

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93720; File No. SR-NYSEArca-2021-73)

December 6, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the Franklin Responsibly Sourced Gold ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)

I. Introduction

On August 23, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Franklin Responsibly Sourced Gold ETF (“Fund”), a series of the Franklin Templeton Holdings Trust (“Trust”), under NYSE Arca Rule 8.201-E. The proposed rule change was published for comment in the Federal Register on September 8, 2021.³ On September 29, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ The Commission has received no comments on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 92840 (September 1, 2021), 86 FR 50385 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 93179, 86 FR 55033 (October 5, 2021). The Commission designated December 7, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

proposed rule change. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change⁷

The Exchange proposes to list and trade Shares of the Fund⁸ under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares⁹ on the Exchange. The Sponsor of the Fund is Franklin Holdings, LLC, a Delaware limited liability company. BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (“BNYM”), serves as the Fund’s administrator (“Administrator”) and transfer agent (the “Transfer Agent”). Delaware Trust Company, a subsidiary of the Corporation Service Company serves as trustee of the Trust (“Trustee”). J.P. Morgan Chase Bank, N.A., London branch is the custodian of the Fund’s Gold Bullion (as defined in the Registration Statement) (the “Gold

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Additional information regarding the Fund, the Trust and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in the Notice, supra note 3.

⁸ On April 22, 2021, the Trust submitted to the Commission on a confidential basis its draft registration statement on Form S-1 under the Securities Act of 1933 (“Registration Statement”). The Registration Statement is not yet effective, and the Exchange will not commence trading in Shares until the Registration Statement becomes effective.

⁹ 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. The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange and that the Trust relies on the exemption contained in Rule 10A-3(c)(7) regarding the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act.

Custodian”).¹⁰ BNYM will serve as the custodian of the Fund’s cash, if any (the “Cash Custodian”).

Exchange’s Description of the Operation of the Trust and Fund

The investment objective of the Fund will be for the Shares to reflect the performance of the price of gold bullion, less the expenses of the Fund’s operations. Shares of the Fund will represent units of fractional undivided beneficial interest in and ownership of the net assets of the Fund.

The Fund seeks to predominantly hold responsibly sourced gold bullion, defined as London Good Delivery gold bullion bars produced after January 2012 in accordance with London Bullion Market Association’s (“LBMA”) Responsible Gold Guidance (the “Guidance”). From time to time, in certain circumstances a portion of the Fund’s assets may include pre-2012 LBMA gold bullion (i.e., London Good Delivery gold bars produced prior to January 2012 which was not subject to the Guidance), including, for example, due to availability constraints.

¹⁰ The Gold Custodian is responsible for safekeeping the Fund’s gold pursuant to the Allocated Gold Account Agreement and the Unallocated Gold Account Agreement. The Gold Custodian will facilitate the transfer of gold in and out of the Fund through (i) the unallocated gold accounts it may maintain for each Authorized Participant (as defined below) or unallocated gold accounts that may be maintained for an Authorized Participant by another London Precious Metals Clearing Limited clearing bank, and (ii) the unallocated and allocated gold accounts it will maintain for the Fund. The Gold Custodian is responsible for allocating specific bars of gold to the Fund Allocated Account. As used herein, “Fund Allocated Account” means the allocated gold account of the Trust established with the Gold Custodian on behalf of the Fund by the Allocated Gold Account Agreement, to be used to hold gold that is transferred from the Fund Unallocated Account to be held by the Fund in allocated form; the “Fund Unallocated Account” means the unallocated gold account of the Trust established with the Gold Custodian on behalf of the Fund by the Unallocated Gold Account Agreement, to be used to facilitate the transfer of gold in and out of the Fund. The Gold Custodian will provide the Fund with regular reports detailing the gold transfers into and out of the Fund Unallocated Account and the Fund Allocated Account and identifying the gold bars held in the Fund Allocated Account.

In those circumstances, the Gold Custodian will seek to replace any pre-2012 LBMA gold bullion in the Fund Allocated Account with LBMA good delivery bars produced after January 2012 as soon as is practicable.

The Guidance is a mandatory governance framework for the responsible sourcing of gold applicable to LBMA approved good delivery refiners that is designed to promote the integrity of the global supply chain for the wholesale gold markets. Among other things, the Guidance includes measures to address environmental issues, avoid materials from conflict-afflicted areas, and combat money laundering, financing of terrorism, and human rights abuses, including child labor. The Guidance requires each LBMA good delivery refinery to undergo a comprehensive audit, at least annually, in order to confirm compliance with the LBMA's minimum requirements related to the responsible sourcing of gold and to publicly report results (audits are made available on the LBMA website). The audits, among other aspects, focus on the refiner's management systems and controls, and whether they are robust and appropriate to addressing the refiner's risk profile. Additional information regarding the LBMA's efforts to promote ethical sourcing of gold and a copy of the current version of the Guidance is available at <https://www.lbma.org.uk/responsible-sourcing>.

