

Number SR–EDGA–2013–16 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR–EDGA–2013–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 Web site 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; 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–EDGA–2013–16 and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69847; File No. SR–NYSEArca–2013–61]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing to List and Trade Units of the First Trust Gold Trust Pursuant to NYSE Arca Equities Rule 8.201

June 25, 2013.

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 June 11, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade Units of the First Trust Gold Trust pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to list and trade Units of the Trust under NYSE

Arca Equities Rule 8.201.<sup>3</sup> Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (“UTP”) “Commodity-Based Trust Shares.”<sup>4</sup> The Securities and Exchange Commission (“Commission”) has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the APMEX Physical-1 oz. Gold Redeemable Trust<sup>5</sup>, ETFs Gold Trust<sup>6</sup>, as well as the Sprott Physical Gold Trust.<sup>7</sup> In addition, the Commission has approved listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.<sup>8</sup> Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (“NYSE”) and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.<sup>9</sup> FT Portfolios Canada Co. will be the trustee and manager of the Trust (“Manager”),<sup>10</sup> and The Bank of Nova Scotia Trust Company (the “Trust Custodian”) will be the custodian of the Trust's assets.<sup>11</sup> Equity Financial Trust

<sup>3</sup> See the draft registration statement for the Trust on Form F–1, filed with the Commission on March 19, 2013 (File No. 377–00130) (the “Registration Statement”). The descriptions of the Trust, the Units and the gold market contained herein are based, in part, on the Registration Statement.

<sup>4</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

<sup>5</sup> Securities Exchange Act Release 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18).

<sup>6</sup> Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

<sup>7</sup> Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113).

<sup>8</sup> See Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

<sup>9</sup> See Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

<sup>10</sup> The Manager is a company subsisting under the laws of Nova Scotia. The Manager is responsible for the day-to-day activities and administration of the Trust. The Manager manages, or causes to be managed, the Trust pursuant to the declaration of trust. Additional details regarding the Manager are set forth in the Registration Statement.

<sup>11</sup> The Trust Custodian intends to appoint The Bank of Nova Scotia as gold sub-custodian (the “Gold Sub-Custodian”). Physical gold bullion held directly by the Gold Sub-Custodian will be stored on an allocated and segregated basis in the vault facilities of ScotiaMacatta, a division of the Gold

Continued

<sup>28</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

Company (the "Transfer Agent") will process redemption orders and transfers for the Trust. CIBC Mellon Trust Company (the "Valuation Agent") will calculate the value of the net assets of the Trust on a daily basis and reconcile all purchases and redemptions of Units to determine the net asset value per Unit ("NAV"). The Trust was created to invest and hold substantially all of its assets in physical gold bullion. The Trust will seek to provide a secure, convenient and exchange-traded investment alternative for investors interested in holding physical gold bullion without the inconvenience that is typical of a direct investment in physical gold bullion. The Trust intends to invest primarily in long-term holdings of unencumbered, fully allocated, physical gold bullion and will not speculate with regard to short-term changes in gold prices. Each outstanding Unit will represent an equal, fractional, undivided ownership interest in the Trust. The Trust seeks to allow investors to invest in physical gold through Units of the Trust and either redeem their Units for physical gold bullion, or cash, less applicable expenses as described below.

According to the Registration Statement, substantially all of the net assets of the Trust (at least 90%), will be invested in allocated kilogram bars of physical gold bullion with a fineness of 0.995 or higher that are manufactured by refiners recognized by the London Bullion Market Association ("LBMA") for the production of "good delivery bars" ("Kilogram Bars"). The Trust will not invest in gold certificates or other financial instruments that represent gold or that may be exchanged for gold.

The Trust intends to list the Units on the Toronto Stock Exchange ("TSX"). According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940<sup>12</sup> nor a commodity pool for purposes of the Commodity Exchange Act.<sup>13</sup>

The Exchange represents that the Units satisfy the requirements of NYSE

Sub-Custodian, or additional gold sub-sub-custodians appointed by it in Canada, the United States or London, England. The Gold Sub-Custodian intends to appoint Brinks Global Services USA and/or Via Mat International as gold sub-sub-custodians for physical gold bullion in the Trust's name (each such gold sub-sub-custodians, and the Gold Sub-Custodian, a "Gold Custodian", and together with the Trust Custodian, the "Custodians"). Each Gold Custodian will be responsible for and will bear all risk of the loss of, and damage to, the Trust's physical gold bullion that is in the Gold Custodian's custody, subject to certain limitations based on events beyond the Gold Custodian's control.

<sup>12</sup> 15 U.S.C. 80a-1.

