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Dated: May 9, 2012.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66930; File No. SR-NYSEArca-2012-18]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the APMEX Physical-1 oz. Gold Redeemable Trust Pursuant to NYSE Arca Equities Rule 8.201

May 7, 2012.

#### I. Introduction

On March 5, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade Units ("Units") of the APMEX Physical-1 oz. Gold Redeemable Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on March 26, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to list and trade Units<sup>4</sup> under NYSE Arca Equities Rule 8.201. APMEX Precious Metals Management Services, Inc. is the manager of the Trust ("Manager").<sup>5</sup> Computershare Trust Company of Canada is the trustee of the Trust ("Trustee"). RBC Dexia Investor

Services ("RBC Dexia")<sup>6</sup> is the custodian of the Trust ("Custodian")<sup>7</sup> and the valuation agent of the Trust ("Valuation Agent").

The Trust will issue Units in an initial public offering.<sup>8</sup> The Trust may not issue additional Units following the completion of the initial public offering except under certain conditions. NYSE Arca will require that a minimum of 1,000,000 Units be outstanding at the start of trading.<sup>9</sup> NYSE Arca represents that the Units satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing and trading on the Exchange.<sup>10</sup>

The Trust's investment objective is to invest and hold substantially all of its assets in 1 oz. gold coins. The Trust will hold 1 oz. American Gold Eagle bullion coins and 1 oz. Canadian Gold Maple Leaf bullion coins, and is permitted to purchase 1 oz. gold bullion bars and rounds. The Trust intends to hold highly liquid investments (consisting of short-term certificates of deposit or U.S. Government securities) or cash in an amount equal to approximately three percent of its total net assets generally to pay expenses and cash redemptions.

The Units will be redeemable weekly at the option of the holder for 1 oz. gold coins or for cash subject to certain conditions. Generally, units redeemed for 1 oz. gold coins will be entitled to receive a redemption price equal to 100% of the aggregate net asset value ("NAV") of the redeemed Units determined at 4 p.m., Eastern time, on the Thursday on which NYSE Arca and/or the Toronto Stock Exchange ("TSX") is open for trading for the week in respect of which the redemption request is processed, or the weekly redemption date and time, less the redemption

expenses, or the gold redemption amount. Redemption requests for 1 oz. gold coins must be for a minimum redemption amount of at least \$10,000.

Units will be redeemable on a monthly basis for cash. Units redeemed for cash will receive a redemption price equal to 95% of the lesser of (i) the volume-weighted average trading price of the Units traded on NYSE Arca or, if trading has been suspended on 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 during the month in which the redemption request is processed; or (ii) the NAV of the redeemed Units as of 4 p.m., Eastern time, on the last day of the month on which NYSE Arca is open for trading during the month in which the redemption request is processed (in each case, less any applicable taxes). The Trust will retain the remaining 5% of the value of the Units.

Additional information can be found in the Notice and in the Registration Statement regarding: the Trust; the Units; the Trust's investment objectives, strategies, policies, and restrictions; fees and expenses; creation and redemption of Units; the gold bullion market and the 1 oz. gold coins; availability of information; trading rules and halts; and surveillance procedures.<sup>11</sup>

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>12</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments 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.

In addition, the Commission finds that the proposal to list and trade Units

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

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

<sup>3</sup> Securities Exchange Act Release No. 66627 (March 20, 2012), 77 FR 17539 ("Notice").

<sup>4</sup> Each Unit will represent an equal, undivided interest in the net assets of the Trust attributable to the Units.

<sup>5</sup> The Manager is a Delaware corporation and is a wholly owned subsidiary of Apmex, Inc. (formerly known as American Precious Metals Exchange, Inc.). The Manager is responsible for the day-to-day activities and administration of the Trust. Additional details regarding the Trust are set forth in the Registration Statement for the Trust on Form F-1, filed with the Commission on December 23, 2011 (No. 333-178745) (as amended, "Registration Statement").

