WORLD GOLD COUNCIL

June 10, 2019

VIA E-MAIL (rule-comments@sec.gov)
Ms. Vanessa Countryman
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Securities Offering Reform for Closed-End Investment Companies
File No. S7-03-19

Dear Ms. Countryman:

We appreciate the opportunity to respond to the request of the U.S. Securities and Exchange Commission (the "**Commission**") for comment on the above-captioned proposed rule release (the "**Proposing Release**") regarding, among other things, proposed amendments to Rule 24f-2 under the Investment Company Act of 1940 (the "**Investment Company Act**"). These proposed amendments would allow interval funds to pay registration fees on an annual net basis. Under the Investment Company Act, many registered investment companies, such as mutual funds and exchange traded funds, register an indefinite amount of securities upon their registration statements' effectiveness, but pay registration fees based on their net issuance of shares within 90 days after the fund's fiscal year-end. In response to the Commission's request for comment on whether to permit additional categories of issuers to pay registration fees on an annual net basis,[1] we urge the Commission to extend this same opportunity to other pooled investment vehicles, such as commodity-backed exchange traded products, that are not registered under the Investment Company Act ("**Non-1940 Act ETPs**"), so they may also pay registration fees on an annual net basis like exchange traded funds registered under the Investment Company Act ("**ETFs**").

I. About Our Funds

We have launched three Non-1940 Act ETPs that offer investors the ability to invest in the gold market without having to acquire or hold physical gold: SPDR® Gold Trust ("**GLD**"), SPDR® Long Dollar Gold Trust ("**GLDW**"), and SPDR® Gold MiniShares℠ Trust ("**GLDM**"). Each of our Non-1940 Act ETPs holds gold and regularly issues and redeems shares in baskets of set amounts in exchange for deposits of gold and distributes gold in connection with redemptions of its shares. Shares of each of our Non-1940 Act ETPs are listed on the NYSE Arca. GLD began trading in 2003 and is a well-known seasoned issuer ("**WKSI**") under Rule 405 of the Securities

[1] See Securities Offering Reform for Closed-End Investment Companies, Release No. 33-10619 (Mar. 20, 2019) (the "**Proposing Release**"), at 65.

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Act of 1933, as amended (the "**Securities Act**"). GLDW and GLDM are each series of the World Gold Trust, a Delaware statutory trust, which is considered the registrant for purposes of the Securities Act and the Securities Exchange Act of 1934, as amended. GLDW began trading in 2017 and GLDM in 2018. The World Gold Trust qualifies as a smaller reporting company, emerging growth company, and non-accelerated filer.

II. The Reasons for Amending Rule 24f-2 Also Apply to Non-1940 Act ETPs

In 2015, the Commission acknowledged that "[f]or almost all ETPs, the issuance and redemption of ETP [s]ecurities operates in essentially the same manner."[2] In fact, we believe the utility of an annual net issuance system for Non-1940 Act ETPs is even greater than for interval funds, which do not have to continuously offer their securities and, like mutual funds, can stop offering at any time. Conversely, Non-1940 Act ETPs, just like ETFs registered under the Investment Company Act, are essentially required to issue shares on demand. Further, redemptions for Non-1940 Act ETPs can occur at any time for any reason, similar to ETFs and unlike interval funds, which have a predictable redemption rhythm.

According to the Proposing Release, the amendments to Rule 24f-2 would yield similar operational benefits to interval funds that open-end funds enjoy today.[3] Parity with interval and open-end funds (including ETFs) would yield similar benefits to Non-1940 Act ETPs for the same reasons as they would to interval funds.

The Proposing Release highlights two characteristics of interval funds that support amending Rule 24f-2: routine repurchase of shares at net asset value and the possibility of inadvertently selling more shares than the fund had registered. Both characteristics apply to Non-1940 Act ETPs as well.

The Commission stated it believes the amendments are "appropriate in light of interval funds' operations," in particular because such funds "routinely repurchase shares at net asset value and are required to periodically offer to repurchase their shares."[4] Similarly, the ability to routinely repurchase shares at net asset value is a key characteristic of Non-1940 Act ETPs, as discussed in

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[2] Request for Comment on Exchange-Traded Products, Release No. 34-75165 (Jun. 12, 2015) (the "**2015 Request for Comment**"), at 10.
[3] <u>See</u> <u>id.</u>, at 64.
[4] Proposing Release, at 63-64.

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a robust body of no-action letters from the Division of Trading and Markets (the "**Division**").[5] The Division's staff granted relief from Rules 101 and 102 of Regulation M on a class-wide basis to certain commodity-based, exchange traded investment vehicles (many of which are Non-1940 Act ETPs) based in significant part on the fact that such funds continuously issue and redeem shares at net asset value.[6] In fact, the Division's staff eventually stated that it would no longer respond to requests for relief from Rules 101 and 102 relating to other commodity-based, exchange traded investment vehicles unless they present novel or unusual issues.[7] As such, we believe that Non-1940 Act ETPs' reliance on the foregoing no-action letter precedent, which requires them to redeem shares at net asset value regularly, is analogous to the fundamental policy that interval funds are required to have regarding repurchase offers.[8] We believe the staff's position epitomizes the fact that Non-1940 Act ETPs, like interval funds, must be able to routinely repurchase shares at net asset value.