<sup>13</sup> 7 U.S.C. 1.

Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.<sup>14</sup>

Operation of the Physical Gold Bullion Market

According to the Registration Statement, the physical gold bullion market is influenced by several factors, including:

- (a) Global gold supply and demand, which is influenced by such factors as: (i) Forward selling by gold producers; (ii) purchases made by gold producers to unwind gold hedge positions; (iii) central bank purchases and sales; (iv) production and cost levels in major gold-producing countries; and (v) new production projects;
- (b) investors' expectations for future inflation rates;
- (c) exchange rate volatility of the U.S. dollar, the principal currency in which the price of gold is generally quoted;
- (d) interest rate volatility;
- (e) unexpected global, or regional, political or economic incidents; and
- (f) changing tax, royalty, land and mineral rights ownership and leasing regulations in gold producing countries.

LBMA

According to the Registration Statement, the LBMA is the London-based trade association that represents the wholesale gold and silver bullion market in London. London is the focus of the international Over-the-Counter (OTC) market for gold and silver, with a client base that includes the majority of the central banks that hold gold, plus producers, refiners, fabricators and other traders throughout the world.

According to the Registration Statement, the "LBMA Good Delivery List"—the list of acceptable refiners of gold and silver bars in the London bullion market—is now widely recognized as representing the de facto standard for the quality of gold and silver bars, and applies stringent criteria for assaying standards and bar quality that an applicant must satisfy in order to be listed. The assaying capabilities of refiners on the Good Delivery List are periodically checked under the LBMA's "Proactive Monitoring" program.

The LBMA Good Delivery List has been developed and is maintained by the LBMA in order to facilitate the international distribution and acceptability on technical grounds of standard bars produced by those refiners:

- (a) Who meet the criteria for inclusion in the list; and

<sup>14</sup> With respect to 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).

(b) whose bars have passed the testing procedures laid down by the LBMA.

Standard Good Delivery bars of gold are bars of approximately 400 fine troy ounces.

Operation of the Trust

According to the Registration Statement, the Trust will not hold or trade in commodity futures contracts regulated by the Commodity Exchange Act, as administered by the U.S. Commodity Futures Trading Commission ("CFTC"). Gold futures are traded on the COMEX, an affiliate of the Chicago Mercantile Exchange, Inc., and the Tokyo Commodity Exchange.<sup>15</sup>

The Trust is subject to various "Investment and Operating Restrictions", as described in the Registration Statement. The Investment and Operating Restrictions provide that the Trust:

(a) Will invest in and hold a minimum of 90% of the total net assets of the Trust in physical gold bullion (i.e., Kilogram Bars) and hold no more than 10% of the total net assets of the Trust, at the discretion of the Portfolio Advisor, in cash or any asset readily convertible into cash (whether or not denominated in U.S. dollars) including, but not limited to, bank accounts, certificates of deposit, money market accounts, commercial paper, U.S. and foreign treasury obligations and other cash equivalent instruments, except during the 60-day period following the closing of the offering of the Units or additional offerings or prior to the distribution of the assets of the Trust;

(b) will store all Kilogram Bars owned by the Trust at a Gold Custodian on a fully allocated basis, provided that the Kilogram Bars may be stored with a custodian only if it will remain within the chain of custody with the Gold Custodian;

(c) will not purchase, sell or hold derivatives;

(d) will not issue Units following the completion of the offering of the Units except if the net proceeds per Unit to be received by the Trust are not less than 100% of the most recently calculated NAV prior to, or upon the determination of the pricing of such issuance;

(e) will ensure that no part of the stored Kilogram Bars may be delivered out of safekeeping by a Gold Custodian, without receipt of an instruction from the Manager in the form specified by a Gold Custodian indicating the purpose of the delivery and giving direction with respect to the specific amount;

<sup>15</sup> For additional information regarding the gold bullion market, gold futures exchanges, and regulation of the global gold market, see, e.g., Securities Exchange Act Release Nos. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (order approving Exchange listing and trading of the ETFs Gold Trust); and 66627 (March 20, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (order approving Exchange listing and trading of the APMEX Physical-1 oz. Gold Redeemable Trust).

(f) will ensure that no director or officer of the Manager or representative of the Trust or the Manager will be authorized to enter into the Kilogram Bars storage vaults without being accompanied by at least one representative of a Gold Custodian, as applicable;

(g) will ensure that the Kilogram Bars remain unencumbered;

(h) will inspect or cause to be inspected the stored Kilogram Bars periodically on a spot inspection basis and, together with a representative of the Trust's auditor, physically verify the existence of each bar annually;

(i) will not guarantee the securities or obligations of any person other than the Manager, and then only in respect of the activities of the Trust; and

(j) will comply with certain holding restrictions of the Income Tax Act (Canada).

