

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-090 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2010-090. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2010-090 and

should be submitted on or before November 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63043; File No. SR-NYSEArca-2010-84]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of the Sprott Physical Silver Trust

October 5, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 22, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change 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 units<sup>4</sup> of the Sprott Physical Silver Trust (the "Trust") under NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

The Exchange proposes to list and trade units ("Units") of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."<sup>5</sup> The Commission has approved listing of the iShares Silver Trust on the Exchange<sup>6</sup> and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as "NYSE Amex LLC").<sup>7</sup> Further, the Commission has also approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of ETFs Silver Trust<sup>8</sup> and ETFs Gold Trust.<sup>9</sup> The Commission also has previously approved listing on the Exchange of shares of the Sprott Physical Gold Trust, streetTRACKS Gold Trust, and iShares COMEX Gold Trust.<sup>10</sup> Prior to their listing on the Exchange, the Commission approved listing of the

<sup>5</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>6</sup> See Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing on the Exchange of the iShares Silver Trust).

<sup>7</sup> See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

<sup>8</sup> See Securities Exchange Act Release No. 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR-NYSEArca-2009-28) (approving listing on the Exchange of the ETFs Silver Trust).

<sup>9</sup> See Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (approving listing on the Exchange of the ETFs Gold Trust).

<sup>10</sup> See Securities Exchange Act Release No. 61496 (February 4, 2010) 75 FR 6758 (February 10, 2010) (NYSEArca-2009-113) (approving listing on the Exchange of Sprott Physical Gold Trust); Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (approving listing on the Exchange of iShares COMEX Gold Trust).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Each unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of units.

streetTRACKS Gold Trust on the New York Stock Exchange (“NYSE”) and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.<sup>11</sup> In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.<sup>12</sup> Sprott Asset Management LP is the sponsor or manager of the Trust (the “Sponsor” or the “Manager,”<sup>13</sup> as the case may be), RBC Dexia Investor Services Trust is the trustee of the Trust (the “Trustee”),<sup>14</sup> the Royal Canadian Mint is the custodian for the physical silver bullion owned by the Trust (the “Silver Custodian”),<sup>15</sup> and RBC Dexia serves as the custodian of the Trust’s assets other than physical silver bullion (the “Non-Silver Custodian”).<sup>16</sup>

#### Listing Rules

*Definition.* Rule 8.201(c)(1) defines Commodity-Based Trust Shares as a

<sup>11</sup> See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (approving listing of streetTRACKS Gold Trust on NYSE); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

<sup>12</sup> See Securities Exchange Act Release No. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

<sup>13</sup> The Manager is a limited partnership existing under the laws of Ontario, Canada, and acts as manager of the Trust pursuant to the Trust’s trust agreement and the management agreement. The Manager provides management and advisory services to the Trust. Additional details regarding the Manager are set forth in the Registration Statement on Form F-1 for the Sprott Physical Silver Trust, filed with the Commission on July 9, 2010 (No. 333-168051) (the “Registration Statement”).

<sup>14</sup> The Trustee holds title to the Trust’s assets on behalf of the Unitholders and has, together with the Manager, exclusive authority over the assets and affairs of the Trust. The Trustee has a fiduciary responsibility to act in the best interest of the Unitholders. Additional details regarding the Trustee are set forth in the Registration Statement.

<sup>15</sup> The Silver Custodian will be responsible for and will bear all risk of loss of, and damage to, the Trust’s physical silver bullion that is in its custody, subject to certain limitations based on events beyond the Silver Custodian’s control. The Manager, with the consent of the Trustee, may determine to change the custodial arrangements of the Trust. Additional details regarding the Silver Custodian are set forth in the Registration Statement.

