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,[14] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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 information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–126 and should be submitted on or before January 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31161 Filed 12–31–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61236; File No. SR–NYSEArca–2009–113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change for the Listing and Trading of Sprott Physical Gold Trust

December 23, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 15, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') 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.

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

NYSE Arca, Inc. (''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list and trade units[4] of the Sprott Physical Gold Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office 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 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.''[5] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) and 8.201, respectively, shares of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.[6] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.[7] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust and [sic] on the Exchange pursuant to UTP.[8] The Commission also has approved listing of the iShares Silver Trust on the Exchange[9] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as ''NYSE Amex LLC'').[10] Further, the Commission has also approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of ETFS Silver Trust[11] and ETFS Gold Trust.[12]

Sprott Asset Management LP is the sponsor or manager of the Trust (the ''Sponsor'' or the ''Manager'',[13] as the case may be), RBC Dexia Investor Services Trust is the trustee of the Trust

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*.

[15] 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.

[4] Each unit represents an equal, fractional, undivided ownership interest in the net assets of the Trust attributable to the particular class of units.

[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] *See* 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) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[7] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order 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) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[8] *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).

[9] *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).

[10] *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).

[11] *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).

[12] *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).

[13] 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 Gold Trust, filed with the Commission on December 9, 2009 (No. 333–163601) (the ''Registration Statement'').

(the ''Trustee''),[14] the Royal Canadian Mint is the custodian for the physical gold bullion owned by the Trust (the ''Gold Custodian''),[15] and RBC Dexia serves as the custodian of the Trust's assets other than physical gold bullion (the ''Non-Gold Custodian'').[16]

Listing Rules

Definition. Rule 8.201(c)(1) defines Commodity-Based Trust Shares as a 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 gold bullion. The investment objective of the Trust is for the Units to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations.[17] 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 gold 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.[18] The Units will be issued in an initial public offering. The Trust may issue additional Units (i) in future offerings if the gross proceeds received by the Trust per Unit is not less than 100% of the most recently calculated NAV or (ii) by way of a distribution in Units 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 remaining requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[19]

Operation of the Gold Market

A detailed description of the gold 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 gold 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 net asset value 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 gold markets. While the Units will trade on the NYSE Arca until 4 p.m., New York time, liquidity in the global gold market will be reduced after the close of the major world gold markets, including London and of the COMEX division of the New York Mercantile Exchange at 1:30 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.

Unitholders may redeem their Units on a monthly basis.

Redemption for Physical Gold

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 physical gold bullion in any calendar month. Units redeemed for physical gold 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 for gold must be for amounts that are at least equivalent in value to one London Good Delivery bar or an integral multiple thereof, plus applicable expenses. A ''London Good Delivery bar'' contains between 350 and 430 troy ounces of gold. Any fractional amount of redemption proceeds in excess of one London Good Delivery bar or an integral multiple 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 gold 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 gold 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 gold storage in-and-out fees.

A redemption notice to redeem Units for physical gold bullion must be received by the Trust's transfer agent no later than 4 p.m. Toronto time, on the

[14] 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.

[15] The Gold Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust's physical gold bullion that is in its custody, subject to certain limitations based on events beyond the Gold 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 Gold Custodian are set forth in the Registration Statement.

[16] The Non-Gold Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust's assets (other than physical gold bullion) that are in its custody, subject to certain limitations based on events beyond the Non-Gold 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-Gold Custodian are set forth in the Registration Statement.

[17] The descriptions of the Trust, the Units and the gold market contained herein are based on the Registration Statement.

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

[19] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange [sic] of 1934 (''Act'') (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

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 gold 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 gold 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 gold 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 gold 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 gold 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 gold 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 p.m., Toronto 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.. Toronto 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 at least 90 days' notice. 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, is described in the Registration Statement.

Valuation of Gold and Definition of Net Asset Value

The value of the net assets of the Trust and the NAV will be determined daily at 4:00 p.m. (Toronto 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 and deferred taxes) 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 Gold Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, 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 gold price and gold market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service

providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on 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 gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at or [sic] *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 gold derived from updated bids and offers indicative of the spot price of gold.[20] 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[21] 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.

A minimum of 1,000,000[22] Units will be required to be outstanding at the start of trading.[23] 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. A minimum of 400[24] Unitholders at the start of trading.[25] 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. The Trust represented to the Exchange that, prior to listing, the NAV would be calculated daily and made available to all market participants at the same time. The Trust has also represented to the Exchange that, prior to listing, 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(h), 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 gold, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits 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 gold, 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 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 gold 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. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[26]

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

[20] 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.

[21] 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.

[22] The minimum number of Units issued is comparable to the minimum threshold established for the issuance of equity linked notes under NYSE Arca Rule 5.2(j)(2).