#### Description of the Units

According to the Registration Statement, the Trust will be authorized to issue an unlimited number of Units. Each Unit will represent a beneficial interest in the net assets of the Trust. Units will be transferable and redeemable at the option of the unitholder in accordance with the provisions set forth in the "Declaration of Trust". All Units will have equal rights and privileges with respect to all matters, including voting, receipt of distributions from the Trust, liquidation and other events in connection with the Trust. Units and fractions thereof will be issued only as fully paid and non-assessable units. Units will have no preference, conversion, exchange or preemptive rights. Each whole Unit will entitle the holder thereof to a vote at meetings of unitholders.

#### Redemption of Units

According to the Registration Statement, subject to the terms of the Declaration of Trust and the Manager's right to suspend redemptions in the circumstances described below, Units may be redeemed at the option of a unitholder in any month for Kilogram Bars or cash. All redemptions will be determined using U.S. dollars, regardless of whether the redeemed Units were acquired on a U.S. national securities exchange or the TSX. Redemption requests will be processed on the last business day of the applicable month.

#### Redemption for Physical Gold

According to the Registration Statement, all redemptions of Units for Kilogram Bars will be determined using U.S. dollars. Unitholders whose Units are redeemed for Kilogram Bars will be entitled to receive a redemption price equal to 100% of the NAV of the redeemed Units on the last day of the

month on which the NYSE Arca is open for trading for the month in respect of which the redemption request is processed (the "Monthly Redemption Date"). The NAV of Units in connection with a redemption will be calculated by the Valuation Agent in the same manner as the NAV of Units is calculated on an ongoing basis. Redemption requests must be for amounts that are at least equivalent to the value of one Kilogram Bar plus applicable expenses. Any redemption proceeds not paid in Kilogram Bars because such proceeds are not equivalent to the value of one Kilogram Bar will be paid in cash at a rate equal to 100% of the NAV of the redeemed Units as of 4:00 p.m., Eastern Time, on the applicable Monthly Redemption Date that represents such excess amount.

#### Procedures to Redeem for Physical Gold Bullion (Kilogram Bars)

A unitholder that owns a sufficient number of Units who desires to exercise redemption privileges for Kilogram Bars must do so by instructing his, her or its broker, who must be a direct or indirect participant of the Canadian Depository for Securities ("CDS") or the Depository Trust Company ("DTC"), as applicable, to deliver to the Transfer Agent on behalf of the unitholder a written request signed by a unitholder in the form as the Manager may from time to time in its sole discretion determine, which must be guaranteed by a Canadian chartered bank, or by a bank, brokerage firm or other financial intermediary that is a member of an approved "Medallion Guarantee Program" or that the Manager on behalf of the Trust otherwise approves (a "Gold Redemption Notice"), of the unitholder's intention to redeem Units for Kilogram Bars. A Gold Redemption Notice must be received by the Transfer Agent no later than 4:00 p.m., Toronto Time, on the 15th day of the month in which the Gold Redemption Notice will be processed or, if such day is not a business day, then on the immediately following day that is a business day. Any Gold Redemption Notice received after such time will be processed on the next Monthly Redemption Date.

Once a Gold Redemption Notice is received by the Transfer Agent, the Transfer Agent, together with the Manager, will determine whether such Gold Redemption Notice complies with the applicable requirements, is for an amount of gold that is equal to at least one Kilogram Bar plus applicable expenses, and contains delivery instructions that are acceptable to the armored service transportation carrier, or such other transportation provider as

deemed appropriate by the logistical coordinator. If the Transfer Agent and the Manager determine that the Gold Redemption Notice complies with all applicable requirements, it will provide a notice to such redeeming unitholder's broker confirming that the Gold Redemption Notice was received and determined to be complete.

If the Gold Redemption Notice is determined to have complied with the applicable requirements, the Transfer Agent and the Manager will determine as of 4:00 p.m., Toronto Time, on the Monthly Redemption Date the amount of Kilogram Bars and the amount of cash that will be delivered to the redeeming unitholder. Also, if the Units being redeemed are certificated on such Monthly Redemption Date, the redeeming unitholder's broker will deliver the certificate(s) evidencing the redeeming Units to CDS or DTC or the Transfer Agent, as applicable, for cancellation.

The Transfer Agent and the Manager will determine the amount of Kilogram Bars the redeeming unitholder will receive and the amount of cash necessary to cover the expenses associated with the redemption and delivery that must be paid by the redeeming unitholder. Once such determination has been made, the Transfer Agent will inform the broker through which the unitholder has delivered its Gold Redemption Notice of the amount of Kilogram Bars and cash that the redeeming unitholder will receive upon the redemption of the unitholder's Units.

