

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56041; File No. SR-NYSEArca-2007-43)

July 11, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Shares of the iShares COMEX Gold Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 11, 2007, NYSE Arca, Inc. (the “Exchange”), through its wholly-owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

The Exchange proposes to list and trade shares (“Shares”) of the iShares<sup>3</sup> COMEX<sup>4</sup> Gold Trust (“Trust”) pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule

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

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

<sup>3</sup> “iShares” is a registered trademark of Barclays Global Investors, N.A.

<sup>4</sup> “COMEX” is a registered service mark of Commodity Exchange, Inc., a subsidiary of the New York Mercantile Exchange, Inc. (“NYMEX”). COMEX is operated by Commodity Exchange, Inc. and the Tokyo Commodity Exchange. Open outcry trading of gold futures on COMEX is conducted from 8:20 a.m. Eastern Time (“ET”) until 1:30 p.m. ET, and electronic trading of such gold futures is conducted from 6:00 p.m. ET until 5:15 p.m. ET via the CME Globex<sup>®</sup> trading platform, Sunday through Friday. Thus, except for brief breaks (45 minutes) to switch between open outcry and electronic trading in the evening and the morning, gold futures trade almost 24 hours per day, five business days per week.

change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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

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

1. Purpose

Pursuant to NYSE Arca Equities Rule 8.201, which permits the trading of Commodity-Based Trust Shares<sup>5</sup> either by listing or pursuant to unlisted trading privileges (“UTP”), the Exchange proposes to list and trade the Shares. The Shares are currently listed on the American Stock Exchange LLC (“Amex”),<sup>6</sup> and the Exchange currently trades the Shares pursuant to

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<sup>5</sup> As defined in NYSE Arca Equities Rule 8.201(c)(1), “Commodity-Based Trust Shares” are securities that: (1) are issued by a trust that holds a specified commodity deposited with the trust; (2) are issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (3) when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such trust which would deliver to the redeeming holder the quantity of the underlying commodity.

<sup>6</sup> See Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (granting approval to list and trade the Shares on Amex). See also Securities Exchange Act Release No. 50792 (December 3, 2004), 69 FR 71446 (December 9, 2004) (SR-Amex-2004-38) (providing notice of Amex’s proposal to list and trade the Shares) (“Amex Notice”).

UTP.<sup>7</sup> The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.

The Shares represent beneficial ownership interests in the net assets of the Trust, which holds gold bullion. The objective of the Trust is for the value of the Shares to reflect, at any given time, the price of gold owned by the Trust at that time, less the Trust's expenses and liabilities. 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. The Trust is neither an investment company registered under the Investment Company Act of 1940 nor a commodity pool for purposes of the Commodity Exchange Act.<sup>8</sup> Barclays Global Investors International Inc., a Delaware corporation and a subsidiary of Barclays Bank PLC, is the sponsor of the Trust ("Sponsor"). The Shares are not obligations of, and are not guaranteed by, the Sponsor or any of its respective subsidiaries or affiliates.

A detailed discussion of the gold market, including the over-the-counter gold market and the gold futures exchanges, gold market regulation, COMEX gold futures contracts, the process for creations and redemptions of the Shares, certificates evidencing the Shares, and Trust distributions, among others, can be found in the Amex Notice and in the Trust Prospectus.<sup>9</sup>

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<sup>7</sup> See Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132) (approving NYSE Arca Equities Rule 8.201 and the trading of the Shares pursuant to UTP) ("UTP Order").

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

<sup>9</sup> See supra note 6; see also iShares COMEX Gold Trust Prospectus dated March 1, 2007 (Registration Statement No. 333-140874) ("Prospectus"). E-mail from Timothy J. Malinowski, Director, NYSE Group, Inc., to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 11, 2007 (confirming that additional information on the gold markets, the Trust, and the Shares can be found in the Amex Notice and the Prospectus, as supplemented).

