exchange for trading non-Nasdaq securities.

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

Nasdaq 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.

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

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, as amended; or
- B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-056 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-056. 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 Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at 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-

NASDAQ-2007-056 and should be submitted on or before August 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-15965 Filed 8-14-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56224; File No. SR-NYSEArca-2007-76]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the streetTRACKS® Gold Trust**

August 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 27, 2007, NYSE Arca, Inc. (the "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On August 7, 2007, the Exchange submitted Amendment No. 1 to the proposal rule change. This order provides notice of the proposed rule change and approves the proposed rule change, as amended, on an accelerated basis.

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

The Exchange proposes to list and trade shares ("Shares") of the streetTRACKS® Gold Trust ("Trust")<sup>3</sup> pursuant to NYSE Arca Equities Rule 5.2(j)(5). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> streetTRACKS® is a registered service mark of State Street Corporation, an affiliate of State Street Global Markets, LLC, the marketing agent of the Trust.

<sup>7</sup> Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

Pursuant to NYSE Arca Equities Rule 5.2(j)(5), which permits the trading of Equity Gold Shares<sup>4</sup> either by listing or pursuant to unlisted trading privileges ("UTP"), the Exchange proposes to list and trade the Shares. The Shares are currently listed on the New York Stock Exchange LLC ("NYSE"),<sup>5</sup> and the Exchange currently trades the Shares pursuant to UTP.<sup>6</sup> The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 5.2(j)(5) and thereby qualify for listing on the Exchange.

The Shares represent units of fractional undivided beneficial interests in and ownership of the Trust, the sole assets of which are gold bullion and,

from time to time, cash. The value of each Share, which corresponds to a fixed amount of gold,<sup>7</sup> fluctuates with the spot price of gold. 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 not actively managed and does not engage in any activities designed to profit from, or to ameliorate losses caused by, changes in the price of gold. The Trust is neither an investment company registered under the Investment Company Act of 1940 nor a commodity pool for purposes of the Commodity Exchange Act.<sup>8</sup> World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,<sup>9</sup> is the sponsor of the Trust ("Sponsor").<sup>10</sup> In addition, The Bank of New York is the trustee of the Trust ("Trustee"), HSBC Bank USA, N.A. is the custodian of the Trust ("Custodian"), and State Street Global Markets LLC is the marketing agent of the Trust ("Marketing Agent").

A detailed discussion of the gold market (including the London Bullion Market, over-the-counter gold market, and gold futures exchanges); gold market regulation; management, structure, fees, and expenses of the Trust; the process for creations and redemptions of the Shares; and the liquidity of the Shares, among others, can be found in the NYSE Proposal, NYSEArca UTP Order, and the Registration Statement (as defined herein).<sup>11</sup>

<sup>7</sup> Initially, each Share corresponded to one-tenth of a troy ounce of gold. The Exchange states that over time, the amount of gold associated with each Share decreases as the Trust incurs and pays maintenance fees and other expenses.

<sup>8</sup> In addition, the Exchange states that the Trust does not trade in gold futures contracts. The Trust takes delivery of physical gold that complies with certain gold delivery rules. Because the Trust does not trade in gold futures contracts on any futures exchange, the Trust is not regulated as a commodity pool and is not operated by a commodity pool operator.

<sup>9</sup> The World Gold Council is a not-for-profit association registered under laws of Switzerland.

<sup>10</sup> The Exchange states that the Shares are not obligations of, and are not guaranteed by, the Sponsor or any of its respective subsidiaries or affiliates.

<sup>11</sup> The Sponsor, on behalf of the Trust, filed Post-Effective Amendment No. 1 to Form S-3 on May 11, 2007 (Registration No. 333-139016). In connection with the initial issuance of the Shares, the Sponsor, on behalf of the Trust, filed Post-Effective Amendment No. 3 to Form S-1 on August 23, 2005 (Registration No. 333-105202). Such filings are collectively referred to herein as the "Registration Statement." See e-mail from Andrew Stevens, Assistant General Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated August 1, 2007 (confirming the disclosure of additional information on the Trust and the Shares) ("NYSEArca Confirmation I").

#### Trust Expenses and Management Fees

Generally, the assets of the Trust (e.g., gold bullion) are sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of a 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 listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value ("NAV") of the Trust.

#### Creation and Redemption of Shares

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (each such aggregation, a "Basket"). Authorized Participants<sup>12</sup> are the only persons that may place orders to create and redeem 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>13</sup> and together with the Gold Deposit, collectively, the "Creation Basket Deposit"). 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

<sup>12</sup> An Authorized Participant is (1) A broker-dealer registered under the Act, or (2) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Act, 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. Certain Authorized Participants will be regulated under federal and state banking laws and regulations. See NYSE Order, 69 FR at 64616.

