



8011-01
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-82340; File No. SR-NYSEArca-2017-112]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the GraniteShares Palladium Trust under NYSE Arca Rule 8.201-E
December 15, 2017.

I. Introduction

On September 12, 2017, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the GraniteShares Palladium Trust under NYSE Arca Rule 8.201-E. The proposed rule change was published for comment in the Federal Register on October 3, 2017.³ On October 24, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. On November 16, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 1.⁴ The Commission has

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81737 (Sept. 27, 2017), 82 FR 46106.

⁴ In Amendment No. 2, the Exchange: (1) clarified the permitted investments of the Trust (as defined herein); (2) supplemented its description of the duties of the Trust Custodian (as defined herein); (3) provided information about palladium futures; (4) supplemented its description of the process of Share (as defined herein) redemptions; (5) supplemented its description of how the Trust’s net asset value (“NAV”) will be calculated; (6) increased the minimum number of Shares that the Exchange will require to be outstanding at the commencement of trading; (7) expanded the circumstances in which the Exchange would or might halt trading in the Shares; (8) specified that the Shares would trade in all of the Exchange’s trading sessions; (9) represented that palladium futures trade on significant exchanges, including the NYMEX (as defined herein), which

not received any comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No.2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2

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 shares (“Shares”) of the GraniteShares Palladium Trust (the “Trust”), under NYSE Arca Rule 8.201-E.⁵ Under NYSE Arca Rule 8.201-E, the

is regulated by the CFTC (as defined herein) and is a member of ISG (as defined herein); and (10) made certain technical corrections. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-112/nysearca2017112-2693354-161503.pdf>.

⁵ On September 8, 2017, the Trust submitted to the Commission its draft registration statement on Form S-1 (the “Registration Statement”) under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”). 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 \$1,000,000,000 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.

Exchange may propose to list and/or trade pursuant to unlisted trading privileges (“UTP”) Commodity-Based Trust Shares.⁶

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,⁷ 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.⁸

The Sponsor of the Trust is GraniteShares LLC, a Delaware limited liability company. The Bank of New York Mellon is the trustee of the Trust (the “Trustee”)⁹ and ICBC Standard Bank PLC is the custodian of the Trust (the “Custodian”).¹⁰

⁶ Commodity-Based Trust Shares are securities issued by a trust that represents investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

⁷ 15 U.S.C. 80a-1.

⁸ 17 U.S.C. 1.

⁹ The Trustee is responsible for the day-to-day administration of the Trust. The responsibilities of the Trustee include (1) processing orders for the creation and redemption of Baskets; (2) coordinating with the Custodian the receipt and delivery of palladium transferred to, or by, the Trust in connection with each issuance and redemption of Baskets; (3) calculating the net asset value of the Trust on each business day; and (4) selling the Trust’s palladium as needed to cover the Trust’s expenses. The Trust does not have a Board of Directors or persons acting in a similar capacity.

¹⁰ The Custodian is responsible for safekeeping the palladium owned by the Trust. The Custodian is appointed by the Trustee and is responsible to the Trustee under the Trust’s palladium custody agreements. The Custodian will facilitate the transfer of palladium in and out of the Trust through the unallocated palladium accounts it may maintain for each Authorized Participant or unallocated palladium accounts that may be maintained for an Authorized Participant by another palladium-clearing bank approved by the London Palladium and Palladium Market (“LPPM”), and through the loco London account maintained for the Trust by the Custodian on an unallocated basis pursuant to the Trust unallocated account agreement (the “Trust Unallocated Account”). The Custodian is responsible for allocating specific bars of palladium to the loco London account maintained for the Trust by the Custodian on an allocated basis pursuant to the Trust agreement (the “Trust Allocated Account”). The Custodian will provide the Trustee with regular reports detailing the palladium transfers in and out of the Trust Unallocated Account with the Custodian and identifying the palladium bars held in the Trust Allocated Account.

The Commission has previously approved listing on the Exchange under NYSE Arca Rule 8.201-E of other precious metals and palladium-based commodity trusts, including the ETFS Platinum Trust,¹¹ the ETFS Palladium Trust,¹² and the Sprott Physical Platinum and Palladium Trust.¹³

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange.¹⁴

Operation of the Trust¹⁵

The investment objective of the Trust will be for the Shares to reflect the performance of the price of palladium, less the expenses and liabilities of the Trust. The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust.