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5 See also 2015 Request for Comment, at 17 (discussing that because most ETPs are continually creating and distributing new securities, absent relief from the Division's staff, the purchase of ETP securities by an authorized participant or by the issuer in the redemption process, would violate Rules 101 and 102 of Regulation M).

6 See letters from Josephine J. Tao, Esq., Assistant Director, Division of Trading and Markets, to Eric Simanek, Sullivan & Worcester LLP, dated August 8, 2018 (ETF Managers Capital LLC and ETF Managers Commodity Trust I); James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to David Yeres, Esq., Clifford Chance US LLP, dated Apr. 27, 2006 (iShares Silver Trust); James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP, dated Dec. 5, 2005 (Euro Currency Trust); Josephine J. Tao, Esq., Assistant Director, Division of Trading and Markets, to Robert Murray, Esq., Baker Botts LLP, dated November 10, 2008 (AirShares EU Carbon Allowances Fund); and Racquel L. Russell, Branch Chief, Office of Trading Practices and Processing, Division of Market Regulation, to George T. Simon, Foley & Lardner LLP, dated June 21, 2006 (re: transactions in shares of CurrencyShares British Pound Sterling Trust, CurrencyShares Australian Dollar Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust; Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust) (the "**Rydex Letter**"). See also Frequently Asked Questions About Regulation M, Division of Market Regulation: Staff Legal Bulletin No. 9 (Oct. 27, 1999).

7 See Rydex Letter, supra note 6.

8 Cf. Proposing Release, at note 159. In this regard, we note that the fundamental policy required of interval funds can be changed by shareholder vote, whereas Non-1940 Act ETPs cannot change their ability to redeem shares at net asset value upon request if they are to rely on the no-action letter precedent discussed above. In fact, Non-1940 Act ETPs cannot operate as ETPs without the ongoing ability to redeem because such ability is necessary to the arbitrage mechanism available to authorized participants, which in turn keeps the market price of the ETPs' securities so close to the net asset value of the ETP. See also NYSE ARCA Rule 8.201-E(c)(1) ("The term 'Commodity-Based Trust Shares' means a security (a) that is issued by a trust ('Trust') that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.").

The Commission also stated that the amendments to Rule 24f-2 "would avoid the possibility that an interval fund would inadvertently sell more shares than it had registered."[9] A number of Non-1940 Act ETPs have encountered this problem when demand for their shares surged. Under the current framework, the lack of predictability of demand for shares results in Non-1940 Act ETPs having to issue and sell shares on short notice, which may leave such funds without enough shares to satisfy demand. If a Non-1940 Act ETP does not have sufficient shares remaining under its existing registration statement filed under the Securities Act to fulfill the sudden demand, then that fund must file a new registration statement to register the offer and sale of additional shares. For non-WKSIs, filing a new registration statement entails incurring significant costs and working through the Division of Corporation Finance's filing review process.[10]

Requiring Non-1940 Act ETPs to file registration statements to issue additional shares introduces unnecessary friction into the issuance and trading of those ETPs while providing little to no benefit to investors. Preparing and filing a registration statement involves legal, audit, and printer costs and consumes significant non-monetary resources from all parties involved. The estimated average burden hours per registration statement on Form S-1 is 671 hours,[11] compared to just two hours of clerical time estimated as the *annual* internal hour burden per fund for filing a Form 24F-2.[12]

Even WKSIs can inadvertently sell more shares than they have registered. A leading publicly traded investment management firm's Non-1940 Act ETP issued and sold an aggregate of 24,900,000 shares in excess of the total shares registered under its existing registration statement between February and March 2016 due to a surge of investor demand.[13] The Non-1940 Act ETP suspended the issuance of new shares until it filed a new Form S-3ASR to cover additional shares, paying to register the additional shares upfront rather than relying on "pay as you go."[14] Consequently, the Non-1940 Act ETP was exposed to potential damages from buyers and penalties from regulators, while potentially being required to repurchase the nearly 25 million shares. This case shows that automatic shelf registration statements and eligibility for "pay as

[9] Id. at 64.
[10] Moreover, staff review can be delayed by unpredictable events affecting the SEC's operations, such as the 2018-2019 government shutdown.
[11] See Form S-1, available at: https://www.sec.gov/about/forms/forms-1.pdf.
[12] See Proposing Release, at 219.
[13] See, e.g., BlackRock Suspends Issuance of New iShares Gold Trust Shares, The Wall Street Journal (Mar. 4, 2016), available at: https://www.wsj.com/articles/blackrock-suspends-issuance-of-new-ishares-gold-trust-shares-1457107864.
[14] Presumably, the fund concluded it was unfeasible or inefficient to rely on "pay as you go" because it would require filing a prospectus supplement every day on which shares were issued or redeemed.

you go" fee payment do not prevent even the most sophisticated funds from inadvertently selling more shares than they have registered. Allowing Non-1940 Act ETPs to pay registration statement fees on an annual net basis like other ETPs would address the problem.