<sup>16</sup> The Non-Silver Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust’s assets (other than physical silver bullion) that are in its custody, subject to certain limitations based on events beyond the Non-Silver Custodian’s control. The Manager, with the consent of the Trustee, may determine to change the custodial arrangements of the Trust. Additional details regarding the Non-Silver Custodian are set forth in the Registration Statement.

security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

The Trust will issue Units, each of which represents an equal, fractional undivided ownership interest in the net assets of the Trust attributable to the particular class of Units. Except with respect to cash held by the Trust to pay expenses and anticipated redemptions, the Trust expects to own only London Good Delivery physical silver bullion. The investment objective of the Trust is for the Units to reflect the performance of the price of silver bullion, less the expenses of the Trust’s operations.<sup>17</sup> The Trust is not actively managed and does not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of silver bullion. 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>18</sup> The Units will be issued in an initial public offering. The Trust may not issue additional Units of the class offered in this offering following its completion except (i) if the net proceeds per Unit to be received by the Trust are not less than 100% of the most recently calculated net asset value (“NAV”) immediately prior to, or upon, the determination of the pricing of such issuance or (ii) by way of Unit distribution in connection with an income distribution. The Trust will not issue Units on an on-going or daily basis. At the start of trading the Trust will issue a minimum of 1,000,000 Units to at least 400 holders (“Unitholders”), as further described below.

The Units will be redeemable monthly at the option of the holder. The redemption process is further described below.

The Exchange represents that the Units satisfy the requirements of NYSE

<sup>17</sup> The descriptions of the Trust, the Units and the silver market contained herein are based on the Registration Statement.

<sup>18</sup> The Trust does not trade in silver futures contracts. The Trust takes delivery of physical silver that complies with certain silver delivery rules. Because the Trust does not trade in silver futures contracts on any futures exchange, the Trust is not regulated as a commodity pool, and is not operated by a commodity pool operator.

Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.<sup>19</sup>

#### Operation of the Silver Market

A detailed description of the silver market is set forth in the Registration Statement.

#### Secondary Market Trading and Liquidity

While the Trust’s investment objective is for the Units to reflect the performance of physical silver bullion, less the expenses of the Trust, the Units may trade in the secondary market on the NYSE Arca at prices that are lower or higher relative to their per Unit NAV. The NAV is expected to fluctuate with changes in the market value of the Trust’s assets. The trading price of the Units will fluctuate in accordance with changes in the NAV as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV may be influenced by non-concurrent trading hours between the NYSE Arca and the COMEX and other major world silver markets. While the Units will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the global silver market will be reduced after the close of the major world silver markets, including London and of the COMEX division of the New York Mercantile Exchange at 1:25 p.m. New York time. As a result, during this time, trading spreads, and the resulting premium or discount to the NAV may widen.

#### Trust Expenses

The fees and expenses of the Trust are set forth in detail in the Registration Statement.

#### Initial Public Offering and Redemption of Units

The Trust will offer at a minimum, 1,000,000 Units in its initial public offering to a minimum of 400 Unitholders. Each Unit will represent an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of Units. It is not currently intended that the Trust will create additional Units, except as provided above.

Unitholders may redeem their Units on a monthly basis.

#### Redemption for Physical Silver

Subject to the terms of the trust agreement and the Manager’s right to suspend redemptions under certain circumstances described in the

<sup>19</sup> With respect to application of Rule 10A-3 (17 CFR 240.10A-3) under the Act (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A-3(c)(7).

registration statement, Units may be redeemed at the option of a Unitholder for physical silver bullion in any calendar month. Units redeemed for physical silver will be entitled to a redemption price equal to 100% of the NAV of the redeemed Units on the last Business Day, as defined herein, of the calendar month in which the redemption request is processed, less redemption and delivery expenses. Redemption requests must be for amounts that are at least equivalent to the value of ten London Good Delivery bars or an integral multiple of one bar in excess thereof, plus applicable expenses. A "London Good Delivery bar" contains between 750 and 1100 troy ounces of silver. Any fractional amount of redemption proceeds in excess of ten London Good Delivery bars or an integral multiple of one bar in excess thereof will be paid in cash at a rate equal to 100% of the NAV of such excess amount. The ability of a Unitholder to redeem Units for physical silver bullion may be limited by the sizes of London Good Delivery bars held by the Trust at the time of the redemption. A Unitholder redeeming Units for silver will be responsible for expenses incurred by the Trust in connection with such redemption and applicable delivery expenses, including the handling of the notice of redemption, the delivery of the physical bullion for units that are being redeemed and the applicable silver storage in-and-out fees.