<sup>13</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 received by the Trust as of the date an Authorized Participant places an order to purchase one or more Baskets ("Purchase Order"); and (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>4</sup> As defined in NYSE Arca Equities Rule 5.2(j)(5)(A), Equity Gold Shares represent units of fractional undivided beneficial interests in and ownership of an Equity Gold Trust. The Exchange states that, while Equity Gold Shares are not technically Investment Company Units ("ICUs") and, thus, are not covered by NYSE Arca Equities Rule 5.2(j)(3), all other rules that reference ICUs also apply to Equity Gold Shares. In addition, the provisions set forth in NYSE Arca Equities Rule 8.201(g)-(i), as further discussed herein, apply to Equity Gold Shares. See NYSE Arca Equities Rule 5.2(j)(5).

<sup>5</sup> See Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (approving the listing and trading of the Shares) ("NYSE Order") and 49849 (June 10, 2004), 69 FR 33984 (June 17, 2004) (SR-NYSE-2004-22) (providing notice of NYSE's proposal to list and trade the Shares) ("NYSE Notice," and together with the NYSE Order, collectively, the "NYSE Proposal").

<sup>6</sup> See Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving the adoption of NYSE Arca Equities Rule 5.2(j)(5) and the trading of the Shares pursuant to UTP) ("NYSEArca UTP Order"). See also Securities Exchange Act Release No. 53261 (February 9, 2006), 71 FR 8328 (February 16, 2006) (SR-PCX-2006-02) (expanding the trading hours of the Shares from 9:30 a.m. to 4:15 p.m. Eastern Time ("ET") to 4 a.m. to 8 a.m. ET) ("NYSEArca Trading Hour Proposal").

Redemption Amount”<sup>14</sup> and together with the gold, collectively, the “Redemption Distribution”). The Shares are only redeemable in Basket aggregations.

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. The Trust will impose transaction fees in connection with creation and redemption transactions.

#### Availability of Information on Underlying Gold Holdings and the Shares

Quotations and last-sale price information for the Shares are disseminated over the Consolidated Tape.<sup>15</sup> Gold price and market information are also 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).

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 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. Complete real-time data for gold futures and options prices traded on COMEX, a division of the New York Mercantile Exchange, Inc. (“NYMEX”), is available by subscription from Reuters and Bloomberg. NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. 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. Many of these Web sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, such quotations are generally subject to time delays.<sup>16</sup> Current gold spot prices are also generally available with bid/ask spreads from gold bullion dealers.

In addition, the Trust’s Web site (<http://www.streettracksgoldshares.com>) provides at no charge continuously updated bids and offers indicative of the spot price of gold.<sup>17</sup> The Exchange provides a link to the Trust’s Web site on its Web site at <http://www.nyse.com>. The Trust Web site also provides a calculation of the Indicative Intra-day Value or “IIV” of a Share, as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. The indicative spot price and IIV per Share are provided on an essentially real-time basis.<sup>18</sup> The Trust

Web site also provides the NAV of the Trust, as calculated each business day by the Sponsor.<sup>19</sup>

In addition, the Web site for the Trust contains the following information, on a per-Share basis: (1) IIV as of the close of the prior business day; (2) the mid-point of the bid-ask price in relation to such IIV (“Bid/Ask Price”);<sup>20</sup> (3) a calculation of the premium or discount of such price against such IIV; and (4) 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 also provides the Trust’s prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site provides the last sale price of the Shares as traded in the United States, subject to a 20-minute delay.<sup>21</sup>

#### Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of ICUs under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2).<sup>22</sup> As indicated above, the Shares are currently trading on the Exchange pursuant to UTP and satisfy the requirements of NYSE Arca Equities Rule 5.2(j)(5) for listing on the Exchange. A minimum of 100,000 Shares would be required to be outstanding when the Shares are listed. This minimum number of Shares required to be outstanding is comparable to requirements that have been applied to previously listed series of exchange-traded funds. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange represents the Trust is required to

Trading Sessions). See NYSE Arca Equities Rule 7.34 (Trading Sessions); see also NYSE Arca Trading Hour Proposal, *supra* note 6; e-mail from Timothy J. Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated August 2, 2007 (confirming that the indicative price of gold and the IIV will be calculated and disseminated during the Opening, Core Trading, and Late Trading Sessions) (“NYSE Arca Confirmation II”).

<sup>19</sup> The Exchange represents that it would obtain a representation from the Trust, prior to listing, that the NAV per Share would be calculated daily and made available to all market participants at the same.

<sup>20</sup> The Bid-Ask Price is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing IIV. See NYSE Arca Confirmation II.

<sup>21</sup> The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from major market data vendors. See NYSE Arca Confirmation I.

<sup>22</sup> See *supra* note 4. NYSE Arca Equities Rule 5.5(g)(2) provides for the continued listing standards for ICUs.

