

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will enable the Exchange to, as soon as possible, have the ability to compete with option exchanges that have incorporated the proposed rule change to their short term option series programs. For this reason, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-16 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEARCA-2015-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-NYSEARCA-2015-16 and should be submitted on or before April 15, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Brent J. Fields,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74544; File No. SR-NYSEARCA-2015-19]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the LBMA Gold Price as a Replacement for the London Gold Fix for Certain Gold Related Exchange Traded Products

March 19, 2015.

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 March 17, 2015, 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 and II below, which Items have

been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to (1) to reflect a change to the value used by the SPDR® Gold Trust, which is currently listed on the Exchange under NYSE Arca Equities Rule 5.2(j)(5); iShares Gold Trust, ETFs Gold Trust, ETFs Precious Metals Basket Trust, ETFs Asian Gold Trust and Merk Gold Trust, each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.201, with respect to calculation of the net asset value of shares of each trust; and (2) to reflect a change to the underlying benchmark for ProShares Ultra Gold and ProShares UltraShort Gold, each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend the Exchange listing rules applicable to nine exchange-traded products, all of which reference the "London Gold Fix", as described further below. The exchange-traded products are listed and traded pursuant to NYSE Arca Equities Rule 5.2(j)(5) for the Equity Gold Shares; NYSE Arca Equities Rules 8.201, for Commodity-Based Trust Shares, and NYSE Arca Equities Rule 8.200, for Trust Issued Receipts. The proposed change would replace references to the

<sup>22</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.

“London Gold Fix”, as described below. The London Gold Fix is a gold-price mechanism that has been in existence since 1919 and that will be discontinued T [sic] the close of business on March 19, 2015.<sup>4</sup>

#### Revised Procedures for the Gold Price

On November 8, 2014, the London Bullion Market Association (“LBMA”) announced that ICE Benchmark Administration (“IBA”)<sup>5</sup> has been selected to be the third-party administrator for the “LBMA Gold Price”, which will replace the current London Gold Fix. IBA, an independent specialist benchmark administrator, will provide the auction platform and methodology as well as the overall administration and governance for the LBMA Gold Price benchmark.

On February 19, 2015, the Intercontinental Exchange (“ICE”) announced that the new LBMA Gold Price will be launched on March 20, 2015. As the administrator for the LBMA Gold Price benchmark and the operator of the “IBA Gold Auction”,

<sup>4</sup> As described in the registration statement under the Securities Act of 1933 (15 U.S.C. 77a) (“1933 Act”) for the SPDR® Gold Trust (formerly known as the streetTRACKS Gold Trust) (*see infra*, note 13), twice daily during London trading hours there is a fix (“London Gold Fix”) which provides reference gold prices for that day’s trading. Many long-term contracts will be priced on the basis of either the morning (AM) or afternoon (PM) London Gold Fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. The London Gold Fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources. Membership in the London fix is traditionally limited to banks that are bullion dealers and members of the LBMA. The chairmanship rotates annually among the four member firms. The fix takes place by telephone and the four member firms no longer meet face-to-face as was previously the case. There is a morning session at 10:30 a.m. London time and an afternoon session at 3:00 p.m. London time. The current members of the gold fixing are Bank of Nova Scotia—ScotiaMocatta, Barclays Bank plc, HSBC Bank USA, N.A., and Société Générale. Any other market participant wishing to participate in the trading on the fix is required to do so through one of the four gold fixing members. Orders are placed either with one of the four fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting an opening price, reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The gold price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media.

<sup>5</sup> IBA is a London-based company that was created specifically to administer systemically important benchmarks. Formed in 2013, IBA is part of the Intercontinental Exchange (ICE).

IBA will transition from the current London Gold Fix procedures to a physically settled, electronic and tradeable auction, with the ability to settle trades in U.S. Dollars (“USD”), euros or British Pounds. Within the process, aggregated gold bids and offers will be updated in real-time with the imbalance calculated and the price updated at regular intervals (expected to be at least every 45 seconds). IBA will use ICE’s front-end system— *WebICE*— as the technology platform that will allow direct participants, as well as sponsored clients of direct participants, to manage their orders in the auction in real time via their desktops.<sup>6</sup>

Participants in the auction will include direct participants and sponsored clients of direct participants. Direct participants may enter orders on their own behalf or on behalf of clients. Sponsored clients also may manage their own positions utilizing their own trading screens; however, a sponsored client’s orders would be backed by the sponsoring direct participant. *WebICE* allows sponsored clients to participate in the auction process with the same information and order management capabilities as direct participants.

