



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90807; File No. SR-NYSEArca-2020-114]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect a Change in the Time of Calculation and Publication of the Wilshire Gold Index Applicable to Shares of the Wilshire wShares Enhanced Gold Trust**

December 28, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 21, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to reflect a change in the time of calculation and publication of the Wilshire Gold Index applicable to shares of the Wilshire wShares Enhanced Gold Trust (“Trust”). Shares of the Trust have been approved by the Commission for listing and trading on the Exchange under NYSE Arca Rule 8.201-E.<sup>4</sup> The Trust’s shares have not commenced trading on the Exchange. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See note 5, *infra*.

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

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

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

#### 1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the Wilshire wShares Enhanced Gold Trust (“Trust”) for listing and trading on the Exchange under NYSE Arca Rule 8.201-E (“Commodity-Based Trust Shares”).<sup>5</sup> The Exchange proposes to reflect a change in the time of calculation and publication of the Wilshire Gold Index (“Index”) applicable to Shares of the Trust. The Trust’s Shares have not commenced trading on the Exchange.<sup>6</sup>

According to the Registration Statement and the Prior Order, the investment objective of the Trust is for the Shares to closely reflect the Index, which will be published by Solactive AG (the Index Calculation Agent), less the Trust’s liabilities and expenses. The Trust will have no

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<sup>5</sup> See Securities Exchange Act Release No. 90216 (October 16, 2020), 85 FR 67401 (October 22, 2020) (SR-NYSEArca-2020-59) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To Permit the Listing and Trading of Shares of the Wilshire wShares Enhanced Gold Trust Under Amended NYSE Arca Rule 8.201–E) (“Prior Order”).

<sup>6</sup> On November 18, 2020 the Trust filed with the Commission an amended registration statement on Form S-1 under the Securities Act of 1933 relating to the Trust (File No. 333- 235913) (“Registration Statement”). The description of the operation of the Trust herein is based, in part, on the Prior Order. The procedures described in this proposed rule change will not be implemented until this proposed rule change is effective and operative.

assets other than (a) physical gold bullion (“Physical Gold”) in proportions that seek to closely replicate the Index and (b) cash.

The Prior Order stated that the Index value using the London Bullion Market Association (“LBMA”) Gold Price PM<sup>7</sup> will be calculated and published daily each business day at approximately 5:00 p.m. (Eastern time (“E.T.”)) on the Trust’s website. The Exchange proposes to change this representation to state that the Index value using the LBMA Gold Price PM will be calculated and published daily each business day by approximately 7:00 p.m. E.T. on the Trust’s website. The revised time is being proposed as a result of certain contractual licensing restrictions which prevents the publication of the Index value prior to 7:00 p.m. E.T.

The Exchange believes that modifying the representation regarding when the Index value using the LBMA Gold Price PM is published to reflect that such Index value would be published each business day by approximately 7:00 p.m. E.T. would have no impact on the Trust’s shareholders. During the proposed two hour extension from approximately 5:00 p.m. E.T. to approximately 7:00 p.m. E.T., the value of the Trust’s holdings and net asset value (“NAV”) will be available, which will provide investors and authorized participants (“APs”) with a basis to determine whether Shares during the Exchange’s Late Trading Session (normally 4:00 p.m., E.T. to 8:00 p.m., E.T.) are trading at a premium or a discount to the Trust’s NAV. Therefore, investors and APs will have sufficient information to be able to ascertain whether any premiums or discounts will have a material impact on their trading in Shares of the Trust.<sup>8</sup> The creation

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<sup>7</sup> As stated in the Prior Order, the LBMA Gold Price PM is the price of Physical Gold obtained from auctions conducted in the afternoon (London time) by ICE Benchmark Administration (“IBA”), a benchmark administrator appointed by the LBMA.

<sup>8</sup> The Commission has previously approved proposed rule changes permitting listing and trading of shares of gold-related commodity trusts where such proposed rule changes did not specify when NAV or the value of the applicable trust’s holdings would be posted to the trust’s website. See, e.g., Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares);

and redemption process used by the Trust will not be affected by the proposed change because the value used for purposes of effecting creations and redemptions of the Shares is based on NAV, not the Index value.

The proposed two-hour extension of the calculation and publication of the Index value will not impact investors trading Shares during the Exchange's Early Trading Session (normally 4:00 a.m. to 9:30 a.m. E.T.) or the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m. E.T.) as such calculation and publication time will, consistent with the Prior Order, occur after such trading sessions. In addition, investors trading Shares during the Exchange's Late Trading Session (normally 4:00 p.m. to 8:00 p.m. E.T.) will not be impacted by such change, as the Trust's NAV will be determined as of 4:00 p.m., E.T. (or as soon thereafter as practicable) and then disseminated via market data feeds as well as posted on the Trust's website. Like the Index, the value of the Physical Gold held by the Trust for purposes of determining the Trust's NAV is determined by reference to the LBMA Gold Price PM for that day. Therefore, whether the Index value is calculated and published at 5:00 p.m. E.T. or 7:00 p.m. E.T., investors trading in the Exchange's Late Trading Session will trade based on the Trust's NAV determined as of 4:00 p.m. E.T. (or as soon thereafter as practicable).<sup>9</sup>

The Exchange notes that the Prior Order stated that the Index value is calculated and published each business day at approximately 5:00 p.m. E.T. on the Trust's website.<sup>10</sup> Such

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71378 (January 13, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the Merk Gold Trust Pursuant to NYSE Arca Equities Rule 8.201).