Based on instructions from the Manager, the Gold Custodian will release the requisite amount of Kilogram Bars from its custody to the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator. As directed by the Manager, any cash to be received by a redeeming unitholder in connection with a redemption of Units for Kilogram Bars will be delivered or caused to be delivered by the Manager to the unitholder's brokerage account within 10 business days after the applicable Monthly Redemption Date.

#### Transporting the Gold from a Custodian to the Redeeming Unitholder

A unitholder redeeming Units for Kilogram Bars will receive the Kilogram Bars from a Gold Custodian. Kilogram Bars received by a unitholder as a result of a redemption of Units will be delivered by armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator

pursuant to delivery instructions provided by the unitholder to the Manager. The armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator will be engaged by or on behalf of the redeeming unitholder. Such Kilogram Bars can be delivered (i) To an account established by the unitholder at an institution located in North America recognized as a depository for physical precious metals; (ii) in the United States, to any physical address (subject to approval by the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator); (iii) in Canada, to any business address (subject to approval by the armored transportation service carrier); and (iv) outside of the United States and Canada, to any address approved by the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator.

Costs associated with the redemption of Units and the delivery of Kilogram Bars will be borne by the redeeming unitholder, as set forth in the Registration Statement.

The armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator will receive Kilogram Bars in connection with a redemption of Units approximately 10 business days after the Monthly Redemption Date. Once the Kilogram Bars representing the redeemed Units has been placed with the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator, the Gold Custodian will no longer bear the risk of loss of, and damage to, such Kilogram Bars. In the event of a loss after the Kilogram Bars have been placed with the armored transportation service carrier or such other transportation provider as deemed appropriate by the logistical coordinator, the unitholder will not have recourse against the Trust, the Manager, the Advisor, or Gold Custodian. However, Kilogram Bars being delivered to a redeeming unitholder will be insured until the client signs accepting delivery of the Kilogram Bars.

#### Redemption for Cash

All redemptions for cash shall be determined using U.S. dollars. Unitholders whose Units are redeemed for cash will be entitled to receive a redemption price per Unit equal to 95%

of the lesser of (i) the volume-weighted average trading price of the Units traded on the NYSE Arca or, if trading has been suspended on the NYSE Arca, the trading price of the Units traded on the TSX, for the last five days on which the respective exchange is open for trading for the month in which the redemption request is processed and (ii) the NAV of the redeemed Units as of 4:00 p.m., Toronto Time, on the Monthly Redemption Date. Cash proceeds from the redemption of Units will be transferred to a redeeming Unitholder approximately three business days after the applicable Monthly Redemption Date.

#### Suspension of Redemptions

The Manager, on behalf of the Trust, may suspend the right or obligation of the Trust to redeem Units (whether for Kilogram Bars and/or cash) for the whole or any part of any period with the prior approval of securities regulatory authorities having jurisdiction, where required, for any period during which the Manager determines that conditions exist which render impractical the sale of assets of the Trust or which impair the ability for the Manager to determine the NAV or the redemption amount of Units.

In the event of any such suspension, the Manager will issue a press release announcing the suspension and will advise the Trustee. The suspension may apply to all requests for redemption received prior to the suspension, but as for which payment has not been made, as well as to all requests received while the suspension is in effect. All unitholders making such requests will be advised by the Manager of the suspension and that the redemption will be effected at a price determined on the first valuation date that the NAV per Unit is calculated following the termination of the suspension. All such unitholders will have, and will be advised that during such suspension of redemptions that they have, the right to withdraw their requests for redemption. The suspension will terminate in any event on the first business day on which the condition giving rise to the suspension has ceased to exist or when the Manager has determined that such condition no longer exists, provided that no other condition under which a suspension is authorized then exists, at which time the Manager will issue a press release announcing the termination of the suspension. Subject to applicable laws any declaration of suspension made by the Manager, on behalf of the Trust, will be conclusive.

Generally, a mutual fund, such as the Trust, that is a reporting issuer in

Canada only may suspend the right of security holders to request that the mutual fund redeem its securities without the approval of securities regulatory authorities for the whole or any part of a period during which normal trading is suspended on a stock exchange, options exchange or futures exchange within or outside Canada on which securities are listed and traded, or on which specified derivatives are traded, if those securities or specified derivatives represent more than 50 percent by value, or underlying market exposure, of the total assets of the mutual fund without allowance for liabilities and if those securities or specified derivatives are not traded on any other exchange that represents a reasonably practical alternative for the mutual fund. Given the intended portfolio assets of the Trust (which will consist primarily of gold, not exchange traded securities), the Trust likely will not avail itself of the foregoing and will need to seek the approval of the securities regulatory authority in each province and territory of Canada if it intends to suspend redemptions. The securities regulatory authorities will consider whether the proposed suspension is not contrary or prejudicial to the public interest.