At the opening of each auction, the auction chairman (“Chairman”) will announce an opening price (in USD) based on the current market conditions and begin auction rounds, with an expected duration of at least every 45 seconds each. During each auction round, participants may enter the volume they wish to buy or sell at that price, and such orders will be part of the price formation. All orders will be routed through direct participants but only direct participants will share the final imbalance. Aggregate bid and offer volume will be shown live on *WebICE*, providing a level playing field for all participants. At the end of each auction round, the total net volume will be calculated. If this ‘imbalance’ is larger than the imbalance tolerance (currently set at 20,000 oz) then the Chairman will choose a new price<sup>7</sup> (based on the current market conditions, and the direction and magnitude of the imbalance in the round) and begin a new auction round. If the imbalance is less than the tolerance, then the auction is complete with all volume tradeable at that price. The price will then be set in USD and also converted into in euros and British Pounds. Auctions will

<sup>6</sup> The *WebICE* platform provides real-time order management as well as separation of direct participant and sponsored client orders, live credit limit controls, audit history, advanced Excel integration and automated deal notifications.

<sup>7</sup> The Chairman will have significant experience in the gold markets and will be employed by IBA.

continue to be run at 10:30 and 15:00 (London time).

During the auction, the price at the start of each round, and the volumes at the end of each round will be available through major market data vendors. As soon as the auction finishes, the final prices and volumes will be available through major market data vendors. IBA will also publish transparency reports, detailing the prices, volumes and times for each round of the auction. These transparency reports will be available through major market data vendors and IBA when the auction finishes. The process can also be observed real-time through a *WebICE* screen. The auction mechanism will provide a complete audit trail.

The number of direct participants initially expected to participate in the auction process is not yet confirmed, but is expected to equal or exceed the number of market participants currently determining the London Gold Fix.

#### Regulation of the LBMA Gold Price

As of April 1, 2015, the LBMA Gold Price will be regulated by the Financial Conduct Authority (“FCA”) in the United Kingdom (“UK”).<sup>8</sup> IBA is already authorized as a regulated benchmark administrator by the FCA. Under the UK benchmark regulation,<sup>9</sup> the governance structure for a regulated benchmark must include an Oversight Committee, made up of market participants, industry bodies, direct participant representatives,

<sup>8</sup> The conduct of financial institutions is overseen by the FCA, which was formed from the former Financial Services Authority and is separate from the Bank of England. The LBMA Gold Price will be regulated under the FCA’s Market Conduct (MAR) Sourcebook (MAR 8.3).

<sup>9</sup> On June 12, 2014, the UK Chancellor of the Exchequer announced steps to raise standards of conduct in the financial system with a joint review by the UK Treasury, the Bank of England and the FCA into the way wholesale financial markets operate. According to this announcement, the “Fair and Effective Markets Review”, led by Bank of England Deputy Governor for Markets and Banking, has been tasked with investigating those wholesale markets, both regulated and unregulated, where most of the recent concerns about misconduct have arisen: Fixed-income, currency and commodity markets, including associated derivatives and benchmarks. It will make recommendations on: principles to govern the operation of fair and effective markets, focusing on fixed income, currency and commodities; reforms to ensure standards of behavior are in accordance with those principles; tools to strengthen the oversight of market conduct; whether the regulatory perimeter for wholesale financial markets should be extended, and to what extent international action is required; and additional reforms in relation to benchmarks, in order to strengthen market infrastructure. *See* <http://www.bankofengland.co.uk/markets/Documents/femraug2014.pdf>. On September 25, 2014, the Fair and Effective Markets Review announced its proposal that the gold fixing process may become regulated under UK benchmark regulation, effective from April 2015.

infrastructure providers and the administrator (*i.e.*, IBA).<sup>10</sup> Through the Oversight Committee, the LBMA will continue to have significant involvement in the oversight of the auction process, including, among other matters, changes to the methodology and accreditation of direct participants.<sup>11</sup>

The price discovery process for the LBMA Gold Price will be subject to surveillance by IBA. IBA is compliant with the UK benchmark regulation (MAR 8.3), regulated by the FCA, and has been formally assessed against the IOSCO Principles for Financial Benchmarks (the “IOSCO Principles”).<sup>12</sup> In order to meet the IOSCO Principles, the price discovery used for the LBMA Gold Price benchmark will be auditable and transparent.