A redemption notice to redeem Units for physical silver bullion must be received by the Trust's transfer agent no later than 4 pm, Eastern Standard Time, on the 15th day of the calendar month in which the redemption notice will be processed or, if such day is not a day on which banks located in New York, New York, are open for the transaction of banking business (a "Business Day"), then on the immediately following day that is a Business Day. Any redemption notice received after such time will be processed in the next month.

Physical silver bullion received by a Unitholder as a result of a redemption of Units will be delivered by armored transportation service carrier pursuant to delivery instructions provided by the Unitholder. The armored transportation service carrier will be engaged by or on behalf of the redeeming Unitholder. Such physical silver bullion can be delivered (i) to an account established by the Unitholder at an institution located in North America authorized to accept and hold London Good Delivery bars; (ii) in the United States, to any physical address (subject to approval by the armored transportation service

carrier); (iii) in Canada, to any business address (subject to approval by the armored transportation service carrier); and (iv) outside of the United States and Canada, to any address approved by the armored transportation service carrier. Physical silver bullion delivered to an institution located in North America authorized to accept and hold London Good Delivery bars will likely retain its London Good Delivery status while in the custody of such institution; physical silver bullion delivered pursuant to a Unitholder's delivery instruction to a destination other than an institution located in North America authorized to accept and hold London Good Delivery bars will no longer be deemed London Good Delivery once received by the Unitholder. The armored transportation service carrier will receive silver bullion in connection with a redemption of Units approximately 10 Business Days after the end of the month in which the redemption notice is processed. Any cash to be received by a redeeming Unitholder in connection with a redemption of Units for physical silver bullion will be delivered to the Unitholder's brokerage account within 10 Business Days after the calendar month in which the redemption is processed.

#### Redemption for Cash

Subject to the terms of the trust agreement and the Manager's right to suspend redemptions under certain circumstances described in the registration statement, Units may be redeemed at the option of a Unitholder for cash on a monthly basis. Units redeemed for cash will be entitled to a redemption price equal to 95% of the lesser of (i) the volume-weighted average trading price of the Units traded on the NYSE Arca or, if trading has been suspended on NYSE Arca, the trading price of the units traded on the Toronto Stock Exchange, for the last five Business Days of the month in which the redemption request is processed and (ii) the NAV of the redeemed Units as of 4:00 p.m., Eastern Standard Time, on the last Business Day of such month. Cash redemption proceeds will be transferred to a redeeming Unitholder approximately three Business Days after the end of the month in which the redemption notice is processed. See "Redemption of Units" for detailed terms and conditions relating to the redemption of Units for cash.

A redemption notice to redeem Units for cash must be received by the Trust's transfer agent no later than 4 p.m. Eastern Standard Time, on the 15th day of the calendar month in which the redemption notice will be processed or,

if such day is not a Business Day, then on the immediately following day that is a Business Day. Any redemption notice to redeem Units for cash received after such time will be processed in the next month.

#### Termination Events

The Trust will be terminated in the event there are no Units outstanding, the Trustee resigns or is removed and no successor trustee is appointed by the Manager by the time the resignation or removal becomes effective, the Manager resigns and no successor manager is appointed by the Manager and approved by Unitholders by the time the resignation becomes effective, the Manager is, in the opinion of the Trustee, in material default of its obligations under the trust agreement and does not cure such default within a certain time period, the Manager experiences certain insolvency events or the assets of the Manager have become subject to seizure or confiscation by any public or governmental authority. In addition, the Manager may, in its discretion, terminate the Trust, without Unitholder approval, if, in the opinion of the Manager, after consulting with the independent review committee, the value of net assets of the Trust has been reduced such that it is no longer economically feasible to continue the Trust and it would be in the best interests of the Unitholders to terminate the Trust, by giving the Trustee and each holder of Units at the time not less than 60 days and not more than 90 days' written notice prior to the effective date of the termination of the Trust.<sup>20</sup> To the extent such termination in the discretion of the Manager may involve a matter that would be a "conflict of interest matter" as set forth in applicable Canadian regulations, the matter will be referred by the Manager to the independent review committee established by the Manager for its recommendation. In connection with the termination of the Trust, the Trust shall, to the extent possible, convert its assets to cash and, after paying or making adequate provision for all of the Trust's liabilities, distribute the net assets of the Trust to Unitholders, on a pro rata basis, as soon as practicable after the termination date. Additional information regarding the Units and the operation of the Trust, including termination events, risks, and redemption procedures, are described in the Registration Statement.