<sup>14</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 the Depository Trust Company (“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 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>15</sup> See NYSE Arca Confirmation I (clarifying the information to be disseminated over the Consolidated Tape).

<sup>16</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>17</sup> The Trust Web site’s gold spot price will be provided by The Bullion Desk (<http://www.thebulliondesk.com>). The Bullion Desk is not affiliated with the Trust, Sponsor, Marketing Agent, Custodian, or the Exchange. The Exchange 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.

<sup>18</sup> The Trust’s Web site, to which the Exchange’s Web site will link, disseminates an indicative spot price of gold and the IIV and indicates that these values are subject to an average delay of five to ten seconds. The Exchange states that the updated indicative spot price of gold and IIV per Share are disseminated during all three of the Exchange’s trading sessions (Opening, Core Trading, and Late

comply with Rule 10A-3 under the Act<sup>23</sup> for the initial and continued listing of the Shares.

#### Trading Rules and Halts

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (Opening, Core Trading, and Late Trading Sessions, 4 a.m. to 8 p.m. ET).<sup>24</sup>

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 may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The factors 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 the Shares could be halted pursuant to the Exchange's "circuit breaker" rule<sup>25</sup> or by the halt or suspension of trading of the underlying gold.

In addition, NYSE Arca Equities Rule 5.5(g)(2)(b) provides that, if the IIV or the value of the underlying gold is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the IIV or the value of the underlying gold occurs. If the interruption to the calculation or wide dissemination of the IIV or the value of the underlying gold persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative securities

products to monitor trading in the Shares. 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. The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, as appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of ISG. In addition, the Exchange has in place an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to COMEX gold futures contracts. Further, the Exchange notes that the Shares are subject to NYSE Arca Equities Rules 8.201(g)-(i), which set forth certain restrictions on ETP Holders<sup>26</sup> to facilitate surveillance and the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would include the following: (1) A description of the Shares; (2) the procedures for purchases and redemptions of Shares (and that Shares are not individually redeemable); (3) a discussion of NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin would explain that: (a) The Trust is subject to various fees and expenses described in the Registration Statement; (b) the number of ounces of gold required to be purchased or to be delivered upon redemption would gradually decrease

over time because the Shares comprising would represent a decreasing amount of gold due to the sale of the Trust's gold to pay Trust expenses;<sup>27</sup> (c) there is no regulated source of last-sale information regarding physical gold; (d) the Commission has no jurisdiction over the trading of gold as a physical commodity; (e) the Commodity Futures Trading Commission has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts; and (f) the NAV for the Shares would be calculated as of the earlier of the London PM fix<sup>28</sup> for such day or 12:00 p.m. ET each day that the Exchange is open for trading. The Bulletin would also discuss the exemptive, no-action, and/or interpretive relief granted by the Commission from Section 11(d)(1) of the Act<sup>29</sup> and certain rules under the Act.<sup>30</sup>

#### 2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,<sup>31</sup> in general, and Section 6(b)(5) of the Act,<sup>32</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

<sup>23</sup> 17 CFR 240.10A-3 (providing requirements for listing standards relating to audit committees).

<sup>24</sup> The Exchange states that, while the Shares would trade on the Exchange until 8 p.m. ET, liquidity in the over-the-counter market for gold generally decreases after 1:30 p.m. ET when daily trading at COMEX and other world gold trading centers ends. Trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the over-the-counter gold market. The Exchange does not believe that the Shares would trade at a material discount or premium to the value of the underlying gold held by the Trust because of arbitrage opportunities. See *supra* note 18.

<sup>25</sup> See NYSE Arca Equities Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility).

<sup>26</sup> An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit (ETP) by NYSE Arca Equities.

<sup>27</sup> See *supra* note 7.

<sup>28</sup> See NYSE Notice, 69 FR at 33986 (providing a detailed discussion and explanation of the London PM fix).

<sup>29</sup> 15 U.S.C. 78k(d)(1).

<sup>30</sup> See, e.g., Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, Commission, to Kathleen M. Moriarty, Esq., Carter, Ledyard & Milburn, dated November 17, 2004; Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, Commission, to Ms. Kathleen M. Moriarty, Esq., Carter, Ledyard & Milburn, dated December 12, 2005.

<sup>31</sup> 15 U.S.C. 78f(b).

<sup>32</sup> 15 U.S.C. 78f(b)(5).