If the approval of securities regulatory authorities is required to suspend redemptions, the Trust must apply to the Ontario Securities Commission, the securities regulatory authority for the jurisdiction in which the head office of the Trustee is located, for approval pursuant to Sections 5.7(2) and 5.7(3) of National Instrument 81-102—Mutual Funds and must concurrently file a copy of the application with the securities regulatory authority in each of the other Canadian jurisdictions in which the Units will be offered. The Trust may suspend redemptions only after the application is approved by the Ontario Securities Commission and has not been disallowed by any of the other relevant Canadian jurisdictions.

Other Canadian securities regulatory authorities which must be notified are as follows: British Columbia Securities Commission, Alberta Securities Commission, Saskatchewan Securities Commission, Manitoba Securities Commission, Autorite des marches financiers, New Brunswick Securities Commission, Nova Scotia Securities Commission, Securities Commission of Newfoundland and Labrador, Prince Edward Island Securities Office, Office of the Attorney General, Northwest Territories Securities Registry, Government of Nunavut Securities Registry and Registrar of Securities, Government of the Yukon Territory.

### Suspension of Calculation of Net Asset Value Per Unit

During any period in which the right of unitholders to request a redemption of their Units for Kilogram Bars and/or cash is suspended, the Manager, on behalf of the Trust, will direct the Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV. During any such period of suspension, the Trust will not issue or redeem any Units. In the event of any such suspension or termination thereof, the Manager will issue a press release announcing the suspension or the termination of such suspension, as the case may be.

### Secondary Market Trading

The Units may trade in the secondary market on the Exchange at prices that are lower or higher relative to their NAV. 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 COMEX, which is the U.S. exchange on which gold for physical delivery is traded and NYSE Arca. While the Units will trade on NYSE Arca until 4:00 p.m., Toronto time, liquidity in the global gold market will lessen after the close of the COMEX at 1:30 p.m., Eastern time. As a result, during this time, trading spreads, and the resulting premium or discount to the NAV may widen.

### Termination Events

According to the Registration Statement, the Trust does not have a fixed termination date but will be terminated and dissolved in the event any of the following occurs:

- (a) There are no outstanding Units;
- (b) the Trustee resigns or is removed and no successor trustee is appointed and approved by the Unitholders, if required;
- (c) the Trustee has been declared bankrupt or insolvent or has entered into a liquidation or winding-up, whether compulsory or voluntary (and not merely voluntary liquidation for the purposes of amalgamation or reconstruction);
- (d) the Trustee makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency; or
- (e) the assets of the Trustee have become subject to seizure or confiscation by any public or governmental authority.

In addition, the Trustee may, in its discretion, terminate the Trust, without unitholder approval, if, in the opinion of the Trustee, the value of net assets of the Trust have been reduced such that

it is no longer economically feasible to continue the Trust and/or it would be in the best interests of the unitholders to terminate the Trust, by giving each holder of Units at the time at least ninety (90) days notice.

In the event of the winding-up of the Trust, the rights of unitholders to require redemption of any or all of their Units will be suspended, and the Manager or, in the event of (c), (d) or (e) above, such other person appointed by the Trustee, the unitholders of the Trust or a court of competent jurisdiction, as the case may be, will make appropriate arrangements for converting the investments of the Trust into cash and the Trustee will proceed to wind-up the affairs of the Trust in such manner as seems to it to be appropriate. The assets of the Trust remaining after paying or providing for all obligations and liabilities of the Trust will be distributed among the unitholders registered as of 4:00 p.m., Toronto time, on the date on which the Trust is terminated in accordance with the Declaration of Trust. Distributions of net income and net taxable capital gains will, to the extent not inconsistent with the orderly realization of the assets of the Trust, continue to be made in accordance with the Declaration of Trust until the Trust has been wound up. Additional information relating to the Trust's termination is provided in the Registration Statement.

### Determining the NAV of the Trust

According to the Registration Statement, the NAV of the Trust will be determined daily as of 4:00 p.m., Toronto time, on each business day by the Trust's Valuation Agent. The value of the net assets of the Trust on any such day will be equal to the aggregate fair market value of the assets of the Trust as of such date, less an amount equal to the fair value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units) as of such date, after processing of all subscriptions and redemptions of Units as of such date. The Valuation Agent will calculate the NAV per Unit by dividing the value of the net assets of the Trust represented by the Units on that day by the total number of Units then outstanding on such day.