<sup>20</sup> See e-mail, dated October 5, 2010, from Tim Malinowski, Senior Director, NYSE Euronext, to Christopher Chow, Special Counsel, and Steve Varholik, Special Counsel, Commission.

### Valuation of Silver and Definition of Net Asset Value

The value of the net assets of the Trust and the NAV will be determined daily at 4 p.m. (Eastern Standard Time) on each day that is a Business Day, by the Trust's valuator, which is RBC Dexia Investor Services Trust. The value of the net assets of the Trust as of the valuation time on any such day shall be equal to the aggregate fair market value of the assets of the Trust as of such date, less an amount equal to the total liabilities of the Trust (excluding all liabilities represented by outstanding Units) as of such date. The valuator shall calculate the NAV by dividing the value of the net assets of the Trust on that day by the total number of Units then outstanding on such day.

The Units will be book-entry only and individual certificates will not be issued for the Units (except in connection with a redemption of Units, during the process of which redeeming Units will be certificated and presented for cancellation as part of the redemption process).

### Availability of Information Regarding Silver Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as silver, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Units, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of silver price and silver market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis silver pricing information based on the spot price for an ounce of silver 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 silver and last sale prices of silver futures, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver 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 silver, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for

silver futures and options prices traded on the COMEX are 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. There are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the daily London noon Fix is publicly available at no charge at or <http://www.thebulliondesk.com>.

The Trust Web site will provide an intraday indicative value ("IIV") per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV will be calculated based on a price of silver derived from updated bids and offers indicative of the spot price of silver.<sup>21</sup> In addition, the Web site for the Trust will contain the following information, on a per Unit basis, for the Trust: (a) The mid-point of the bid-ask price<sup>22</sup> at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, 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 provide the last sale price of the Units as traded in the US market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

### Criteria for Initial and Continued Listing

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

It is anticipated that a minimum of 1,000,000<sup>23</sup> Units will be required to be

<sup>21</sup> The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

<sup>22</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 NAV.

<sup>23</sup> The minimum number of Units issued is comparable to the minimum threshold established

outstanding at the start of trading. The minimum number of Units required to be outstanding exceeds the requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust and exchange-traded funds. There will be a minimum of 400<sup>24</sup> Unitholders at the start of trading. Additionally, it is anticipated that the initial price of a Unit will be approximately \$10.00. The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity. Prior to listing, the Trust will represent to the Exchange that the NAV would be calculated daily and made available to all market participants at the same time. Prior to listing, the Trust will also represent to the Exchange that the IIV will be calculated at least every fifteen seconds and made available to all market participants at the same time.

### Trading Rules

The Exchange deems the Units to be equity securities and subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Units to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its trading in the underlying silver, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker in the Units 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 the underlying silver, related futures or options on futures or any other related derivative (including the Units).

As a general matter, the Exchange has regulatory jurisdiction over its ETP

for the issuance of equity linked notes under NYSE Arca Rule 5.2(j)(2).

<sup>24</sup> The minimum number of holders is comparable to the minimum threshold established for the issuance of equity linked notes under NYSE Arca Rule 5.2(j)(2).

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

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, or (3) if the Toronto Stock Exchange halts trading in the Units. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>25</sup>

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Units and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative, through 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 may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.<sup>26</sup>

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) 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 Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of silver trading during the Core and Late Trading Sessions after the close of the major world silver markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. ETP Holders purchasing Units from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

<sup>26</sup> A list of ISG members is available at <http://www.isgportal.org/isgportal/public/members.htm>. Trading information can be obtained from the Investment Industry Regulatory Organization of Canada, a member of ISG, who oversees Canadian broker dealers and trading activity on the Toronto Stock Exchange. The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the Tokyo Commodity Exchange ("TOCOM") is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and further the objectives of Section 6(b)(5),<sup>28</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. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

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

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

Within 45 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 or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See NYSE Arca Equities Rule 7.12.