The Web site for the Trust at [www.ishares.com](http://www.ishares.com), which is publicly accessible at no charge, contains the following information about the Shares: (a) the prior business day's net asset value ("NAV") per Share;<sup>10</sup> (b) Basket Gold Amount;<sup>11</sup> (c) the reported Share closing price; (d) the present day's Indicative Basket Gold Amount;<sup>12</sup> (e) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated ("Bid-Ask Price");<sup>13</sup> (f) calculation of the premium or discount of such price against such NAV; (g) data in chart form 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; (h) the Prospectus; and (i) other applicable quantitative information, such as expense ratios, trading volumes, and the total return of the Shares. The Exchange also provides a hyperlink on its Web site to the Trust's Web site.

The Exchange would make available, through the facilities of the Consolidated Tape Association ("CTA"), quotation information including the last sale price for the Shares, the daily trading volume, closing prices, and the NAV for the Shares from the previous day. In addition, the Exchange or a major market data vendor would disseminate each day through the facilities of

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<sup>10</sup> The Exchange states that it would obtain a representation from the Trust, prior to listing, that the NAV per Share would be calculated daily and made available to all market participants at the same time.

<sup>11</sup> The "Basket Gold Amount" is the corresponding amount of gold, measured in fine ounces, to be exchanged for an issuance of a basket of 50,000 Shares (each such basket, a "Basket"), for the purpose of creating and redeeming the Shares.

<sup>12</sup> The "Indicative Basket Gold Amount" is the indicative amount of gold to be deposited for issuance of the Shares that Authorized Participants can use. Because the creation/redemption process is based entirely on the physical delivery of gold (and does not contemplate a cash component), the actual number of fine ounces required for the Indicative Basket Gold Amount would not change intra-day, even though the value of the Indicative Basket Gold Amount may change based on the market price of gold.

<sup>13</sup> The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

the CTA the number of Shares outstanding and the Indicative Trust Value (“ITV”) on a per-Share basis at least every 15 seconds<sup>14</sup> from 9:30 a.m. to 4:15 p.m. ET.<sup>15</sup> The ITV is calculated based on the estimated amount of gold required for creations and redemptions on any particular day (e.g., the Indicative Basket Gold Amount) and a price of gold derived from the most recently reported trade price in the active gold futures contract. The prices reported for the active contract month are adjusted based on the prior day’s spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract is not adjusted.<sup>16</sup>

Shortly after 4:00 p.m. ET each business day, the Trustee,<sup>17</sup> the Exchange, and the Sponsor would disseminate the NAV for the Shares, the Basket Gold Amount (for orders placed

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<sup>14</sup> E-mail from Timothy J. Malinowski, Director, NYSE Group, Inc., to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 9, 2007 (confirming the updated ITV would be disseminated at least every 15 seconds).

<sup>15</sup> The Exchange states that the ITV will not reflect changes to the price of gold between the close of trading at COMEX, which is typically 1:30 p.m. ET, and the open of trading on the NYMEX ACCESS market at 2:00 p.m. ET. While the market for the gold futures is open for trading, the ITV can be expected to closely approximate the value per Share of the Indicative Basket Gold Amount. The ITV on a per-Share basis disseminated during the hours from 9:30 a.m. to 4:15 p.m. ET should not be viewed as a real-time update of the NAV, which is calculated only once a day. E-mail from Timothy J. Malinowski, Director, NYSE Group, Inc., to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 9, 2007. See also UTP Order, 70 FR at 3956.

<sup>16</sup> E-mail from Timothy J. Malinowski, Director, NYSE Group, Inc., to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 9, 2007 (confirming the ITV calculation methodology). See also UTP Order, 70 FR at 3956 n.33.

<sup>17</sup> The Bank of New York serves as the Trustee and is responsible for the day-to-day administration of the Trust, including processing orders for the creation and redemption of Shares, coordinating the receipt and delivery of gold transferred to, or by, the Trust in connection with each creation and redemption of Shares, calculating the NAV and the adjusted NAV of the Trust on each business day, and selling the Trust’s gold as needed to cover the Trust’s expenses.

during the day), and the Indicative Basket Gold Amount (for use by Authorized Participants<sup>18</sup> contemplating placing orders the following business day). The Basket Gold Amount, the Indicative Basket Gold Amount, and the NAV are communicated by the Trustee to all Authorized Participants via facsimile or e-mail and are available on the Trust's Web site.