### Calculation of Net Asset Value

According to the Registration Statement, the Trustee shall or shall cause the Valuation Agent of the Trust to calculate the value of the net assets of the Trust. The value of the net assets of the Trust as of 4:00 p.m., Toronto Time, on each business day will be the amount obtained by deducting from the

aggregate fair market value of the assets of the Trust as of such time an amount equal to the fair value of the liabilities of the Trust (excluding all liabilities represented by outstanding Units) as of such time.

The NAV per Unit at any time shall be the quotient obtained by dividing the value of the net assets of the Trust at such time by the total number of Units then outstanding and adjusting the number to the nearest one hundredth of a cent. For the purpose of this calculation:

(a) Units subscribed for shall be deemed to be outstanding as of the business day after the day upon which payment in full for such Units shall have actually been received by the Manager; and

(b) Units which the Trust is required to redeem shall be deemed to be outstanding at 4:00 p.m., Toronto Time, on the valuation date as of which NAV is to be determined for the purpose of the redemption, and thereafter the Units shall be deemed to be no longer outstanding and the redemption price shall, until paid, be deemed to be a liability of the Trust.

The NAV will be determined in accordance with the following:

(a) The assets of the Trust will be deemed to include the following property:

(i) All Kilogram Bars owned by or contracted for the Trust;

(ii) all cash on hand or on deposit, including any interest accrued thereon adjusted for accruals deriving from trades executed but not yet settled;

(iii) all bills, notes and accounts receivable;

(iv) all interest accrued on any interest-bearing securities owned by the Trust other than interest, the payment of which is in default;

(v) prepaid expenses; and

(vi) such other cash equivalent instruments, as may be held by the Trust from time to time.

(b) The market value of the portfolio assets of the Trust will be determined as follows:

(i) The value of Kilogram Bars will be based on the per ounce price as indicated by the daily 3 p.m. London Fix<sup>16</sup> (15:00 Greenwich Mean Time) and, if the 3 p.m. London Fix is not available, such Kilogram Bars will be valued at a price provided by another pricing service as determined by the

<sup>16</sup>Twice daily during London trading hours there is a fix which provides reference gold prices for that day's trading. Many long-term contracts will be priced on the basis of either the morning (AM) or afternoon (PM) London Fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations.

Manager, in consultation with the Valuation Agent;

(ii) the value of any cash on hand or on deposit, bills, demand notes, accounts receivable, prepaid expenses, and interest accrued and not yet received, will be deemed to be the full amount thereof unless the Manager determines that any such deposit, bill, demand note, account receivable, prepaid expense or interest is not worth the full amount thereof, in which event the value thereof will be deemed to be such value as the Manager determines to be the fair value thereof;

(iii) short-term investments including notes and money market instruments will be valued at cost plus accrued interest;

(iv) the value of any security or other property for which no price quotations are available or, in the opinion of the Manager (which may delegate such responsibility to the Valuation Agent under the valuation services agreement), to which the above valuation principles cannot or should not be applied, will be the fair value thereof determined from time to time in such manner as the Manager (or the Valuation Agent, as the case may be) will from time to time in time provide; and

(v) the value of all assets and liabilities of the Trust will be valued in U.S. dollars and the value of assets and liabilities of the Trust in terms of a currency other than U.S. dollars will be converted to U.S. dollars by applying the rate of exchange obtained from the best available sources to the Valuation Agent as agreed upon by the Manager including, but not limited to, the Trustee or any of its affiliates.

For the purposes of determining the fair market value of any security or property pursuant to paragraph (b) above to which, in the opinion of the Trust's Valuation Agent in consultation with the Manager, the above valuation principles cannot be applied (because no price or yield equivalent quotations are available as provided above, or the current pricing option is not appropriate, or for any other reason), will be the fair value as determined in such manner by the Trust's Valuation Agent in consultation with the Manager and generally adopted by the marketplace from time to time. For greater certainty, fair valuing an investment comprising the property of the Trust may be appropriate if: (i) Market quotations do not accurately reflect the fair value of an investment; (ii) an investment's value has been materially affected by events occurring after the close of the exchange or market on which the investment is principally traded; (iii) a trading halt closes an

exchange or market early; or (iv) other events result in an exchange or market delaying its normal close.