#### Exchange-Listed Gold-Based Products

The Exchange lists and trades shares of exchange traded products that reference the London Gold Fix

<sup>10</sup> The Oversight Committee is a key decision making forum, with market representation that includes participants, users and infrastructure providers. The Oversight Committee’s responsibilities include review of methodology and process relating to the LBMA Gold Price; implementation of a Code of Conduct applicable to participants; expansion of membership; and surveillance oversight, among other functions. The Oversight Committee’s structure and responsibilities is described in the Oversight Committee Terms of Reference, available on the IBA Web site.

<sup>11</sup> The LBMA will continue to provide guidance with respect to the LBMA Gold Price through the Oversight Committee, which will facilitate communication among representatives of all market participants to ensure the process continues to fulfil the needs of the market. The Oversight Committee is responsible for decisions that affect the evolution of the process based on changes in the market and regulatory environments.

<sup>12</sup> The IOSCO Principles are designed to enhance the integrity, the reliability and the oversight of benchmarks by establishing guidelines for benchmark administrators and other relevant bodies in the following areas: Governance: To protect the integrity of the benchmark determination process and to address conflicts of interest; Benchmark quality: to promote the quality and integrity of benchmark determinations through the application of design factors; Quality of the methodology: to promote the quality and integrity of methodologies by setting out minimum information that should be addressed within a methodology. These principles also call for credible transition policies in case a benchmark may cease to exist due to market structure change. Accountability mechanisms: to establish complaints processes, documentation requirements and audit reviews. The IOSCO Principles provide a framework of standards that might be met in different ways, depending on the specificities of each benchmark. In addition to a set of high level principles, the framework offers a subset of more detailed principles for benchmarks having specific risks arising from their reliance on submissions and/or their ownership structure. For further information concerning the IOSCO Principles, see <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>.

benchmark for one or more purposes. The Exchange lists and trades shares of (1) the SPDR® Gold Trust,<sup>13</sup> which is currently listed on the Exchange under NYSE Arca Equities Rule 5.2(j)(5); (2) iShares Gold Trust,<sup>14</sup> ETFs Gold Trust,<sup>15</sup> ETFs Precious Metals Basket Trust,<sup>16</sup> ETFs Asian Gold Trust,<sup>17</sup> and Merk Gold Trust,<sup>18</sup> each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.201 (together with the SPDR Gold Trust, the “Gold Trusts”). In addition, the Exchange lists and trades shares of the Ultra Gold ProShares and UltraShort Gold ProShares<sup>19</sup> (together, the “Gold

<sup>13</sup> See Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of shares of the streetTRACKS Gold Trust (now known as the SPDR® Gold Trust) on the New York Stock Exchange); See Securities Exchange Act Release Nos. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (order approving trading on the Exchange of shares of the streetTRACKS Gold Trust pursuant to unlisted trading privileges); 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (order approving listing on the Exchange of shares of the streetTRACKS Gold Trust).

<sup>14</sup> See Securities Exchange Act Release No. 63398 (November 30, 2010), 75 FR 76056 (December 7, 2010) (SR–NYSEArca–2010–105) (notice of filing and immediate effectiveness of proposed rule change relating to calculation of net asset value by the iShares Gold Trust (formerly the iShares COMEX Gold Trust)). See also Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust). 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

<sup>15</sup> See Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (notice of filing and order granting accelerated approval of proposed rule change relating to the listing and trading of shares of the ETFs Gold Trust).

<sup>16</sup> See Securities Exchange Act Release No. 62402 (June 29, 2010), 75 FR 39292 (July 8, 2010) (SR–NYSEArca–2010–56) (notice of filing of proposed rule change to list and trade shares of the ETFs Precious Metals Basket Trust); 62692 (August 11, 2010), 75 FR 50789 (August 17, 2010) (order approving proposed rule change to list and trade shares of the ETFs Precious Metals Basket Trust).