The Trust will not hold or trade in any instrument or asset on any futures exchange or over the counter (“OTC”) other than physical palladium bullion. The Trust will take delivery of physical palladium bullion that complies with the LPPM palladium delivery rules.

The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in palladium. Although the Shares are not the exact equivalent of an investment in palladium, they provide investors with an alternative that allows a level of participation in the palladium market through the securities market.

¹¹ Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR-NYSEArca-2009-95).

¹² Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR-NYSEArca-2009-94).

¹³ Securities Exchange Act Release No. 68430 (December 13, 2012), 77 FR 75239 (December 13, 2012) [sic] (SR-NYSEArca-2012-111).

¹⁴ With respect to the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

¹⁵ The description of the operation of the Trust, the Shares and the palladium market contained herein are based, in part, on the Registration Statement. See note 5, supra.

Operation of the Palladium Market

The global trade in palladium consists of OTC transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

According to the Registration Statement, most trading in physical palladium is conducted on the OTC market, predominantly in Zurich and London. The LPPM coordinates various OTC market activities, including clearing and vaulting, acts as the principal intermediary between physical palladium market participants and the relevant regulators, promotes good trading practices and develops standard market documentation. In addition, the LPPM promotes refining standards for the palladium market by maintaining the “London/Zurich Good Delivery List,” which are the lists of LPPM accredited melters and assayers of palladium.

The most significant palladium futures exchanges are the New York Mercantile Exchange, Inc. (“NYMEX”), a subsidiary of the Chicago Mercantile Exchange Group (the “CME Group”), and the Tokyo Commodity Exchange.¹⁶ U.S. futures exchanges are registered with the Commodities Futures Trading Commission (“CFTC”) and seek to provide a neutral, regulated marketplace for the trading of derivatives contracts for commodities, such as futures, options and certain swaps. The palladium contract market is of significant size and liquidity.

The basis for settlement and delivery of a spot trade is payment (generally in US dollars) two business days after the trade date against delivery. Delivery of the palladium can either be by physical delivery or through the clearing systems to an unallocated account. The unit of trade in London and Zurich is the troy ounce, whose conversion between grams is: 1,000 grams is equivalent to 32.1507465 troy ounces, and one troy ounce is equivalent to 31.1034768 grams.

A good delivery palladium plate or ingot is acceptable for delivery in settlement of a

¹⁶ NYMEX is a member of the Intermarket Surveillance Group (“ISG”).

transaction on the OTC market (a “Good Delivery Palladium Plate or Ingot”). A Good Delivery Palladium Plate or Ingot must contain between 32 and 192 troy ounces of palladium with a minimum fineness (or purity) of 999.5 parts per 1,000 (99.95%), be of good appearance, and be easy to handle and stack. A Good Delivery Palladium Plate or Ingot must also bear the stamp of one of the melters and assayers who are on the LPPM approved list. Unless otherwise specified, the palladium spot price always refers to the “Good Delivery Standards” set by the LPPM.

Creation and Redemption of Shares

The Trust will create and redeem Shares on a continuous basis in one or more blocks of 15,000 Shares (a block of 15,000 Shares is called a “Basket”). As described below, the Trust will issue Shares in Baskets to certain authorized participants (“Authorized Participants”) on an ongoing basis. Baskets of Shares will only be issued or redeemed in exchange for an amount of palladium represented by the aggregate number of Shares issued or redeemed. No Shares will be issued unless the Custodian has allocated to the Trust’s account the corresponding amount of palladium. Initially, a Basket will require delivery of 1,500 ounces of palladium. The amount of palladium necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust.

Baskets may be created or redeemed only by Authorized Participants. Orders must be placed by 3:59 p.m. Eastern Time (“E.T.”). The day on which a Trust receives a valid purchase or redemption order is the order date.

Each Authorized Participant must be a registered broker-dealer, a participant in Depository Trust Corporation (“DTC”), have entered into an agreement with the Trustee (the “Authorized Participant Agreement”) and have established a palladium unallocated account with

the Custodian or another LPPM-approved palladium clearing bank. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of palladium in connection with such creations or redemptions.