For the purposes of determining the value of Kilogram Bars, the Manager will rely solely on weights provided to the Manager by third parties and confirmed by the applicable Gold Custodian. The Manager or the Trust's Valuation Agent will not be required to make any investigation or inquiry as to the accuracy or validity of such weights.

The Exchange will obtain a representation from the issuer of the Units that the NAV will be calculated on each business day and will be made available to all market participants at the same time.

#### Intraday Indicative Value

The Trust Web site will provide an intraday indicative value ("IIV") per Unit, as calculated by a third party financial data provider during the Exchange's core trading session (9:30 a.m. to 4:00 p.m., Eastern time; hereafter "Core Trading Session").<sup>17</sup> The IIV will be calculated based on a price of gold derived from updated bids and offers indicative of the spot price of gold.

#### Availability of Information

The Web site for the Trust, which the Trust will launch upon the closing of the initial public offering, will contain the following information, on a per Unit basis, for the Trust:

(a) The midpoint of the bid-ask price at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and

(b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

(c) the Trust's prospectus, as well as the two most recent reports to stockholders.

The Trust Web site also will provide the last sale price of the Units as traded in the U.S. market, as well as a breakdown of the holdings of the Trust, including the assets described above under "Calculation of Net Asset Value".

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape quotation and last sale information for the Units.

<sup>17</sup> The IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which will be calculated once a day

In addition, there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. The IIV relating to the Units will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>18</sup>

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers.

Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at [www.bullioninternational.com](http://www.bullioninternational.com).

The Trust's daily (or as determined by the Manager in accordance with the Trust Agreement) NAV will be posted on the Trust's Web site as soon as practicable. The Exchange will provide on its Web site ([www.nyx.com](http://www.nyx.com)) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape last sale, quotation information, trading volume, closing prices and NAV for the Units from the previous day.

#### Criteria for Initial and Continued Listing

The Trust and the Units will be subject to the criteria in NYSE Arca

<sup>18</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

Equities Rule 8.201(e) for initial and continued listing of the Units.

The Exchange will require a minimum of 100,000 Units to be outstanding at the start of trading. The minimum number of Units required to be outstanding is comparable to requirements that have been applied to previously listed shares of the ETFs Gold Trust.<sup>19</sup> The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity.

#### Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, 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 order entry is \$0.0001.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading on the Exchange in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>20</sup> The Exchange may halt trading of the Units on the Exchange in the event trading in the Units is halted on TSX. The Exchange will halt trading if the Manager, on behalf of the Trust, directs the Trust's Valuation Agent to suspend the calculation of the value of the net assets of the Trust and the NAV. 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.

#### Surveillance

The Exchange represents that trading in the Units will be subject to the existing trading 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.<sup>21</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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.

NYSE Arca Equities Rule 8.201 sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in the Units. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange and FINRA, on behalf of the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives in a manner prescribed by the Exchange. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Units 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 Units).

FINRA, on behalf of the Exchange, will communicate as needed regarding

<sup>21</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

trading in the Units, gold futures contracts, and options on gold futures with other markets that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Units, gold futures contracts, and options on gold futures contracts from such markets, including the COMEX. In addition, the Exchange may obtain information regarding trading in the Units, gold futures contracts, and options on gold futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>22</sup> Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange and FINRA are able to request and obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (4) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (5) trading information. For

<sup>22</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Investment Industry Regulatory Organization of Canada is a member of ISG. The Chicago Mercantile Exchange ("CME"), and the New York Mercantile Exchange ("NYMEX") are members of ISG, and the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX.

<sup>19</sup> See note 6, *supra*.

<sup>20</sup> See NYSE Arca Equities Rule 7.12.

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 Units directly from the Trust will receive a prospectus. ETP Holders purchasing Units from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>23</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 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 Equities Rule 8.201. 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. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Units, gold futures contracts, and options on gold futures with other markets that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Units, gold futures contracts, and options on gold futures contracts from such markets, including the COMEX. In addition, the Exchange may obtain information regarding trading in the

Units, gold futures contracts, and options on gold futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. 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 gold price and gold market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The Trust's Web site will provide an IIV per share for the Units, as calculated by a third party financial data provider during the Exchange's Core Trading Session. The Trust's Web site will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. The Exchange will provide on its Web site a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

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 Units 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 gold pricing and gold futures information.

### *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 notes that the proposed rule change will facilitate the listing and trading of an additional exchange-traded product that holds physical gold and that will enhance competition among

market participants, to the benefit of investors and the marketplace.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-61 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2013-61. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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

<sup>23</sup> 15 U.S.C. 78f(b)(5).