<sup>17</sup> See Securities Exchange Act Release No. 63267 (November 8, 2010), 75 FR 69494 (November 12, 2010) (notice of filing of proposed rule change to list and trade shares of the ETFs Asian Gold Trust); 63464 (December 8, 2010), 75 FR 77926 (December 14, 2010) (SR–NYSEArca–2010–95) (order granting accelerated approval of a proposed rule change to list and trade shares of the ETFs Asian Gold Trust).

<sup>18</sup> See Securities Exchange Act Release No. 71038 (December 11, 2013), 78 FR 76367 (December 17, 2013) (notice of filing of proposed rule change to list and trade shares of the Merk Gold Trust) 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR–NYSEArca–2013–137) (order approving proposed rule change to list and trade shares of the Merk Gold Trust).

<sup>19</sup> See Securities Exchange Act Release Nos. 58457 (September 3, 2008), (73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (notice of filing and order granting accelerated approval of proposed rule change regarding listing and trading of shares of 14 funds of the

Funds”), each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.200.

With respect to the Gold Trusts, the net asset value of shares of the respective trusts is based on the London Gold Fix, as described in the applicable rule filings relating to listing and trading of shares of each of the Gold Trusts and in the registration statement under the 1933 Act relating to each such trust.<sup>20</sup> After March 19, 2015, the London Gold Fix will no longer exist and it is, therefore, necessary for the Gold Trusts to change the benchmark price that each such trust uses for purposes of calculating the net asset value of such trust’s shares. The sponsors of the Gold Trusts have indicated that, as of March 20, 2015, they intend to use the LBMA Gold Price for purposes of determining the net asset value of shares of the Gold Trusts. Accordingly, the Exchange proposes to change the benchmark price used by the Gold Trusts for calculation of the net asset value of shares of each of such trust.

With respect to the Gold Funds, the existing “Underlying Benchmark” for each such fund is the U.S. dollar price of gold bullion as measured by the London Gold Fix.<sup>21</sup> The Gold Funds,

Commodities and Currency Trust, now ProShares Trust II); 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73) (notice of filing and immediate effectiveness of proposed rule change relating to trading of shares of 14 funds of the Commodities and Currency Trust pursuant to unlisted trading privileges). See also Securities Exchange Act Release Nos. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (order approving listing and trading on the American Stock Exchange LLC of shares of 14 funds of the Commodities and Currency Trust); 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) (notice of proposed rule change regarding listing and trading of shares of 14 funds of the Commodities and Currency Trust).

<sup>20</sup> See *supra*, notes 13–19 [sic]. See also the registration statement on Form S–3 under the 1933 Act for the SPDR® Gold Trust dated April 26, 2012 (No. 333–180974); registration statement on Form S–3 under the 1933 Act for the iShares Gold Trust, dated May 10, 2014 (No. 333–199257); Post-Effective Amendment No. 2 on Form S–3 under the 1933 Act for the ETFs Precious Metals Basket Trust, filed with the Commission on November 25, 2014 (No. 333–195675); Registration Statement on Form S–3 ASR under the 1933 Act for the ETFs Gold Trust, filed with the Commission on April 11, 2014 (No. 333–195204); Registration Statement on Form S–1 under the 1933 Act for the ETFs Asian Gold Trust, filed with the Commission on May 12, 2014 (No. 333–195868); and Amendment No. 6 on Form S–1 under the 1933 Act for the Merk Gold Trust, dated May 13, 2014 (No. 333–180868).

<sup>21</sup> ProShares Ultra Gold seeks daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Benchmark. ProShares UltraShort Gold seeks daily investment results, before fees and expenses that correspond to twice the inverse (-200%) of the daily performance of the Underlying Benchmark. See Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (order approving listing

therefore, similarly need to change the Underlying Benchmark for each such fund. The sponsor of the Gold Funds represents that it intends to change the Underlying Benchmark for the Gold Funds to the LBMA Gold Price as of March 20, 2015. Accordingly, the Exchange proposes to reflect a change in the Underlying Benchmark applicable to the Gold Funds.