<sup>6</sup> RBC Dexia is affiliated with a broker-dealer. RBC Dexia has represented to NYSE Arca that it has put in place and will maintain the appropriate information barriers and controls between itself and the broker-dealer affiliate so that the broker-dealer affiliate will not have access to information concerning the composition and/or changes to the Trust's holdings that are not available on the Trust's Web site. See Notice, 77 FR at 17540, n.12.

<sup>7</sup> The Bank of Nova Scotia, a sub-custodian of RBC Dexia, will act as gold custodian for the 1 oz. gold coins that the Trust owns. See *id.*

<sup>8</sup> To purchase all of the 1 oz. gold coins, the Manager will negotiate on behalf of the Trust for multiple transactions with certain authorized distributors; all of the distributors are independent of the Manager and any affiliate of the parent company. See Notice, 77 FR at 17543. The Manager will not buy and sell 1 oz. gold coins for the Trust through its parent company or its affiliates. See *id.*

<sup>9</sup> See email from Tim Malinowski, Senior Director, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Brian J. Baltz, Attorney-Advisor, Commission, dated April 26, 2012.

<sup>10</sup> With respect to application of Rule 10A-3 under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7). See Notice, 77 FR at 17540, n.16.

<sup>11</sup> See Notice and the Registration Statement, *supra* notes 3 and 5, respectively.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 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).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

on NYSE Arca is consistent with Section 11(a)(1)(C)(iii) of the Act,<sup>15</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Units will be available via the Consolidated Tape Association. The Trust's Web site, which the Trust will launch upon the closing of the initial public offering, will provide an intraday indicative value ("IIV") per share for the Units, as calculated by a third-party financial data provider during NYSE Arca's Core Trading Session (9:30 a.m. to 4 p.m. Eastern time).<sup>16</sup> In addition, the Trust's Web site 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. The Trust's Web site will also provide the Trust's prospectus, the two most recent reports to stockholders, the last sale price of the Units as traded in the U.S. market, and a breakdown of the holdings of the Trust by coin type. In addition, NYSE Arca will make available over the Consolidated Tape quotation information, trading volume, closing prices, and NAV for the Units from the previous day.

The Commission believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. As discussed above, the Trust will publish on its Web site: A breakdown of the holdings of the Trust by coin type, the NAV of the Trust, the IIV of the Shares, the Trust's prospectus, and the last sale

price of the Units as traded in the U.S. market. The Commission notes that the Exchange will obtain a representation from the Trust prior to the commencement of trading of the Units that the NAV will be calculated daily and made available to all market participants at the same time.<sup>17</sup> Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants. Additionally, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>18</sup> Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12-month period following commencement of trading: (1) The value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis.<sup>19</sup> NYSE Arca will halt trading in the Units on the Exchange if trading in the Units is halted on TSX and in the event 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.<sup>20</sup> NYSE Arca Equities Rule 8.201(e)(2) also provides that NYSE Arca may seek to delist the Units in the event the value of the underlying commodity or the IIV is no longer calculated or available as required.

In support of this proposal, NYSE Arca has made representations, including:

<sup>17</sup> See email from Tim Malinowski, Senior Director, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Brian J. Baltz, Attorney-Advisor, Commission, dated April 26, 2012.

<sup>18</sup> See *id.*

<sup>19</sup> More generally, NYSE Arca may halt trading on the Exchange in the Units because of market conditions or for reasons that, in the Exchange's view, make trading in the Units inadvisable, including: (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. Additionally, trading in the Units will be subject to trading halts caused by extraordinary market volatility pursuant to NYSE Arca's "circuit breaker" rule. See NYSE Arca Equities Rule 7.12.

<sup>20</sup> See Notice, *supra* note 3, 77 FR at 17546.

