

PROCEDURAL SCHEDULE FOR DOCKET NO. N2021-2—Continued

[Modified by the Presiding Officer, July 26, 2021]

Rebuttal Cases Discovery Responses Due	August 16, 2021.
Filing of Notice of Designations on Rebuttal Discovery Responses	August 17, 2021.
Surrebuttal Case Deadlines (if applicable):	
Filing of Motion for Leave to File Surrebuttal Case	August 6, 2021.
Filing of Response to Motion for Leave to File Surrebuttal Case	August 10, 2021.
Filing of Surrebuttal Case (if authorized)	August 11, 2021.
Hearing Dates:	
Hearings (with Rebuttal Case, but no authorized Surrebuttal Case)	August 11–13, 2021.
Hearings (with Rebuttal Case and authorized Surrebuttal Case)	August 18–20, 2021.
Briefing Deadlines:	
Filing of Initial Briefs	August 20, 2021.
Filing of Reply Briefs	August 27, 2021.
Advisory Opinion Deadline:	
Filing of Advisory Opinion (absent determination of good cause for extension)	September 29, 2021.

[FR Doc. 2021-16212 Filed 7-29-21; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021-116 and CP2021-118]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 2, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market

dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2021-116 and CP2021-118; *Filing Title:* USPS Request to Add Priority Mail Contract 714 to

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 23, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 2, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2021-16213 Filed 7-29-21; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92494; File No. SR-ISE-2021-17]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Opening Process

July 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 19, 2021 Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend ISE Options 3, Section 8, "Options Opening Process."

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

ISE proposes to amend Options 3, Section 8, "Options Opening Process." Specifically, the Exchange proposes to amend the definition of Valid Width Quote at Options 3, Section 8(a)(8).

ISE's Opening Process for an option series is conducted pursuant to Options 3, Section 8 paragraphs (f)–(j), on or after 9:30 a.m. Eastern Time if the ABBO, if any, is not crossed and the System has received, within two minutes³ of the opening trade or quote on the market for the underlying security,⁴ a Valid Width Quote. The System will accept a Primary Market Maker's Valid Width Quote or the Valid Width Quote of at least one Competitive Market Maker.⁵ Today, ISE requires a Primary Market Maker to enter a Valid Width Quote in 90% of their assigned series, not later than one minute

following the dissemination of a quote or trade by the market for the underlying security.⁶ PMMs must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security.⁷ In either case, the Primary Market Maker or Competitive Market Maker must enter a Valid Width Quote to open an options series. ISE Options 3, Section 8(a)(8) defines a Valid Width Quote as follows:

A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$.40 where the bid is at least \$2 but does not exceed \$5, no more than \$.50 where the bid is more than \$5 but does not exceed \$10, no more than \$.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend a Valid Width Quote to instead provide:

A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$5, provided that, in the case of equity options, the bid/ask differential stated above shall not apply

to in-the-money series where the market for the underlying security is wider than the differential set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options. Such differences will be posted by the Exchange on its website.

This proposed language is similar to Nasdaq BX, Inc. ("BX").⁸ The Exchange proposes to widen the current bid/ask differentials for several reasons.

First, the proposal would conform the Valid Width Quote definition of ISE to that of BX. BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending ISE's Valid Width Quote, the Exchange notes that the \$5 difference is akin to ISE's intra-day requirement within ISE Options 2, Section 4(b)(4).⁹

Second, the proposed differential would simplify the differential for Primary Market Makers, who would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series. Widening the differentials would allow Primary Market Makers, and Competitive Market Makers that elect to quote during the Opening Process, an ability to quote wider during the Opening Process when an underlying is

⁸ BX Options 3, Section 8(a)(9) provides, "A 'Valid Width Quote' is a two-sided electronic quotation, submitted by a Market Maker, quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options." See also Securities Exchange Act Release No. 89731 (September 1, 2020), 85 FR 55524 (September 8, 2020) (SR-BX-2020-016) (Order Approving Proposed Rule Change To Amend BX's Opening Process in Connection With a Technology Migration).