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-76 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2007-76. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2007-76 and should be submitted on or before September 5, 2007.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>33</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>34</sup> which requires that an exchange have rules 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. The Commission notes that it previously approved the original listing and trading of the Shares on NYSE, and the instant proposal is substantively identical to the NYSE Proposal.<sup>35</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>36</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares are disseminated over the Consolidated Tape. In addition, the Trust's Web site, to which the Exchange provides a link on its own Web site, disseminates the updated indicative spot price of gold and the IIV on a per-Share basis at least every 15 seconds during all of the Exchange's trading sessions. The Web site for the Trust also provides the daily NAV, the Bid-Ask Price, data related to the premium or discount of the Bid-Ask Price against the NAV, the prospectus, and recent reports to holders. 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 Bloomberg. Complete real-time data for gold futures and options prices traded on COMEX is available by subscription, and NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. 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. Current gold spot

prices are also generally available with bid/ask spreads from gold bullion dealers.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain a representation from the Trust, prior to listing, that the NAV per Share would be calculated daily and made available to all market participants at the same time.<sup>37</sup> In addition, NYSE Arca Equities Rule 8.201(g) prohibits an ETP Holder acting as a registered Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares from being affiliated with a Market Maker in physical gold, gold futures, options on gold futures, or any other gold derivatives, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26 (Limitations on Dealings). Finally, NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Shares).

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 5.5(g)(2)(b) provides that, when the Exchange is the listing market, if the IIV or the value of the underlying gold<sup>38</sup> is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the underlying gold occurs. If the interruption to the dissemination of the IIV or the value of the underlying gold persists past the trading day in which it occurred, the Exchange will halt trading. NYSE Arca Equities Rule 5.5(g)(2)(a) also provides that the Exchange may seek to delist the Shares

<sup>37</sup> See *supra* note 19.

<sup>38</sup> The Exchange represents that, for purposes of complying with the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2), which apply to the Shares, the Exchange deems the value of the underlying gold to be analogous to the value of the index or portfolio, as such value is referenced in NYSE Arca Equities Rule 5.5(g)(2). See NYSEArca Confirmation II (confirming the analogy between the value of the underlying gold and the value of the index, as referenced in NYSE Arca Equities Rule 5.5(g)(2), for purposes of the instant proposal).

<sup>33</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> See *supra* note 5.

<sup>36</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

in the event the value of the underlying gold is no longer calculated or available as required.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing Exchange rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Shares.

(2) The Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares, including suitability recommendation requirements.

(3) The Exchange would require its members to deliver a prospectus to investors purchasing Shares prior to or concurrently with confirmation of a transaction in such Shares and will note this prospectus delivery requirement in the Information Bulletin.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously approved the original listing and trading of the Shares on NYSE and the trading of the Shares pursuant to UTP on the Exchange.<sup>39</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the listing and trading of the Shares on the Exchange. Accelerating approval of this proposed rule change would allow the Shares to be listed on the Exchange without undue delay and continuously traded without interruption, to the benefit of investors.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2007-76), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-15937 Filed 8-14-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56221; File No. SR-Phlx-2007-48]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Adopt a Monthly Fee for Stock Execution Clerks That Handle Stand- Alone Equity Orders

August 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 28, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Phlx. On August 7, 2007, Phlx amended the proposed rule change.<sup>3</sup> The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> thereunder, as establishing or changing a due, fee, or other charge applicable to a member, which renders the proposed rule change effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Phlx proposes to adopt a monthly fee of \$500.00 for stock execution clerks that handle stand-alone equity orders, such as to hedge traders' options positions. Those stock execution clerks who are assessed the \$500.00 monthly fee will no longer pay the \$25.00 Trading Floor Personnel Registration

Fee, as the \$500.00 monthly fee will encompass the \$25.00 Trading Floor Personnel Registration Fee. The text of the proposed rule change is available at <http://www.phlx.com>, the Phlx, and the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

A stock execution clerk is currently defined in Exchange Rule 1090 as any clerk other than a specialist clerk on the Exchange trading floor who functions as an intermediary in a transaction (i) Consummated on the Exchange; (ii) entered verbally for execution other than on the Exchange; or (iii) entered into a third party system designed to execute transactions other than on the Exchange.<sup>7</sup> All stock execution clerks must register as such with the Exchange.<sup>8</sup>

Generally, "stock execution" refers to the service used by options traders to hedge their options trades with the underlying stock. Although stock execution today is often done electronically, stock execution clerks provide a service to Exchange members on the options floor by accepting orders for the purchase and sale of securities underlying options transactions. Once such orders are accepted, the stock execution clerk forwards such orders to the appropriate marketplace for execution. The transactions executed are typically hedging transactions in underlying stocks for Exchange specialists and Registered Options Traders. The transaction may be contingent on an options transaction<sup>9</sup> or

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

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

<sup>3</sup> See Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 7, 2007, the date the Exchange filed Amendment No. 1.

<sup>7</sup> See Exchange Rule 1090, Commentary .01(a).

<sup>8</sup> See Exchange Rule 620(b).

<sup>9</sup> A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post. For certain options contingency orders, the contingency

Continued

<sup>39</sup> See *supra* notes 5 and 6.

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).