II. Parity for Non-1940 Act ETPs Would Benefit Investors

The possibility of Non-1940 Act ETPs running out of registered shares as described above is also harmful to investors for two principal reasons. First, investors may be deprived from accessing Non-1940 Act ETPs when they need it the most. Surges in demand for shares of Non-1940 Act ETPs are unpredictable because they typically occur during stock market downturns or other periods of volatility, which likewise cannot be predicted. With Non-1940 Act ETPs out of the market right when investors demand their shares, investors are precluded from viable investment options to offset significant volatility in the broader market. Under our recommended approach, Non-1940 Act ETPs could remain in the market regardless of how much the demand for their shares increases at any given time, thereby ensuring investors have viable options to withstand volatility, downturn, and other uncertainties.

Investors are also harmed when a Non-1940 Act ETP must suspend issuances until additional shares are registered. In such a scenario, the Non-1940 Act ETP stops being an open-end ETP that tracks the underlying asset closely and becomes in practice a closed-end fund that may not track the underlying asset accurately or at all. This risk is even more acute for Non-1940 Act ETPs as compared to closed-end interval funds because investors do not expect closed-end interval funds to track their underlying asset closely like they do with Non-1940 Act ETPs. Indeed, investors expect the Non-1940 Act ETPs in which they invest to track the underlying commodity closely in order to gain exposure to the commodity without having to acquire the underlying commodity itself. Consequently, parity for Non-1940 Act ETPs would benefit investors by ensuring that Non-1940 Act ETPs always have sufficient shares registered to issue and redeem shares as necessary to allow shares held by investors to track the underlying commodity closely.

III. Other Reasons for Extending Annual Net Basis Payment to Non-1940 Act ETPs

Permitting Non-1940 Act ETPs to calculate their registration fees on an annual net basis like ETFs would reduce costs for such funds. By paying a registration fee before the offer and sale of shares, Non-1940 Act ETPs incur such cost regardless of how many shares they may be required to issue and redeem in the future. Conversely, funds that enjoy annual net basis payment are required to pay fees covering only the net amount of shares issued and sold during their fiscal year. Demand for redeeming Non-1940 Act ETP shares—like demand for purchasing those shares—is unpredictable. As such, the current framework results in Non-1940 Act ETPs possibly incurring the significant costs associated with preparing and filing a registration statement with the SEC, as discussed above, and paying to register a significant amount of shares that they may not issue or sell at all, while being precluded from offsetting that cost with redemptions of outstanding shares. In this regard, we note that Non-1940 Act ETPs compete for investors' dollars with other funds that pay fees on an annual net basis, such as mutual funds and traditional ETFs. Therefore, our recommended proposal would bring operational costs for Non-1940 Act ETPs more in line with their competitors.

Moreover, we believe parity for Non-1940 Act ETPs would alleviate internal resources within the Division of Corporation Finance by not requiring the staff to review registration statements for ETPs whose operations have barely changed between one registration statement and the next. Rather, the staff could dedicate its resources to reviewing the disclosure of traditional operating companies.

IV. Conclusion

We welcome the Commission's consideration of extending annual net issuance registration fees to other entities. Parity for Non-1940 Act ETPs with mutual funds, ETFs and interval funds would yield similar operational benefits that interval funds will enjoy under the proposed amendments, given that the reasons for and the benefits of paying fees on an annual net basis apply to Non-1940 Act ETPs as well. Moreover, parity for Non-1940 Act ETPs would benefit investors by, among other things, ensuring access to Non-1940 Act ETPs shares regularly, preventing the inadvertent sale of more shares than are registered, and reducing the costs of registering shares for issuance and sale. Therefore, we urge the Commission to extend annual net basis payments of registration fees to Non-1940 Act ETPs.

We believe the Commission has authority under the Securities Act to adopt new rules or amendments permitting Non-1940 Act ETPs to pay registration fees on an annual net basis, particularly pursuant to Sections 19(a) and 28 thereof. Like the proposed change for interval funds, we believe our proposal falls under the "rules and regulations governing registration statements and prospectuses" contemplated in Section 19(a) and under the general exemptive authority of Section 28. The Commission's adoption "pay-as-you-go" for WKSIs in 2005 is an example of the Commission's use of its general exemptive authority under the Securities Act to exempt registrants from the requirement in Section 6(c) of the Securities Act that the registration statement be accompanied by the payment of the registration fee.

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We thank you for the opportunity to submit this comment letter. Please do not hesitate to contact the undersigned at [redacted] if you would like to discuss these matters further.

Very truly yours,

Joseph R. Cavatoni, President

cc: Jay Clayton, Chairman, U.S. Securities and Exchange Commission
Robert J. Jackson Jr., Commissioner, U.S. Securities and Exchange Commission
Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission
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