(1) The Units will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) NYSE Arca's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of NYSE Arca rules and applicable federal securities laws.<sup>21</sup>

(3) 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: (a) The procedures for purchases and redemptions of Units; (b) 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; (c) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (d) 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 (e) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>22</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the

<sup>21</sup> To support this, NYSE Arca states that, pursuant to NYSE Arca Equities Rule 8.201(g), it is able to obtain information regarding trading in the Units, physical gold, gold futures contracts, options on gold futures, or any other gold derivative from ETP Holders acting as registered Market Makers, in connection with their proprietary or customer trades. More generally, NYSE Arca states that it has regulatory jurisdiction over its ETP Holders and their associated persons, which includes any person or entity controlling an ETP Holder. With respect to a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange states that it 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. Further, NYSE Arca states that it may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of the ISG, including the COMEX. The Exchange also states that The Investment Industry Regulatory Organization of Canada is a member of ISG.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

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

<sup>16</sup> The IIV will be calculated by (i) subtracting the closing spot price of gold for the prior business day from the current applicable spot price of gold (the "Spread"); (ii) multiplying the Spread by the aggregate number of the Trust's 1 oz. gold coins for the prior business day (the "Adjustment"); (iii) dividing the Adjustment by the aggregate number of units of the Trust outstanding for the prior business day (the "Per-Unit Adjustment"); and (iv) adding the Per-Unit Adjustment to the NAV per Unit of the Trust for the prior business day.

proposed rule change (SR-NYSEArca-2012-18) is approved.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66935; File No. SR-Phlx-2012-58]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Pricing Schedule Regarding the Co-Location Super High Density Cabinet Monthly Fee

May 7, 2012.

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 April 27, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 modify Phlx's Pricing Schedule at Section X(a), entitled "Co-Location Services" regarding the Exchange's co-location super high-density cabinet monthly fee. The Exchange will implement the proposed change on May 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to modify Phlx's Pricing Schedule at Section X(a) to reduce the co-location super high-density cabinet on-going monthly fee from \$15,000 per month to \$13,000 per month. The installation fee for the super high-density cabinet will remain the same.

Co-location customers have the option of obtaining several cabinet sizes and power densities. The co-located customer may obtain a half cabinet, a low density cabinet, a medium density cabinet, a medium-high density cabinet and a high density cabinet.<sup>3</sup> Each cabinet may vary in size and maximum power capacity. The fees related to the cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment. The co-location customer may obtain more power by choosing a combination of lower power density cabinets.

The Exchange previously filed an immediately effective filing with the Commission to offer another choice of cabinet, specifically a larger cabinet (30" W x 48" D x 96" H) with higher power ("Super High Density Cabinet") as an alternative to combining several units for more power (>10kW<=17.3kW).<sup>4</sup> Currently, the installation fee for the Super High Density Cabinet is \$7,000; and the on-going monthly fee is \$15,000. At this time, the Exchange proposes to reduce the current on-going monthly fee to \$13,000 to bring the fee in line with Exchange fees for similar power levels using multiple cabinets.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) of

the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes the proposed reduction of the on-going monthly fee is reasonable because it is in line with Exchange fees for similar power levels using multiple cabinets. Also, the Exchange believes the reduction to the on-going monthly fee is equitable and not unfairly discriminatory because the super high-density power option is entirely voluntary and available to all members; therefore, the reduction is available to all members that select this power option. Also, the Exchange believes the reduction in fees is equitable and not unfairly discriminatory because the reduction diminishes the disparity in the Exchange's fees for various co-location power options. This results in a more competitive cost structure for the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other trading venues. These competitive forces help to ensure that the Exchange's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their operating venue.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange is reducing fees through this proposed Pricing Schedule change, thereby enhancing the competitiveness of its co-location offering.

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

Written comments were neither solicited nor received.

<sup>3</sup> See Exchange Rule 7034(a).

<sup>4</sup> See Securities Exchange Act Release No. 66429 (February 21, 2012), 77 FR 11611 (February 27, 2012) (SR-Phlx-2012-20).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>24</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.