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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2024 - \* 06

Amendment No. (req. for Amendments \*)

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend Rule 5.3-O

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Samir Last Name \* Patel

Title \* Senior Counsel, NYSE Group Inc.

E-mail \* Samir.Patel@ice.com

Telephone \* (212) 656-2030 Fax (212) 656-8101

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 01/16/2024

(Title \*)

By Patrick Troy

Associate General Counsel

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrick Troy Digitally signed by Patrick Troy  
Date: 2024.01.16 16:15:53 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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Re-file NYSE Arca - Options on Comm

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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Ex. 1 Re-file SEC Sub NYSE Arca Op

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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Re-file NYSE Arca - Options on Comm

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE Arca Inc. (“NYSE Arca” or the “Exchange”) proposes to amend Rule 5.3-O to permit the listing and trading of options on Commodity-Based Trust Shares.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Samir M. Patel  
Senior Counsel  
NYSE Group, Inc.  
(212) 656-2030

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

- (a) Purpose

NYSE Arca Rule 5.3-O, Criteria for Underlying Securities, provides for Exchange listing and trading of option contracts. The rule sets forth the criteria to be met by underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange. The purpose of this filing is to amend NYSE Arca Rule 5.3-O, and more specifically, NYSE Arca Rule 5.3-O(g) to permit the listing and trading of options

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

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

on Commodity-Based Trust Shares.<sup>3</sup>

Currently, Rule 5.3-O(g) deems appropriate for options trading Exchange-Traded Fund Shares (“ETFs” or “Fund Shares”) that are traded on a national securities exchange and are defined as an “NMS stock” in Rule 600(b)(55) of Regulation NMS, and that (i) represent an interest in a registered investment company organized as open-end management investment company, a unit investment trust or a similar entity which holds securities and/or financial instruments, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments; or (ii) represent interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool Units”), or (iv) represent interests in the SPDR Gold Trust, or (v) represent interests in the iShares COMEX Gold Trust, or (vi) represent interests in the iShares Silver Trust, or, (vii) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”) or, (viii) represents interest in the ETFS Silver Trust or the ETFS Gold Trust, or (ix) represents interests in the ETFS Palladium

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<sup>3</sup> The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (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/or cash; 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 and/or cash. See NYSE Arca Rule 8.201-E (c)(1).

Trust or ETFS Platinum Trust.<sup>4</sup> This rule change proposes to expand the type of ETFs that may be approved for options trading on the Exchange to include Commodity-Based Trust Shares<sup>5</sup> without requiring a rule filing under Section 19(b) of the Act.<sup>6</sup>

Apart from allowing Commodity-Based Trust Shares to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the current listing standards set forth in NYSE Arca Rule 5.3-O.

Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Commodity-Based Trust Shares, although based upon a publicly disclosed portfolio of securities, each trade as a single exchange-listed equity security. Accordingly, rules pertaining to the listing and trading of standard equity options will apply to options on Commodity-Based Trust Shares.

### Listing Criteria

The Exchange will consider listing and trading options on Commodity-Based Trust Shares provided the Commodity-Based Trust Shares meet (1) the criteria for underlying securities set forth in NYSE Arca Rule 5.3-O(a)<sup>7</sup> -(b),<sup>8</sup> or (2) the Commodity-Based Trust Shares are available for creation and redemption each business day as set forth in NYSE Arca Rule 5.3-O(g)(1)(B).

The Exchange proposes that Commodity-Based Trust Shares deemed appropriate for

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<sup>4</sup> See NYSE Arca Rule 5.3-O(g).

<sup>5</sup> See NYSE Arca Rule 8.201-E(c)(1).

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

<sup>7</sup> See NYSE Arca Rule 5.3-O(a) which sets forth minimum requirements for the underlying security which include, but are not limited to, 7,000,000 underlying shares, 2,000 shareholders, and trading volume of 2,400,000 shares over the preceding twelve months. Additionally, the rule requires that the market price per share of the underlying security must be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class. For underlying securities that are deemed Covered Securities, as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the closing market price of the underlying security must be at least \$3.00 per share for the previous three consecutive business days prior to the date of selection of an option class.