The LBMA Gold Price benchmark is widely expected to be viewed as a full and fair representation of all market interest at the conclusion of the auction. IBA's electronic auction methodology is similar to the non-electronic process previously used to establish the London Gold Fix where the London Gold Fix process adjusted the gold price up or down until all the buy and sell orders are matched (within the imbalance threshold), at which time the price was declared fixed. Nevertheless, the LBMA Gold Price has several advantages over the previous London Gold Fix. IBA's auction process will be fully transparent in real time to direct participants and sponsored clients and, at the close of each auction, to the general public. The auction process also will be fully auditable since an audit trail exists for every change made in the process. Moreover, the audit trail and active surveillance of the auction process by IBA, as well as FCA's oversight of IBA, will deter manipulative and abusive conduct in establishing each day's LBMA Gold Price.

The Exchange believes the new LBMA Gold Price benchmark will serve as an appropriate replacement to the London Gold Fix for purposes of determining the net asset value of shares of the Gold Trusts or as the Underlying Benchmark applicable to the Gold Funds because of the transparency of the auction process, the anticipated participation of an increased number of market participants compared to the London Gold Fix, and the auditability of the gold pricing mechanism.

In connection with this proposed rule change, (1) the sponsors of the Gold Trusts will each issue a press release informing the public of the date a trust will first use the LBMA Gold Price to value the gold held by a trust; (2) the sponsor of the Gold Funds will issue a press release informing the public of the

date the Gold Funds will first use the LBMA Gold Price as the basis for their respective Underlying Benchmark; (3) the sponsors will each file the applicable press release with the Commission by means of Form 8-K, which will be available on the applicable Gold Trust's or Gold Fund's Web site; and (4) the sponsors will each file an amendment to the applicable registration statement relating to the proposed change.<sup>22</sup>

The sponsors for the Gold Trusts and the Gold Funds represent that there is no change to the investment objective of the applicable Gold Trust or the Gold Funds from that described in the applicable proposed rule change.<sup>23</sup> The Gold Trusts and the Gold Funds will comply with all initial and continued listing requirements with respect to NYSE Arca Equities Rule 5.2(j)(5), 8.201 or 8.200, respectively.

Except for the changes noted above, all other facts presented and representations made in the proposed rule changes referenced above remain unchanged.

All terms referenced but not defined herein are defined in the applicable proposed rule change referenced above.<sup>24</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>25</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the new LBMA Gold Price benchmark will be based on an auction that is electronic and auditable and is produced from tradeable volumes. The Exchange believes the new LBMA Gold Price benchmark will serve as an appropriate replacement to the London Gold Fix for purposes of determining the net asset value of shares of the Gold Trusts or as the Underlying Benchmark applicable to

the Gold Funds because of the transparency and auditability of the auction process, and the prospective participation of an increased number of market participants compared to the London Gold Fix. In addition, the LBMA Gold Price and the transparency reports showing the prices, timings and total volumes for each round will be available electronically instantly after the conclusion of the auction, as described above.

The proposed change will permit the Gold Trusts and Gold Funds to continue to function as gold-based exchange-traded products by utilizing a new gold benchmark to replace the London Gold Fix, which is not expected to be available after March 19, 2015, and that will provide a sound and reasonable basis for calculation of net asset value or will provide a suitable Underlying Benchmark, as applicable. Such price will be widely disseminated by one or more major market data vendors and/or exchanges. Prior to or following the effectiveness of this proposed rule change, (1) the sponsors of the Gold Trusts will each issue a press release informing the public of the date a trust will first use the LBMA Gold Price to value the gold held by a trust; (2) the sponsor of the Gold Funds will issue a press release informing the public of the date the Gold Funds will first use the LBMA Gold Price as the basis for their respective Underlying Benchmark; (3) the sponsors of the Gold Trusts and Gold Funds will each file the applicable press release with the Commission by means of Form 8-K, which will be available on the applicable Gold Trust's or Gold Fund's Web site; and (4) the sponsors of the Gold Trusts and Gold Funds will each file an amendment to the applicable registration statement under the 1933 Act relating to the proposed change. Such press releases and registration statement amendments will protect investors and the public interest by providing notification to investors of the new gold price benchmark prior to the use of the LBMA Gold Price by the Gold Trusts and Gold Funds. The sponsors for the Gold Trusts and Gold Funds represent that there is no change to the investment objective of the applicable trust or the Gold Funds from that described in the applicable proposed rule change. The Gold Trusts and Gold Funds will comply with all initial and continued listing requirements relating to NYSE Arca Equities Rules 5.2(j)(5), 8.201 or 8.200, respectively. Except for the changes noted above, all other facts presented and representations made in proposed