The Exchange states that information on gold prices and gold markets is available on public Internet Web sites and through professional and subscription services. In most instances, real-time information is available only for a fee, and information available free-of-charge is subject to delay (typically 20 minutes). The Exchange also states that investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. In addition, 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.

The Exchange further represents that complete real-time data for gold futures and options prices traded on COMEX is available by subscription from Reuters and Bloomberg. The closing price and settlement prices of the COMEX gold futures contracts are publicly available from NYMEX at [www.nymex.com](http://www.nymex.com), automated quotation systems, published or other public sources,

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<sup>18</sup> An "Authorized Participant" is a person who, at the time of submitting to the Trustee an order to create or redeem one of more Baskets, (1) is a registered broker-dealer, (2) is a Depository Trust Company participant or an indirect participant, and (3) has in effect a valid authorized participant agreement.

or on-line information services such as Bloomberg or Reuters. NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site.

The Exchange states that the Shares are subject to the criteria for initial and continued listing of Commodity-Based Trust Shares under NYSE Arca Equities Rule 8.201. As indicated above, the Shares are currently trading on the Exchange pursuant to UTP. A minimum of 100,000 Shares would be required to be outstanding when the Shares are listed. This minimum number of Shares required to be outstanding is comparable to requirements that have been applied to previously listed series of exchange-traded funds. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. In addition, the Exchange represents that the Trust is required to comply with Rule 10A-3 under the Act<sup>19</sup> for the initial and continued listing of the Shares.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions, 4:00 a.m. ET to 8:00 p.m. ET).<sup>20</sup>

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares

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<sup>19</sup> 17 CFR 240.10A-3.

<sup>20</sup> The Exchange states that, while the Shares would trade on the Exchange until 8:00 p.m. ET, liquidity in the over-the-counter market for gold generally decreases after 1:30 p.m. ET when daily trading at COMEX and other world gold trading centers ends. Trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the over-the-counter gold market. The Exchange does not believe that the Shares would trade at a material discount or premium to the value of the underlying gold held by the Trust because of arbitrage opportunities.

inadvisable. These reasons may include (1) the extent to which trading is not occurring in the underlying COMEX gold futures contract, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares could be halted pursuant to the Exchange's "circuit breaker" rule<sup>21</sup> or by the halt or suspension of trading of the underlying gold. The Exchange further notes that, if the ITV or the value of the underlying gold is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the ITV or the value of the underlying gold occurs. If the interruption to the calculation or wide dissemination of the ITV or the value of the underlying gold persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange may also obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliate members of ISG. In addition, the Exchange has an information sharing agreement in place with NYMEX for the purpose of providing information in connection with trading in or related to gold futures contracts traded on COMEX. Furthermore, the Exchange states that the Shares are subject to NYSE Arca Equities Rule 8.201(g)-(i), which set forth

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<sup>21</sup> See NYSE Arca Equities Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility).



certain restrictions on ETP Holders<sup>22</sup> acting as registered market makers in the Shares to facilitate surveillance. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) description of the Shares; (b) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated;<sup>23</sup> (c) the procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (d) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (e) how information regarding the ITV is disseminated; (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (g) other relevant trading information. In addition, the Bulletin will reference that the Trust is subject to various fees and expenses, the number of ounces of gold required to create a Basket or to be delivered upon redemption of a Basket would gradually decrease over time because the Shares comprising a Basket would represent a decreasing amount of gold due to the sale of the Trust’s gold to pay Trust expenses, and that there is no regulated source of last-sale information regarding physical gold. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day,

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<sup>22</sup> An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit (ETP) by NYSE Arca Equities.