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-2010-84 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2010-84. 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2010-84 and should be submitted on or before November 2, 2010.

**V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful consideration, 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>29</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>30</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, a national market system, and in general, to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade Units on the Exchange is consistent with Section 11(a)(1)(C)(iii) of the Act,<sup>31</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Units will be available via the Consolidated Tape Association.<sup>32</sup> The Trust's Web site will provide an IIV per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV will be calculated based on a price of silver derived from updated bids and offers indicative of the spot price of silver. In addition, the Web site for the Trust will contain the following information, on a per Unit basis, for the Trust: (a) The mid-point of the Bid/Ask Price and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust also will provide the Trust's prospectus, as well as the two most recent reports to stockholders. Further, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day. Finally,

information on silver prices and markets is widely available as discussed above.

The Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange will receive a representation from the Trust that, prior to listing, the NAV would be calculated daily and made available to all market participants at the same time. Additionally, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>33</sup> Additionally, under NYSE Arca Rules 8.201(e)(2)(iv) and (v), the Exchange will consider suspending or delisting the Units if, after the initial 12-month period following commencement of trading: (1) The value of silver is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, custodian or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. These may include: (1) The extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading; (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or (3) if the Toronto Stock Exchange halts trading in the Units. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>34</sup>

<sup>29</sup> In approving the 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>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>32</sup> The Trust Web site also will provide the last-sale price of the Units as traded in the US market.

<sup>33</sup> See e-mail, dated September 29, 2010, from Tim Malinowski, Senior Director, NYSE Euronext, to Christopher Chow, Special Counsel, Commission.

<sup>34</sup> See NYSE Arca Equities Rule 7.12.

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as Market Makers in the Units. Pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Units and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative, through 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 may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.<sup>35</sup>

Finally, the Commission notes that Commentary .04 to NYSE Arca Equities Rule 6.3 requires among other things that ETP Holders acting as a registered Market Maker in products listed under NYSE Arca Equities Rule 8.201 (and their affiliates) must establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any physical asset or commodity underlying the product, related futures or options on futures, and any related derivative instruments.

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

(1) The Units will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Units and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via ISG from other exchanges who are members of the ISG and from the Investment Industry Regulatory Organization of Canada.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin

of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) 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 Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of silver trading during the Core and Late Trading Sessions after the close of the major world silver markets; and (6) trading information.

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

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register**. The Exchange's proposal to list and trade the Units does not present any novel or significant regulatory issues. Previously, the Commission approved a proposal by the Exchange to list and trade shares of a substantially similar trust that holds gold bullion pursuant to NYSE Arca Equities Rule 8.201.<sup>37</sup> Additionally, the Commission has previously approved proposals to list and trade shares of trusts that hold silver bullion pursuant to NYSE Arca Equities Rule 8.201.<sup>38</sup>

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-NYSEArca-2010-84) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-25496 Filed 10-8-10; 8:45 am]

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<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> See Securities Exchange Act Release No. 61496, *supra* note 10.

<sup>38</sup> See *supra* notes 6, 7, and 8. See also *supra* notes 9-12.

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63036; File No. SR-Phlx-2010-131]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Rule 1014

October 4, 2010.

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 September 27, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to revise Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, to delete provisions related to: (i) The obsolete terms AUTOM, Streaming Quote Option, electronic interface, AUTO-X, Book Sweep and Book Match; (ii) "trading on Phlx XL"; (iii) the use of trading floor tickets; and (iv) [sic] subparagraphs (g)(iii) and (iv), the New Unit/New Option Enhanced Specialist Participation and New Product Enhanced Specialist Participation, respectively. The Exchange also proposes to make corollary changes to Floor Procedure Advice B-6, Priority of Options Orders for Equity Options, Index Options and U.S. Dollar-Settled Foreign Currency Options by Account Type, as explained further below.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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

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

<sup>35</sup> See *supra* note 26 for additional information regarding ISG.