and trading of shares of fourteen funds of the Commodities and Currency Trust); Securities Exchange Act Release No. 58457 (September 3, 2008) (73 FR 52711) (September 10, 2008) (SR-NYSEArca-2008-91) (notice of filing and order granting accelerated approval of proposed rule change regarding listing and trading of shares of 14 funds of ProShares Trust II). See also, registration statement for ProShares Trust II on Form S-3 under the 1933 Act, filed with the Commission on October 28, 2014 (No. 333-199641).

<sup>22</sup> The sponsors for the Gold Trusts and the Gold Funds represent that they will manage the Gold Trusts and the Gold Funds in the manner described in the applicable proposed rule change (see *supra*, notes 13-19), and will not implement the changes described herein until the instant proposed rule change is operative.

<sup>23</sup> See *supra*, notes 13-19.

<sup>24</sup> See *supra*, notes 13-19.

<sup>25</sup> 15 U.S.C. 78f(b)(5).

rule changes referenced above remain unchanged.

The proposed rule change is designed to perfect the mechanism of a free and open market price discovery process and, in general, to protect investors and the public interest in that the gold auction will be transparent, auditable, and operated by a regulated benchmark administrator (IBA). The audit trail records every change made in the process and IBA has regulatory obligations to run surveillance on the activity in the process to deter and identify manipulative and abusive conduct in establishing each day's LBMA Gold Price. The new LBMA Gold Price, as administered by IBA, is designed to be a benchmark that meets the needs of the market and regulators (including the IOSCO Principles<sup>26</sup>). The Gold Trusts and Gold Funds will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria relating to NYSE Arca Equities Rules 5.2(j)(5), 8.201 and 8.200, respectively. Except for the changes noted above, all other facts presented and representations made in proposed rule changes referenced above remain unchanged.<sup>27</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will permit the Gold Trusts and Gold Funds to continue to function as gold-based exchange-traded products by utilizing a new gold price benchmark to replace the London Gold Fix, which will not be available after March 19, 2015, and that will provide a sound and reasonable basis for calculation of net asset value or will provide a suitable Underlying Benchmark, as applicable.

#### *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**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed change will provide additional transparency to gold pricing compared to the previous London Gold Fix for several reasons. The Exchange represents that IBA's auction process will be fully transparent in real time to direct participants and sponsored clients and, at the close of each auction, to the general public. The Exchange represents that IBA's auction process will be fully auditable because an audit trail exists of every change that is made during the auction. Moreover, the Exchange states that there will be active surveillance of the activity in the auction process by IBA. The Exchange represents that the number of gold participants that initially are expected to participate in the auction process equals or exceeds the number of market participants currently determining the London Gold Fix, and will contribute to the integrity and reliability of the pricing process.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will allow the Gold Trusts and the Gold Funds, whose shares are actively traded, to use the LBMA Gold Price as the basis for calculating the NAV or as an Underlying Benchmark, as applicable, by March 20, 2015, thereby facilitating the transition to the new price mechanism without disruption in trading. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>30</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>30</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>31</sup> of the Act to determine whether the proposed rule change should be approved or 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-19 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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

<sup>31</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>26</sup> See *supra*, note 12.

<sup>27</sup> See *supra*, notes 13-19.

information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2015–19 and should be submitted on or before April 15, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–06719 Filed 3–24–15; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74537; File No. SR–OCC–2015–04]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment 1 Thereto, To Expand the Officers Who May Declare That a Clearing Member Is Summarily Suspended

March 19, 2015.

On January 23, 2015, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–OCC–2015–04 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> The proposed rule change was published for comment in the **Federal Register** on February 11, 2015.<sup>3</sup> The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment 1.