<sup>23</sup> E-mail from Timothy J. Malinowski, Director, NYSE Group, Inc., to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 9, 2007 (confirming that such risks will be disclosed in the Bulletin).

based on the COMEX daily settlement value, which is disseminated shortly after 1:30 p.m. ET each trading day and discuss any exemptive, no-action, and/or interpretive relief granted by the Commission from any rules under the Act.<sup>24</sup>

## 2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,<sup>25</sup> in general, and Section 6(b)(5) of the Act,<sup>26</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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

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

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

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<sup>24</sup> The Exchange represents that the Commission has granted exemptions from, or interpretive or no-action advice regarding, Section 11(d)(1) of the Act (15 U.S.C. 78k(d)(1)), Rules 10a-1 (17 CFR 240.10a-1) and 11d1-2 (17 CFR 240.11d1-2), Rule 200(g) of Regulation SHO (17 CFR 242.200(g)), and Rules 101 and 102 of Regulation M (17 CFR 242.101 and 17 CFR 242.102) under the Act, in respect of trading of the Shares. See Letter from James A. Brigagliano, Assistant Director, Office of Trading Practices, Division of Market Regulation, Commission, to David Yeres, Esq., Clifford Chance US LLP, dated January 27, 2005. See also Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, Commission, to David Yeres, Esq., Clifford Chance US LLP, dated December 12, 2005.

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

<sup>26</sup> 15 U.S.C. 78f(b)(5).

### III. Solicitation of Comments

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

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-43 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2007-43. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission

does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2007-43 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>28</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it previously approved the original listing and trading of the Shares on Amex, and the instant proposal is substantively identical to the previous Amex proposal.<sup>29</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>30</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange would make available, through the facilities of

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<sup>27</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>29</sup> See supra note 6.

<sup>30</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

the CTA, quotation and last sale price information for the Shares, the daily trading volume, closing prices, and the NAV for the Shares from the previous day. In addition, the Exchange or a major market data vendor would disseminate each day through the facilities of the CTA the number of Shares outstanding and the ITV on a per-Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The Web site for the Trust contains information related to the NAV, including the Bid-Ask Price, the Basket Gold Amount, the Indicative Basket Gold Amount, calculation information and data related to the premium or discount of the Bid-Ask Price against the NAV, the Prospectus, and other applicable quantitative information, including trading volume data, total return of the Shares, expense ratios, and reported Share closing prices. Shortly after 4:00 p.m. ET each business day, the Trustee, the Exchange, and the Sponsor would disseminate the NAV for the Shares, the Basket Gold Amount, and the Indicative Basket Gold Amount. Information on gold prices and gold markets is available on public Web sites and through professional subscription services, and investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers. Closing and settlement prices of gold futures contracts traded on COMEX are publicly available from NYMEX's Web site, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain a representation from the Trust, prior to listing, that the NAV per Share would be calculated daily and made available

to all market participants at the same time.<sup>31</sup> In addition, NYSE Arca Equities Rule 8.201(i) provides that, in connection with trading in an underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivative, including Commodity-Based Trust Shares, an ETP Holder acting as a Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares is restricted from using any material non-public information received from any person associated with such ETP Holder who is trading such underlying physical commodity, related commodity futures or options on commodity futures, or other related commodity derivatives.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 8.201(e)(2) provides that, when the Exchange is the listing market, if the value of the underlying commodity or ITV is no longer calculated or available on at least a 15-second delayed basis, the Exchange would consider suspending trading in the Shares. The Exchange further represents that if the interruption to the calculation or wide dissemination of the value of the underlying gold or ITV persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. NYSE Arca Equities Rule 8.201(e)(2) also provides that the Exchange may seek to delist the Shares in the event the value of the underlying gold or ITV is no longer calculated or available as required.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has

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<sup>31</sup> See supra note 10.

represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing Exchange rules governing the trading of equity securities.

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

- (1) The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Shares.
- (2) The Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated ITV is not calculated and disseminated and suitability recommendation requirements.
- (3) The Exchange would require its members to deliver a prospectus or product description to investors purchasing Shares prior to or concurrently with a transaction in such Shares and will note this prospectus delivery requirement in the Information Bulletin.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. As noted above, the Commission previously approved the original listing and trading of the Shares on Amex and the trading of the Shares pursuant to UTP on the Exchange.<sup>32</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the listing and trading of the Shares on the Exchange. Accelerating approval of this proposed rule change

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<sup>32</sup> See supra notes 6 and 7.

would allow the Shares to be listed on the Exchange without undue delay and continuously traded without interruption, to the benefit of investors.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-NYSEArca-2007-43) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).