The Fund will not trade in gold futures, options, or swap contracts on any futures exchange or over-the-counter ("OTC"). The Fund will not hold or trade in commodity futures contracts, "commodity interests," or any other instruments regulated by the Commodity Exchange Act. The Fund's Cash Custodian may hold cash proceeds from gold sales and other cash received by the Fund.

The Shares are intended to constitute a simple and cost-efficient means of gaining investment benefits similar to those of holding gold bullion directly, by providing investors an

opportunity to participate in the responsibly sourced gold market through an investment in the Shares, instead of the traditional means of purchasing, storing and insuring gold.

Operation of the Gold Market

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

The OTC gold market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London, New York, and Zurich.

According to the Registration Statement, most OTC market trades are cleared through London. The LBMA plays an important role in setting OTC gold trading industry standards. A London Good Delivery Bar (as described below), which is acceptable for delivery in settlement of any OTC transaction, will be acceptable for delivery to the Fund, as discussed below.

The most significant gold futures exchange is COMEX, operated by Commodities Exchange, Inc., a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group (the “CME Group”). Other commodity exchanges include the Tokyo Commodity Exchange (“TOCOM”), the Multi Commodity Exchange of India (“MCX”), the Shanghai Futures Exchange, the Shanghai Gold Exchange, ICE Futures US (the “ICE”), and the Dubai Gold & Commodities Exchange. The CME Group and ICE are members of the Intermarket Surveillance Group (“ISG”).

The London Gold Bullion Market

According to the Registration Statement, most trading in physical gold is conducted on the OTC market and is predominantly cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its

regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the “London Good Delivery Lists,” which are the lists of LBMA accredited melters and assayers of gold. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

The term “loco London” refers to gold bars physically held in London that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of an LBMA acceptable refiner), and appearance set forth in the good delivery rules promulgated by the LBMA from time to time. Gold bars meeting these requirements are known as “London Good Delivery Bars.”

The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as 400-ounce bars, a London Good Delivery Bar must contain between 350 and 430 fine troy ounces of gold, with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will create and redeem Shares on a continuous basis in one or more Creation Units. A Creation Unit equals a block of 50,000 Shares. The Fund will issue Shares in Creation Units to certain authorized participants (“Authorized Participants”) on an ongoing basis. Each Authorized Participant must be a registered broker-dealer or other securities market participant such as a bank or other financial

institution which is not required to register as a broker-dealer to engage in securities transactions, a participant in The Depository Trust Company (“DTC”), and have entered into an agreement with the Administrator (the “Participant Agreement”), and has established an unallocated gold account with the Gold Custodian or another London Precious Metals Clearing Limited clearing bank.

Creation Units may be created or redeemed only by Authorized Participants. The creation and redemption of Creation Units is only made in exchange for the delivery to the Fund or the distribution by the Fund of the amount of gold represented by the Creation Units being created or redeemed. The amount of gold required to be delivered to the Fund in connection with any creation, or paid out upon redemption, is based on the combined NAV of the number of Shares included in the Creation Units being created or redeemed as determined on the day the order to create or redeem Creation Units is properly received and accepted. Orders must be placed by 3:59:59 p.m. New York time. The day on which the Administrator receives a valid purchase or redemption order is the order date. Creation Units may only be issued or redeemed on a day that the Exchange is open for regular trading.

According to the Registration Statement, the total deposit required to create each Creation Unit, or a Creation Unit Gold Delivery Amount, is an amount of gold and cash, if any, that is in the same proportion to the total assets of the Fund (net of estimated accrued expenses and other liabilities) on the date the order to purchase is properly received as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. An Authorized Participant who places a purchase order is responsible for transferring the Creation Unit Gold Delivery Amount to the Fund Unallocated Account. Upon receipt, the Administrator will direct DTC to credit the number of

Creation Units ordered to the Authorized Participant's DTC account. The Gold Custodian will transfer the Creation Unit Gold Delivery Amount from the Fund Unallocated Account to the Fund Allocated Account by allocating to the Fund Allocated Account specific bars of gold which the Gold Custodian holds, or instructing a sub-custodian to allocate specific bars of gold held by or for the sub-custodian.

The redemption distribution from the Fund consists of a credit to the redeeming Authorized Participant's unallocated account in the amount of the Creation Unit Gold Delivery Amount. The Creation Unit Gold Delivery Amount for redemptions is the number of ounces of gold held by the Fund to be paid out upon redemption of a Creation Unit. The Gold Custodian will transfer the redemption amount from the Fund Allocated Account to the Fund Unallocated Account and, thereafter, to the redeeming Authorized Participant's unallocated account.