#### I. Description

OCC is amending its Rules to permit OCC to expand the officers who may declare that a clearing member is summarily suspended from OCC. Currently, OCC Rule 1102 provides that only OCC’s Board of Directors (“Board”) and its Executive Chairman may summarily suspend a clearing member. OCC believes that, given the time sensitive nature of managing a clearing member default, it is prudent risk management to expand the number of officers with the authority to summarily suspend a clearing member so that OCC may begin its default management process and, in turn, take protective action as soon as possible.

Pursuant to OCC Rule 1102, OCC’s Board and Executive Chairman have the authority to summarily suspend a clearing member. As set forth in Interpretation and Policy .01 of Rule 1102, such action constitutes a “default” with respect to the clearing member. OCC’s ability to timely and effectively begin its clearing member default management process serves a key role in protecting OCC, non-defaulting clearing members and the public from potential consequential damage(s) that may be caused by the default of a clearing member. In order to provide OCC with the necessary tools to manage a clearing member default, Chapter XI of OCC’s Rules provides OCC with the authority to take certain protective action(s) once a clearing member has been summarily suspended (and declared to be in default).<sup>4</sup> While OCC believes that the authority provided to it in Chapter XI of its Rules is sufficiently robust to manage a clearing member default, OCC may not exercise such authority unless and until a clearing member has been summarily suspended by either the Board or the Executive Chairman.

In order to provide greater assurance that OCC will be able to timely and effectively manage a clearing member default, pursuant to its proposal as approved, OCC is amending Rule 1102 to expand the list of officers who may summarily suspend a clearing member to include OCC’s President or a designee of the Executive Chairman <sup>5</sup> or President of the rank of Senior Vice President or higher (each a “Designed Officer”).<sup>6</sup> OCC believes that the change will provide it with additional operational flexibility because more individuals will be able to timely summarily suspend a clearing member and thereby allow OCC to exercise its authority to manage a clearing member default. OCC’s clearing member default management process is designed to protect OCC, non-defaulting clearing members and the public from the defaulting clearing member without materially impacting financial markets.<sup>7</sup> By providing additional officers with

the authority to summarily suspend a clearing member, and thereby allow OCC to begin its default management processes, there will be greater assurance that OCC will timely take action(s) necessary to protect itself, non-defaulting clearing members, and the public from a defaulting clearing member. OCC also is amending Rule 1102 to require notification to the Board as soon as practicable should a Designated Officer summarily suspend a clearing member.<sup>8</sup> The addition of such a requirement will ensure that the Board is timely informed of such suspensions.

Furthermore, pursuant to this rule change as approved, OCC is making conforming amendments consistent with the above to Article VI, Section 25 of its By-Laws and OCC Rule 707, which concern the summary suspension of clearing members that participate in OCC’s cross-margining programs. Specifically, Article VI, Section of OCC’s By-Laws and OCC Rule 707 will explicitly state that the Board of Directors or a Designated Officer may summarily suspend a clearing member based on a cross-margining related default.

Except for the changes described above, no other changes are proposed to OCC’s suspension or default management processes as set forth in the Rules, including a clearing member’s right to appeal a summary suspension in accordance with OCC Rule 1110.

#### II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act <sup>9</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, which requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>10</sup> By expanding the list of officers with the authority to summarily suspend a clearing member, OCC will be better able to ensure that has the ability to timely begin the clearing member default management processes. In turn, timely beginning the

<sup>4</sup> For example, OCC Rule 1106(a) provides OCC with significant flexibility with respect actions it may take in order to close out a defaulting clearing member’s open long positions.

<sup>5</sup> OCC filed Amendment No. 1 in order to correct an inadvertent grammatical error. Specifically, a comma after the word “Executive Chairman” was removed because it caused the description of the proposed rule change to not be consistent with the text of the proposed rule change.

<sup>6</sup> OCC’s proposal is similar to the summary suspension process employed by the National Securities Clearing Corporation (“NSCC”). See NSCC Rule 46, Section 3.

<sup>7</sup> A description of OCC’s default management process is located at: <http://www.theocc.com/risk-management/default-rules/>

<sup>8</sup> OCC staff will notify the Board within two hours of the summary suspension.

<sup>9</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>10</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>32</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> Securities Exchange Act Release No. 74212 (February 5, 2015), 80 FR 7668 (February 11, 2015) (SR–OCC–2015–04).