[23] *See* e-mail, dated December 23, 2009, from Tim Malinowski, NYSE Arca, to David Liu, Assistant Director, Division of Trading and Markets, Commission.

[24] 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).

[25] *See supra* note 23.

[26] *See* NYSE Arca Equities Rule 7.12.

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(h), the Exchange is able to obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold 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 the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[27]

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 gold trading during the Core and Late Trading Sessions after the close of the major world gold 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 gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

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 Exchange believes that the proposed rule change is consistent with Section 6(b)[28] of the Act, in general, and furthers the objectives of Section 6(b)(5),[29] in particular, because it is designed 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 and perfect the mechanisms of a free and open market and to protect investors and the public interest. 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 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve 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 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. Please include File Number SR–NYSEArca–2009–113 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–2009–113.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at NYSE Arca'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 available publicly. All submissions

[27] A list of ISG members is available at *http://www.ISGPortal.org.* The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

should refer to File Number *SR–NYSEArca–2009–113* and should be submitted on or before January 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31162 Filed 12–31–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61241; File No. SR–CBOE–2009–100]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify CBSX Rule 51.8 To Add Pegged Cross Orders, To Add an Interpretation Regarding Pricing of Cross Orders, and To Add Greater Flexibility to Intermarket Sweep Orders

December 24, 2009.

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 December 23, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 modify CBSX Rule 51.8 to add a new order-type, to add an interpretation regarding CBSX pricing of cross orders, and to add greater flexibility to the CBSX intermarket sweep order process. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), on the Commission's Web site (*http://www.sec.gov*), at the Exchange's principal office, 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 CBOE 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 filing proposes to make three changes to CBSX Rule 51.8. First, the proposal would allow users the ability to have any unexecuted balance of an intermarket sweep order (ISO) be booked and displayed. Currently, any unexecuted balance is cancelled. Thus, if the NBBO is 20–20.04 (500 × 100) and CBSX represents the best offer, an ISO (that is not labeled as immediate or cancel) to buy 200 shares would get filled on 100 shares at 20.04 and the balance would book as a 20.04 bid for 100 shares.

Second, the filing proposes to adopt a ''Pegged Cross Order''. This order type would allow users to send both sides of a cross with an execution price that is pegged to the national best offer or national best bid. In fast moving markets this gives users greater certainty in executing crosses while ensuring that such executions honor Protected Quotations. Pegged Cross orders are entered with a penny or subpenny amount higher (lower) than the national best bid (offer). By way of example, if the NBBO is 20–20.04 and a 7000 share Pegged Cross order priced at the bid plus .01 is received, CBSX will execute the 7000 share cross at 20.01.

If, however, a Pegged Cross is priced in a way that would cause a trade-through of a Protected Quotation, then the system will re-price the cross to a permissible trade price (i.e. the nearest price to the originally requested price that would not cause a trade-through and that would not conflict with the priority provisions of CBSX Rule 52.11.[5] For example, if the NBBO is 20–20.04 and a 7000 share Pegged Cross order priced at the bid plus .05 is received while the CBSX offer is 20.04 for 100 shares, CBSX will execute the 7000 share cross at 20.04. If the cross were only for 2000 shares, CBSX would effect the cross at 20.03 because it could not establish priority at 20.04 pursuant to Rule 52.11.

In addition, if a Pegged Cross is received when the national best offer is crossed with the national best bid, the system will cancel the order. If a Pegged Cross is received when the national best bid is locked with the national best offer, the system will attempt to execute the cross at the lock price provided such execution would not conflict with the priority provisions of Rule 52.11.

The last change proposed in this filing is to adopt language substantially similar to a provision contained in Chicago Stock Exchange Article XX, Rule 4.a.(7)(b) which allows for cross transactions to be priced in subpennies. The proposed provision, which would be contained in an interpretation to CBSX Rule 51.8 would allow crosses to be priced in increments as small as 0.0001 provided the execution is more than $0.01 better than the prevailing BBO unless the cross would already be allowed priority at the BBO pursuant to Rule 52.11.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5) of the Act[7] in particular in that, by offering users an enhanced price improvement features and greater control over order routing, it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, the filing is consistent with the Exchange's priority principles in that it complies with Exchange Rule 52.11, and the filing is consistent with existing exemption[8] to the subpenny restrictions of SEC rule 612 in that any subpenny executions effected pursuant to the proposal will occur at least one penny better than any resting customer interest in the CBSX book that has priority order a cross pursuant to CBSX Rule 52.11.

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[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] CBSX Rule 52.11 provides that a cross can only establish priority at the disseminated CBSX bid/offer if it (i) is for at least 5000 shares, (ii) is for a principal amount of at least $100,000, and (iii) is greater in size than any single public customer order at the proposed cross price.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Exchange Act Release No. 34–54714 (November 6, 2006), 71 FR 66352 (November 14, 2006).