<sup>9</sup> The LBMA Gold Price PM for such day does not change between the hours of 4:00 p.m. E.T. and 7:00 p.m. E.T. and the investment objective of the Trust is for the Shares to closely reflect the Index.

<sup>10</sup> The Index currently is published daily through various market data vendors, including Bloomberg LP, under the ticker symbol "WGIX", and Refinitiv, under the Reuters instrument code ("RIC") ".WGIX". Wilshire Phoenix Funds LLC, the Trust's "Sponsor," represents that both the cash and Physical Gold weights for the Index are posted on the Trust's website on the first Business Day after the rebalance date, which is the last Business Day of each month.

calculation and publication time occurs outside of the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m. E.T.) for each business day but occurs during the Exchange's Late Trading Session. The proposed change to the calculation and publication time from approximately 5:00 p.m. E.T. to approximately 7:00 p.m. E.T. is consistent with the Prior Order in that calculation and publication of the Index value will continue to occur outside of the Exchange's Core Trading Session for each business day but during the Exchange's Late Trading Session. The Exchange notes that the Commission has previously approved listing and trading on the Exchange of shares of gold-related commodity trusts under NYSE Arca Rule 8.201-E where the specified time (i.e., approximately 6:00 a.m. E.T.) for dissemination of the applicable index value occurs outside of the Core Trading Session for such business day but during the Exchange's Early Trading Session (normally 4:00 a.m., E.T. to 9:30 a.m., E.T.).<sup>11</sup>

The proposed change would not affect the Trust's requirement to provide investors with an updated Index value each day and would not alter any information that is provided to investors during the trading day.<sup>12</sup> Rather, the proposed publication of the Index value at approximately 7:00 p.m., E.T. would, like the approximately 5:00 p.m., E.T. time frame approved in the Prior Order, provide for publication after the close of the Exchange's Core Trading Session.<sup>13</sup> In

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<sup>11</sup> See Securities Exchange Act Release Nos. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR-NYSEArca-2016-84) (order approving listing and trading of shares of the Long Dollar Gold Trust); 80840 (June 1, 2017), 82 FR 26534 (June 7, 2017) (SR-NYSEArca-2017-33) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, To List and Trade Shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust Under NYSE Arca Equities Rule 8.201).

<sup>12</sup> As stated in the Prior Order, the current Index value will be disseminated by one or more major market vendors at least every 15 seconds during the Exchange's Core Trading Session.

<sup>13</sup> The proposed approximately 7:00 p.m. E.T. time for Index publication, like the approximately 5:00 p.m., E.T. Index calculation and publication time, would overlap with part of the Exchange's Late Trading Session (normally 4:00 p.m., E.T. to 8:00 p.m., E.T.). The Exchange notes, that NYSE Arca Rule 7.34-E (Trading Sessions) includes certain requirements for orders entered in the Late Trading Session. Among these is the requirement that no Equity Trading Permit ("ETP") Holder may accept an order from a non-ETP Holder for execution in the Exchange's Late Trading Session without disclosing to such non-ETP Holder certain risks, including the risk that an updated underlying index

addition, as stated in the Prior Order, the Exchange, the Index Calculation Agent or a third party financial data provider will calculate an intraday indicative value (“IIV”) for the Shares every fifteen seconds during the Exchange’s Core Trading Session, which will be available from one or more major market data vendors.<sup>14</sup>

The Sponsor represents that the proposed change described above will not impact investors. Except for the change noted above, all other representations made in the Prior Order remain unchanged.<sup>15</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>16</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The 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. The Exchange believes that the proposed change to the time of Index value calculation and publication would have no impact on the Trust’s shareholders. The Trust’s ability to pursue its investment objective will not be impacted by the proposed change to provide for a later calculation and publication of an updated Index value for a particular business day.

The proposed change would provide investors with an updated Index value each day and would not alter any information that is provided to investors during the trading day. Like the

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value or IIV may not be calculated or publicly disseminated in extended trading hours.

<sup>14</sup> For purposes of the Prior Order and this filing, the IIV is the value referenced in NYSE Arca Rule 8.201-E(e)(2)(v).

<sup>15</sup> See note 5, supra. All terms referenced but not defined herein are defined in the Prior Order.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

approximately 5:00 p.m., E.T. time frame approved in the Prior Order, the Index would be calculated and published after the close of the Exchange's Core Trading Session and during the Exchange's Late Trading Session. In addition, as stated in the Prior Order, the Exchange, the Index Calculation Agent or a third party financial data provider will calculate an IIV for the Shares every fifteen seconds during the Exchange's Core Trading Session, which will be available from one or more major market data vendors. The Sponsor represents that both the cash and Physical Gold weights for the Index are posted on the Trust's website on the first Business Day after the rebalance date, which is the last Business Day of each month.

The Sponsor represents that the proposed change described above will not impact investors. Except for the change noted above, all other representations made in the Prior Order remain unchanged.

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 purpose of the Act and will enhance competition among issues of gold-based Commodity-Based Trust Shares.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed change would not alter any information that is provided to investors during the Exchange's Core Trading Session and that investors and APs will have sufficient information to determine whether Shares are trading at a premium or discount to the Trust's NAV during the Exchange's Late Trading Session. In addition, the Exchange represents that other than the change discussed herein, all other representations made in the Prior Order remain unchanged. Finally, the change would not affect the Trust's requirement to provide investors with an updated Index value each day. For these reasons, the proposed rule change does not raise any novel regulatory issues, and the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>19</sup> Id.

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2020-114 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-2020-114. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-

NYSEArca-2020-114 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>22</sup> 17 CFR 200.30-3(a)(12).