⁹ ISE Options 2, Section 4(b)(4) provides, ". . . To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options." Intra-day, ISE also distinguishes in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.

³ The Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

⁴ In the case of index options, the timing is within two minutes of the receipt of the opening price in the underlying index or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options. In both cases the Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

⁵ The Exchange proposes an amendment within Options 3, Section 8(c)(1)(B) as described below.

⁶ In the case of index options, a Primary Market Maker must enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. See Options 3, Section 8(c)(3). The Exchange proposes to make a technical amendment to Options 3, Section 8(c)(3) which is described below.

⁷ In the case of index options, Primary Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening. See Options 3, Section 8(c)(3).

volatile. Today, pursuant to Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options. With this proposal, the Exchange is not amending its ability to continue to establish differences for one or more series or classes of options, rather the Exchange may continue to set other requirements pursuant to current ISE Options 3, Section 8(a)(8). Today, the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8),¹⁰ they are:

Bid price low end of	Bid price high end of	Maximum bid/ask differential
\$0.00	\$1.99	\$0.75
2.00	4.99	1.20
5.00	9.99	1.50
10.00	19.99	2.40
20.00	20.00+	3.00

Also, options with an expiration more than nine months away continue to be permitted a Valid Width Quote bid/ask differential of \$5.00. The Exchange will continue to utilize the differentials currently posted on its website until such time as it provides notice to Members of a change.

Third, the Exchange proposes to add rule text to state that such differences will be posted by the Exchange on its website.¹¹ Posting the current differentials on its website would allow Members to easily refer to the quoting obligations for the Opening Process.

Technical Amendment

The Exchange proposes to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B). The Exchange also proposes to remove two incorrect citations to Options 3, Section 8(c)(1)(C). The "C" was removed in a prior rule change.¹²

2. Statutory Basis

The Exchange believes that its proposal to establish a \$5 difference is consistent with Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an

exchange be 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 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 and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed \$5 difference for the Valid Width Quote is more appropriate because it reflects the Exchange's experience in administering the rule and would continue to give Market Makers flexibility including during the Opening Process. The Exchange notes that the current standard is not being applied as the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8).¹⁶ Widening the Valid Width Quote requirement would provide Primary Market Makers, and Competitive Market Makers that elect to quote during the Opening Process, additional flexibility when submitting Valid Width Quotes during the Opening Process thereby allowing these Market Makers the ability to quote wider in instances where the Exchange has not established Valid Width Quote differentials which differ from those in the rule because volatile market conditions exist or there is news regarding an underlying security which may impact pricing. Primary Market Makers are integral to the Exchange's Opening Process as ISE is dependent on receiving a Valid Width Quote to open an options series. With this proposal, Primary Market Makers would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series.¹⁷

The proposal would conform the Valid Width Quote definition of ISE to that of BX.¹⁸ BX refers to a difference

not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending ISE's Valid Width Quote, the Exchange notes that the \$5 difference is akin to ISE's intra-day requirement within ISE Options 2, Section 4(b)(4).¹⁹ Also, today, MIAX and Emerald require market makers to enter a valid width NBBO with a difference of no more than \$5 between the bid and offer.²⁰

Not all options markets have bid/ask differentials. In 2019, Cboe removed its quote width requirements while citing corresponding rules of its affiliated exchanges.²¹ Cboe noted in the 2019 Rule Change that the current quote width requirement at the time for generally all classes was \$10, however, its Market-Makers consistently maintained two-sided quotes that were much tighter than the required width. Cboe opined that, even if markets experienced periods of stress or volatility, they remained obligated to maintain two sided markets and engage in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, which includes refraining from making bids or offers that are inconsistent with such course of dealings and updating quotations in response to changed market conditions.²² Cboe noted that it did not believe that continuing to provide for a quote width requirement was necessary nor would it impact the maintenance of fair and orderly markets because Market-Makers already quoted at a bid/ask spread much narrower than the requirements and were required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.²³

Unlike Cboe, ISE does require its Market Makers to quote both during the Opening Process and intra-day within certain established bid/ask differentials.