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 Web site 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 NYSE's principal office. 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-2013-61, and should be submitted on or before July 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-15627 Filed 6-28-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69851; File No. SR-NYSE-2013-42]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in which Its Indirect Parent, NYSE Euronext, Will Become a Wholly Owned Subsidiary of IntercontinentalExchange Group, Inc.

June 25, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act" or the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 14, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "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

#### A. Overview of the Proposed Merger

The Exchange, a New York limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the "Proposed Rule Change") to the U.S. Securities and Exchange Commission in connection with the proposed business combination (the "Merger") of NYSE Euronext ("NYSE Euronext") and IntercontinentalExchange, Inc. ("ICE"), both Delaware corporations. NYSE Euronext has entered into an Agreement and Plan of Merger, dated as of December 20, 2012, as amended and restated as of March 19, 2013, by and among NYSE Euronext, ICE, IntercontinentalExchange Group, Inc. ("ICE Group"), Braves Merger Sub, Inc. ("ICE Merger Sub") and Baseball Merger Sub, LLC ("NYSE Euronext Merger Sub") (as it may be further amended from time to time, the "Merger Agreement"), whereby NYSE Euronext and ICE would each become subsidiaries of ICE Group.

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation ("NYSE Group"), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the "NYSE Exchanges")—the Exchange, NYSE Arca, Inc. ("NYSE Arca") and NYSE MKT LLC ("NYSE MKT")—and (2) 100% of the equity interest of NYSE Market (DE), Inc. ("NYSE Market"), NYSE Regulation, Inc. ("NYSE Regulation"), NYSE Arca L.L.C., NYSE Arca Equities, Inc. ("NYSE Arca Equities") and NYSE Amex Options LLC ("NYSE Amex Options") (the NYSE Exchanges, together with (x) NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities and NYSE Amex Options and (y) any similar U.S. regulated entity acquired, owned or created after the date hereof, the "U.S. Regulated Subsidiaries" and each, a "U.S. Regulated Subsidiary"). Each of NYSE Arca and NYSE MKT will be separately filing a proposed rule change in connection with the Merger that will be substantially the same as the Proposed Rule Change.

ICE is a leading operator of regulated exchanges and clearing houses serving the risk management needs of global markets for agricultural, credit, currency, emissions, energy and equity index products. ICE directly and indirectly owns ICE Futures Europe, ICE

Futures U.S., Inc., ICE Futures Canada, Inc., ICE U.S. OTC Commodity Markets, LLC, and five central counterparty clearing houses, including ICE Clear Europe Limited and ICE Clear Credit LLC, each of which is registered as a clearing agency under Section 17A of the Exchange Act,<sup>4</sup> ICE Clear U.S., Inc., ICE Clear Canada, Inc., and The Clearing Corporation, and owns 100% of the equity in Creditex Group Inc., which in turn indirectly owns Creditex Securities Corporation. Neither ICE nor any company owned by it directly or indirectly, including, but not limited to, those referenced in this paragraph, is a registered national securities exchange or a member of any U.S. Regulated Subsidiary.

ICE's common stock is listed on the Exchange under the symbol "ICE," and, following the completion of the Merger, ICE Group common stock is expected to be listed for trading on the Exchange under the same symbol.

#### B. Summary of Proposed Rule Change

The Exchange is proposing that, pursuant to the Merger, the successor to NYSE Euronext, the Exchange's indirect parent, will be a wholly owned subsidiary of ICE Group. ICE Group is currently a wholly owned subsidiary of ICE. ICE Group in turn has two wholly owned subsidiaries, ICE Merger Sub, a Delaware corporation, and NYSE Euronext Merger Sub, a Delaware limited liability company. To effect this transaction, (A) ICE Merger Sub will be merged with and into ICE (the "ICE Merger"), with ICE as the surviving corporation and a wholly owned subsidiary of ICE Group, and each share of ICE common stock owned by an ICE stockholder (other than ICE or ICE Merger Sub) will be converted into the right to receive one share of ICE Group common stock, and (B) immediately following the ICE Merger, NYSE Euronext shall be merged with and into NYSE Euronext Merger Sub, with NYSE Euronext Merger Sub as the surviving company and a wholly owned subsidiary of ICE Group (the "NYSE Euronext Merger" and, together with the ICE Merger, the "Merger"). Each issued and outstanding share of NYSE Euronext common stock will be converted into the right to receive the "standard election amount" of 0.1703 of a share of ICE Group common stock and \$11.27 in cash, other than certain shares held by NYSE Euronext, ICE and their respective affiliates. Alternatively, NYSE Euronext stockholders will have the right to make either a cash election to receive \$33.12 in cash, or a stock

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<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> 15 U.S.C. 78qA [sic].