According to the Registration Statement, Authorized Participants, acting on authority of the registered holder of Shares or on their own account, may surrender Baskets of Shares in exchange for the corresponding amount of palladium (measured in ounces) announced by the Trustee (the “Basket Amount”). Upon surrender of such Shares and payment of the Trustee’s applicable fee and of any expenses, taxes or charges (such as stamp taxes or stock transfer taxes or fees), the Trustee will deliver to the order of the redeeming Authorized Participant the amount of palladium corresponding to the redeemed Baskets. Shares can only be surrendered for redemption in Baskets of 15,000 Shares each.

Before surrendering Baskets of Shares for redemption, an Authorized Participant must deliver to the Trustee a written request indicating the number of Baskets it intends to redeem. The date the Trustee receives that order determines the Basket Amount to be received in exchange. However, orders received by the Trustee after 3:59 p.m. E.T. on a business day or on a business day when the London Bullion Market Association (“LBMA”) Palladium Price PM or other applicable benchmark price is not announced, will not be accepted.

The redemption distribution from the Trust will consist of a credit to the redeeming Authorized Participant’s unallocated account representing the amount of the palladium held by the Trust evidenced by the Shares being redeemed as of the date of the redemption order.

Net Asset Value

The NAV of the Trust will be calculated by subtracting the Trust’s expenses and liabilities on any day from the value of the palladium owned by the Trust on that day; the NAV

per Share will be obtained by dividing the NAV of the Trust on a given day by the number of Shares outstanding on that day. On each day on which the Exchange is open for regular trading, the Trustee will determine the NAV as promptly as practicable after 4:00 p.m. E.T. The Trustee will value the Trust's palladium on the basis of LBMA Palladium Price PM. If there is no LBMA Palladium Price PM on any day, the Trustee is authorized to use the LBMA Palladium Price AM announced on that day. If neither price is available for that day, the Trustee will value the Trust's palladium based on the most recently announced LBMA Palladium Price PM or LBMA Palladium Price AM. If the Sponsor determines that such price is inappropriate to use, the Sponsor will identify an alternate basis for evaluation to be employed by the Trustee by consulting other public sources of pricing information. For instance, the Sponsor could use the palladium spot price published by Bloomberg.

Authorized Participants will offer Shares in the secondary market at an offering price that will vary, depending on, among other factors, the price of palladium and the trading price of the Shares on the Exchange at the time of offer. Authorized Participants will not receive from the Trust, the Sponsor, the Trustee or any of their affiliates any fee or other compensation in connection with the offering of the Shares.

Secondary Market Trading

While the Trust seeks to reflect generally the performance of the price of palladium less the Trust's expenses and liabilities, Shares may trade at, above or below their NAV. The NAV of Shares will fluctuate with changes in the market value of the Trust's assets. The trading prices of Shares will fluctuate in accordance with changes in their 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 major palladium markets and the

Exchange. While the Shares trade on the Exchange until 8:00 p.m. E.T., liquidity in the market for palladium may be reduced after the close of the major world palladium markets, including London, Zurich and NYMEX. As a result, during this time, trading spreads, and the resulting premium or discount, on Shares may widen.

Availability of Information Regarding Palladium

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

Investors may obtain palladium pricing information on a 24-hour basis based on the spot price for an ounce of palladium from various financial information service providers, such as Reuters and Bloomberg.

Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of palladium and last sale prices of palladium futures, as well as information about news and developments in the palladium market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on palladium prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot palladium, as well as a feed of real-time streaming prices, delivered as record-based digital data from the EBS platform to its customer's market data platform via Bloomberg or Reuters.

Complete real-time data for palladium futures and options prices traded on the NYMEX

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 website. There are a variety of other public websites providing information on palladium, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal.

Availability of Information

The intraday indicative value (“IIV”) per Share for the Shares will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The IIV will be calculated based on the amount of palladium held by the Trust and a price of palladium derived from updated bids and offers indicative of the spot price of palladium.¹⁷

The website for the Trust (www.graniteshares.com) will contain the following information, on a per Share basis, for the Trust: (a) the mid-point of the bid-ask price¹⁸ at the close of trading (“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 website for the Trust will also provide the Trust's prospectus. Finally, the Trust's website will provide the prior day's closing price of the Shares as traded in the U.S. market. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing

¹⁷ The IIV on a per Share 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.