¹⁹ See *supra* note 9.

²⁰ MIAX and Emerald require Market Makers to submit a valid width NBBO in the opening where the bid and offer of the NBBO differ no more than differences outlined in MIAX and Emerald Rule 603(b)(4)(i). MIAX and Emerald Rule 603(b)(4)(i) provides that bidding and offering so as to create differences of no more than \$5 between the bid and offer. Rule 603(b)(4)(ii) provides MIAX and Emerald may establish differences other than the bid/ask differentials described in (i) above for one or more option series or classes, respectively. See MIAX and Emerald Rules 503.

²¹ See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-Cboe-2019-059) ("2019 Rule Change").

²² *Id.*

²³ *Id.*

¹⁰ See <https://www.nasdaq.com/docs/2021/03/22/ISESystemSettings.pdf>.

¹¹ *Id.*

¹² See Securities Exchange Act Release No. 88729 (April 22, 2020), 85 FR 23573 (April 28, 2020) (SR-ISE-2020-15) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rules at Options 3, Section 8, Titled Options Opening Process).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

¹⁶ See *supra* note 10.

¹⁷ Today, ISE, Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX"), Nasdaq Phlx LLC ("Phlx"), Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("Emerald") and are the only options markets that require a Primary Market Maker, or Lead Market Maker in the case of Phlx, to submit a quote to open an options series.

¹⁸ See *supra* note 8.

The Exchange notes that widening its Valid Width Quote differential during the Opening Process will not impact the maintenance of fair and orderly markets because Market Makers on ISE, unlike other markets that do not require quoting during the Opening Process, will continue to require that its Market Makers provide Valid Width Quotes during the Opening Process, thereby ensuring liquidity. Also, Market Makers may quote tighter than the defined Valid Width Quote differential. Finally, similar to Cboe's argument in the 2019 Rule Change, Market Makers are required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

Today, the Exchange has discretion to set other differentials,²⁴ similar to MIAX and Emerald.²⁵ The Exchange currently is utilizing that discretion to set different bid/ask differentials based on its observation of market openings. Currently, the Exchange requires Market Makers to submit Valid Width Quotes which are tighter than the proposed \$5 difference.

The Exchange's robust Opening Process seeks to encourage quality markets. As noted herein, unlike a majority of options markets,²⁶ it requires Primary Market Makers to quote during the Opening Process to ensure liquidity as well as efficient Opening Process where options series are opened quickly and at fair prices.

The proposal to add rule text to state that such differences will be posted by the Exchange on its website²⁷ would allow Members to easily refer to the quoting obligations for the Opening Process.

Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to require Primary

Market Makers and Competitive Market Makers to bid and/or offer an option series with differences of no more than \$5 for options on equities and index options does not impose an undue burden on competition. All Primary Market Makers, and Competitive Market Makers who elect to quote during the Opening Process, would be subject to the same requirement to submit a Valid Width Quote when submitting quotes during the Opening Process. Differentials would be available on the Exchange's website and therefore transparent, allowing Members to easily refer to the quoting obligations for the Opening Process. Finally, the proposal would also align quoting requirements more closely to intra-day requirements within ISE Options 2, Section 4(b)(4).

With respect to inter-market competition, the Exchange notes that most options markets do not require market makers to quote during the opening.²⁸ The Exchange notes that MIAX and Emerald have quoting requirements in the opening similar to the differential proposed herein. Also, GEMX, MRX and Phlx are filing similar rule changes to this proposal.²⁹

Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

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

No written comments were either solicited or received.

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.³¹

²⁸ See *supra* note 17 citing the options markets that require bid/ask differentials.

²⁹ See SR-GEMX-2021-07, SR-MRX-2021-09 and SR-Phlx-2021-42. These rule changes are not yet noticed.

³⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

³¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give

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. Please include File Number SR-ISE-2021-17 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-ISE-2021-17. 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 website (<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 10:00 a.m. and 3:00 p.m. Copies of the

²⁴ See Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options.

²⁵ See MIAX and Emerald Rules 503.

²⁶ See *supra* note 17.