Net Asset Value

To determine the Fund's NAV, the Administrator will value the gold held by the Fund on the basis of the LBMA Gold Price PM, as published by the ICE Benchmark Administration Limited (the "IBA"). IBA operates electronic auctions for spot, unallocated loco London gold, providing a market-based platform for buyers and sellers to trade. The auctions are run at 10:30 a.m. and 3:00 p.m. London time for gold. The final auction prices are published to the market as the LBMA Gold Price AM and the LBMA Gold Price PM, respectively.

The Administrator will calculate the NAV on each day the Exchange is open for regular trading, at the earlier LBMA Gold Price PM for the day or 12:00 PM New York time. If no LBMA Gold Price (AM or PM) is made on a particular evaluation day or if the LBMA Gold Price PM has not been announced by 12:00 PM New York time on a particular evaluation day, the next most recent LBMA Gold Price AM or PM will be used in the determination of the

NAV, unless the Sponsor determines that such price is inappropriate to use as the basis for such determination.

Once the value of the gold has been determined, the Administrator will subtract all estimated accrued expenses and other liabilities of the Fund from the total value of the gold and all other assets of the Fund. The resulting figure is the NAV. The Administrator will determine the NAV per Share by dividing the NAV of the Fund by the number of Shares outstanding as of the close of trading on the Exchange.

Availability of Information Regarding Gold

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 the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

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

Reuters and Bloomberg, for example, provide at no charge on their websites 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. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of

other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at www.lbma.org.uk.

Availability of Information

The intraday indicative value (“IIV”) per Share for the Shares will be disseminated by one or more major market data vendors. The IIV will be calculated based on the amount of gold held by the Fund and a price of gold derived from updated bids and offers indicative of the spot price of gold.¹¹

The Fund’s website will contain the following information, on a per Share basis: (a) the Official Closing Price¹² and a calculation of the premium or discount of such Official Closing Price against the Fund’s NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website for the Fund will also provide its prospectus. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Criteria for Initial and Continued Listing

¹¹ The IIV on a per Share basis disseminated during the Exchange’s Core Trading Session, as defined in NYSE Arca Rule 7.34-E, should not be viewed as a real-time update of the NAV, which is calculated once a day.

¹² The term “Official Closing Price” is defined in NYSE Arca Rule 1.1(11) as the reference price to determine the closing price in a security for purposes of Rule 7–E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

The Fund will be subject to the criteria in NYSE Arca Rule 8.201-E(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 1,384 fine ounces of gold or approximately \$2,500,000 as of July 22, 2021. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34-E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E 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.

Further, NYSE Arca Rule 8.201-E sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, any related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components

of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying 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 Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.¹³ The Exchange will halt trading in the Shares if the NAV of the Fund is not calculated or disseminated daily. 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.

¹³ See NYSE Arca Rule 7.12-E.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority Inc. (“FINRA”), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁴ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁵

¹⁴ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

¹⁵ For a list of the current members of ISG, see www.isgportal.org.

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

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

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

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

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a

prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the premium or discount on the Shares 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 (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical 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.

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2021-73 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁶ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the

¹⁶ 15 U.S.C. 78s(b)(2)(B).

proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁷ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”¹⁸

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”¹⁹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²⁰ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.²¹

¹⁷ Id.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 17 CFR 201.700(b)(3).

²⁰ See id.

²¹ See id.

The Commission is concerned that certain aspects of the proposal are not sufficiently described and that the Exchange has not met its burden to demonstrate that the proposed rule change is consistent with the Act and the rules and regulations issued thereunder. For example, with respect to creation and redemption of Shares, the Exchange states that the Gold Custodian will transfer the Creation Unit Gold Delivery Amount from the Fund Unallocated Account to the Fund Allocated Account by allocating to the Fund Allocated Account specific bars of gold which the Gold Custodian holds, or instructing a sub-custodian to allocate specific bars of gold held by or for the sub-custodian.²² However, the Exchange does not explain how this process will take place or provide sufficient details on how the costs involved will be allocated.

Furthermore, the Commission is concerned that the Exchange does not adequately explain how other aspects of the proposal are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, as required by Section 6(b)(5) of the Act. The Exchange states that the Administrator will value the gold held by the Fund using the LBMA Gold Price PM as published by the IBA.²³ This suggests that currently there is no price difference between responsibly sourced gold and non-responsibly sourced gold, but the Exchange does not provide sufficient evidence for the Commission to conclude that the price of responsibly sourced gold in the OTC spot market for gold is not different than for non-responsibly sourced gold.

²² See Notice, supra note 3, 86 FR at 50388.

²³ Id.

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act²⁴ to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal in addition to any other comments they may wish to submit

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

about the proposed rule change. In this regard, the Commission seeks commenters' views regarding the Exchange's proposal to list and trade the Shares is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-73 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2021-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-73 and should be submitted by [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(57).