¹⁸ The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

price and trading volume information for the Shares will be published daily in the financial section of newspapers.

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 Shares.

A minimum of two Baskets or 30,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 3,000 ounces of palladium. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

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.

Trading in the Shares on the Exchange will occur during all three trading sessions in accordance with NYSE Arca Rule 7.34-E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for quoting and order entry is \$0.0001.

Further, NYSE Arca Rule 8.201-E sets forth certain restrictions on ETP Holders¹⁹ acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to

¹⁹ An "ETP Holder" means a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that is a registered broker-dealer and has been issued an Equity Trading Permit by the Exchange. See NYSE Arca Rules 1.1(n) and (o).

provide the Exchange with information relating to its trading in the underlying palladium, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3 requires an ETP Holder acting as a registered Market Maker in the Shares and its affiliates to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

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. 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 Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying palladium 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 Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.²⁰ The

²⁰ See NYSE Arca Rule 7.12-E.

Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily or if not made available to all participants at the same time. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will also consider halting trading on a business day when the LBMA Palladium Price PM or other applicable benchmark price is not announced.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²¹ 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 and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. 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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as

²¹ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²²

Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying palladium, palladium futures contracts, options on palladium futures, or any other palladium derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

²² For a list of the current members of ISG, see www.isgportal.org.

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 Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2-E(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; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of palladium trading during the Core and Late Trading Sessions after the close of the major world palladium 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. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares 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 as will be 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 palladium, that the Commission has no jurisdiction over the trading of palladium as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of palladium futures contracts and options on palladium 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 basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The most significant palladium futures exchange in the U.S. is the NYMEX, which is a member of ISG. U.S. futures exchanges are registered with the CFTC and seek to provide a neutral, regulated marketplace for the trading of derivatives contracts for commodities, such as futures, options and certain swaps. The palladium contract market is of significant size and liquidity.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of palladium

²³ 15 U.S.C. 78f(b)(5).

price and palladium market information available on public websites and through professional and subscription services. Investors may obtain palladium pricing information on a 24-hour basis based on the spot price for an ounce of palladium from various financial information service providers. Delayed information regarding the spot price of palladium and last sale prices of palladium futures, as well as information about news and developments in the palladium market, are also available from financial information service providers. Information on palladium prices directly from market participants is also available from financial information service providers. An electronic trading platform called EBS for the trading of spot palladium, as well as a feed of real-time streaming prices, is also available from information service providers.

The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The Trust's website will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the

Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding palladium pricing.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical palladium.

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. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposed rule change, as modified by Amendment No. 2 to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²⁵ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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 the Exchange has represented that it will be able to share surveillance

²⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

information with a significant, regulated market for trading futures on palladium.²⁶ The Commission also notes that it previously approved the listing and trading of shares of another issue of Commodity-Based Trust Shares overlying palladium.²⁷

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁸ 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 last-sale price of the Shares will be disseminated over the Consolidated Tape. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Commission believes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. NYSE Arca Rule 8.201-E(e)(2)(v) requires that an IIV (which is referred to in the rule as the

²⁶ Specifically, according to the Exchange, NYMEX, which is regulated by the Commodity Futures Trading Commission, is a member of the ISG, which will allow the Exchange to obtain surveillance information. See Amendment No. 2, supra note 4, at 6, 14.

²⁷ See Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR-NYSEArca-2009-94) (approving the listing and trading of the ETFs Physical Palladium Trust). See also Securities Exchange Act Release Nos. 62692 (Aug. 11, 2010), 75 FR 50789 (Aug. 17, 2010) (SR-NYSEArca-2010-56) (approving the listing and trading of the ETFs Physical Precious Metals Basket Trust); 62875 (Sept. 9, 2010), 75 FR 56156 (Sept. 15, 2010) (SR-NYSEArca-2010-71) (approving the listing and trading of the ETFs Physical White Metals Basket Trust); and 68101 (Oct. 24, 2012), 77 FR 65732 (Oct. 30, 2012) (SR-NYSEArca-2012-111) (approving the listing and trading of the Sprott Physical Platinum and Palladium Trust).

²⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

“Indicative Trust Value”) be made available at least every 15 seconds. The IIV will be calculated based on the amount of palladium held by the Trust and a price of palladium derived from updated bids and offers indicative of the spot price of palladium.²⁹ The Exchange states that the IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.³⁰ According to the Exchange, there is a considerable amount of information about palladium markets available on public websites and through professional and subscription services. Investors may obtain palladium pricing information on a 24-hour basis based on the spot price for an ounce of palladium from various financial information service providers.³¹

Additionally, the NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust’s website.³² The Trust also will publish the following information on its website: (1) the mid-point of the Bid/Ask Price as of close of trading, and a calculation of the premium or discount of such price against the NAV; (2) data in chart format displaying the frequency distribution of discounts and premiums

²⁹ See Amendment No. 2, supra note 4, at 9-10.

³⁰ See id. at 9.

³¹ See Amendment No. 2, supra note 4, at 9. The Exchange states that Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of palladium and last sale prices of palladium, as well as information about news and developments in the palladium market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on palladium prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot palladium, as well as a feed of real-time streaming prices, delivered as record-based digital data from the EBS platform to its customer’s market data platform via Bloomberg or Reuters. Complete real-time data for palladium futures and options prices traded on the New York Mercantile Exchange, Inc. (“NYMEX”) are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on palladium, ranging from those specializing in precious metals to sites maintained by major newspapers. See id.

³² See id. at 14.

of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; (3) the Trust's prospectus, as well as the two most recent reports to stockholders; and (4) the prior day's closing price of the Shares as traded in the U.S. market.³³

The Commission also believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. 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 on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying palladium market have caused disruptions 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 Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.³⁴ The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily or if not made available to all participants at the same time.³⁵ The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV; if the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.³⁶

Additionally, the Commission notes that market makers in the Shares would be subject to the requirements of NYSE Arca Rule 8.201-E(g), which allow the Exchange to ensure that they

³³ See id. at 10, 14.

³⁴ See id. at 11, n.18 and accompanying text.

³⁵ See id. at 11.

³⁶ See id. at 11-12.

do not use their positions to violate the requirements of Exchange rules or applicable federal securities laws.³⁷

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

- (1) The Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E.³⁸
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.³⁹
- (3) The Exchange deems the Shares to be equity securities.⁴⁰
- (4) The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.⁴¹
- (5) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading

³⁷ Commentary .04 of NYSE Arca Equities Rule 11.3 requires that an ETP Holder acting as a registered market maker in the Shares, and its affiliates, establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

³⁸ See Amendment No. 2, supra note 4, at 14.

³⁹ See id. at 10.

⁴⁰ See id. The Commission notes that, as a result, trading of the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

⁴¹ See id. at 12-13.

sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.⁴²

- (6) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁴³
- (7) 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 Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (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 Shares; (3) how information regarding the IIV is disseminated; (4) ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced

⁴² FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See id. at 12, n.19.

⁴³ See id. at 12.

liquidity of palladium trading during the Core and Late Trading Sessions after the close of the major world palladium markets; and (6) trading information.⁴⁴

- (8) All statements and representations made in the Exchange’s filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.⁴⁵
- (9) The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor⁴⁶ for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the NYSE Arca Rule 5.5-E(m).⁴⁷

This approval order is based on all of the Exchange’s representations – including those set forth above and in Amendment No. 2 – and the Exchange’s description of the Trust.

⁴⁴ See id. at 13.

⁴⁵ See id.

⁴⁶ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

⁴⁷ See id.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act⁴⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the proposed rule change. 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-2017-112 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2017-112. 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 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

⁴⁸ 15 U.S.C. 78f(b)(5).

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 this filing will also 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-NYSEArca-2017-112 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of notice of Amendment No. 2 in the Federal Register. Amendment No. 2 supplements the proposal by providing additional information regarding the Trust and the palladium futures market, and by expanding the circumstances in which the Exchange would or might halt trading in the Shares. These changes assisted the Commission in evaluating the Shares' susceptibility to manipulation, and in determining that the listing and trading of the Shares is consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁴⁹ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

⁴⁹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁰ that the proposed rule change (SR- NYSEArca-2017-112), as modified by Amendment No. 2 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Robert W. Errett,
Deputy Secretary.

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ 17 CFR 200.30-3(a)(12).

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