²⁷ *Id.*

the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2021-17 and should be submitted on or before August 20, 2021.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-16229 Filed 7-29-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92506; File No. SR-NYSEArca-2021-65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E

July 26, 2021.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on July 19, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been 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 list and trade shares of the Sprott ESG Gold ETF under NYSE Arca Rule 8.201-E. The proposed change is available on the Exchange’s website at 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 list and trade shares (“Shares”) of the Sprott ESG Gold ETF (the “Trust”), under NYSE Arca Rule 8.201-E. ⁴ Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade Commodity-Based Trust Shares pursuant to unlisted trading privileges (“UTP”). ⁵

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended, ⁶ and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended. ⁷

⁴ On February 11, 2021, the Trust submitted to the Commission its draft registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and on July 1, 2021, the Trust submitted to the Commission the most recent amendment to its draft registration statement (collectively, the “Registration Statement”). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,070,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Form S-1 Registration Statement on a confidential basis with the Commission. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

⁵ 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.

⁶ 15 U.S.C. 80a-1.

⁷ 17 U.S.C. 1.

The Sponsor of the Trust is Sprott Asset Management LP, a Canadian limited partnership. The Bank of New York Mellon serves as the Trust’s administrator (the “Administrator”) and transfer agent (the “Transfer Agent”). The Delaware Trust Company is the trustee of the Trust (the “Trustee”). ⁸ The Royal Canadian Mint is the custodian of the Trust’s gold (the “Gold Custodian” or “Mint”). ⁹ The Bank of New York Mellon will also serve as the Trust’s cash custodian (the “Cash Custodian”) pursuant to the terms of the agreement between the Trust and the Cash Custodian (the “Cash Custody Agreement”). In its capacity as cash custodian, the Cash Custodian will maintain a custodial account that holds cash for the benefit of the Trust for the purpose of payment of the Sponsor’s fee in cash or the other expenses of the Trust.

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2-E(j)(5) and 8.201-E of other precious metals and gold-based commodity trusts, including the GraniteShares Gold MiniBAR Trust; ¹⁰ the GraniteShares Gold Trust; ¹¹ the

⁸ The Trustee is a fiduciary under the Trust Agreement and must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. However, the fiduciary duties, responsibilities and liabilities of the Trustee are limited by, and are only those specifically set forth in, the Trust Agreement. The Trust does not have a Board of Directors or persons acting in a similar capacity.

⁹ The Mint operates pursuant to the Royal Canadian Mint Act (Canada) and is a Canadian Crown corporation. Crown corporations are corporations wholly-owned by the Government of Canada. The Mint is, for all its purposes, an agent of Her Majesty in right of Canada and, as such, its obligations generally constitute unconditional obligations of the Government of Canada. The Gold Custodian is responsible for safekeeping the gold owned by the Trust pursuant to gold storage and custody agreements. The Gold Custodian will hold gold for the account of the Trust on an allocated basis (the “Trust Allocated Account”), except where gold is temporarily held in an unallocated account (the “Trust Unallocated Account”). The Sponsor may cause the Trust to engage unaffiliated gold brokers to transfer unallocated gold between the Trust’s custody accounts maintained for the benefit of the Trust by the Gold Custodian in Ottawa, Canada and London, United Kingdom where it can be delivered to a redeeming Authorized Participant (as defined below) if additional unallocated gold is needed by the Trust to satisfy the redeeming Authorized Participant’s redemption request. The Gold Custodian is responsible for allocating specific bars of gold to the Trust Allocated Account. The Gold Custodian will provide the Trust with regular reports detailing the gold transfers in and out of the Trust Unallocated Account with the Gold Custodian and identifying the gold bars held in the Trust Allocated Account.

¹⁰ Securities Exchange Act Release No. 84257 (September 21, 2018), 83 FR 48877 (September 27, 2018) (SR-NYSEArca-2018-55).

¹¹ Securities Exchange Act Release No. 81077 (July 5, 2017), 82 FR 32024 (July 11, 2017) (SR-NYSEArca-2017-55).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.