<sup>8</sup> See NYSE Arca Rule 5.3-O(b) which states that the underlying securities shall be registered and be an "NMS Stock" as defined in Rule 600 of Regulation NMS under the Act.

options trading represent an interest in a trust, as described below:

- *Commodity-Based Trust Shares* are securities (a) that are issued by a trust (“Trust”) that holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (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/or cash; 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 and/or cash.<sup>9</sup>

Additionally, the Exchange proposes that options on Commodity-Based Trust Shares may only be listed and traded on the Exchange if the underlying security has been reviewed and approved by the Securities and Exchange Commission under Section 19(b)(2) of the Act or noticed for immediate effectiveness under Section 19(b)(3)(A) of the Act, as applicable. Pursuant to Commission approval, the Exchange currently lists and trades 18 Commodity-Based Trust Shares.<sup>10</sup> While the Exchange’s rules currently provide for the listing of options on a limited number of such Commodity-Based Trust Shares,<sup>11</sup> this proposed rule change would permit listing options on any Commodity-Based Trust Share, including the 11 Commodity-Based Trust Shares that have been

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<sup>9</sup> See NYSE Arca Rule 8.201-E(c)(1).

<sup>10</sup> See e.g. Securities Exchange Act Release Nos. 94518 (March 25, 2022), 87 FR 18837 (March 31, 2022) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) (SR-NYSEArca-2021-65); 82249 (December 8, 2017), 82 FR 58884 (December 14, 2017) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the GraniteShares Platinum Trust Under NYSE Arca Rule 8.201–E) (SR-NYSEArca-2017-110); 68430 (December 13, 2012), 77 FR 75239 (December 19, 2012) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201) (SR-NYSEArca-2012-111); and 63043 (October 5, 2010), 75 FR 62615 (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of the Sprott Physical Silver Trust) (SR-NYSEArca-2010-84).

<sup>11</sup> See NYSE Arca Rule 5.3-O(g)(iv) which permits the listing and trading of options on the SPDR Gold Trust; NYSE Arca Rule 5.3-O(g)(v) which permits the listing and trading of options on the iShares COMEX Gold Trust; NYSE Arca Rule 5.3-O(g)(vi) which permits the listing and trading of options on the iShares Silver Trust; NYSE Arca Rule 5.3-O(g)(viii) which permits the listing and trading of options on the ETFS Silver Trust or ETFS Gold Trust; and NYSE Arca Rule 5.3-O(g)(ix) which permits the listing and trading of options on the ETFS Palladium Trust or ETFS Platinum Trust.

approved for listing and trading by the Commission but are not currently eligible for options trading.

### Continued Listing Requirements

The Exchange represents that the current continued listing standards for options on Exchange-Traded Fund Shares will apply to options on Commodity-Based Trust Shares. Specifically, under NYSE Arca Rule 5.4-O(k), options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions as follows: (1) the Commodity-Based Trust Share no longer meets the terms of paragraphs 1 through 4 of Rule 5.4-O(b); (2) following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (3) the value of the underlying commodity is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, Commodity-Based Trust Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts covering Commodity-Based Trust Shares if such security ceases to be an "NMS stock" as provided for in NYSE Arca Rule 5.4-O(b)(5) or the Commodity-Based Trust Share is halted from trading on its primary market.<sup>12</sup>

Finally, all options on Commodity-Based Trust Shares listed pursuant to proposed Rule 5.3-O(g)(x) would be included within the definition of securities as such terms are used in the Exchange's rules and, as such, would be subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange, including Exchange rules governing the trading of equity options. Furthermore, the Exchange's rules pertaining to position and exercise limits<sup>13</sup> or margin<sup>14</sup> shall apply to options on Commodity-Based Trust Shares.

The Exchange notes that options on Commodity-Based Trust Shares would not be available for trading until The Options Clearing Corporation ("OCC") represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated

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<sup>12</sup> See NYSE Arca Rule 5.4-O(k).

<sup>13</sup> Pursuant to NYSE Arca Rule 6.8-O, Commentary .05 and .06, Commodity-Based Trust Shares are subject to the same position limits applicable to options on stocks and Exchange-Traded Fund Shares. NYSE Arca Rule 6.9-O stipulates that exercise limits for options on stocks and other securities, including Commodity-Based Trust Shares, shall be the same as the position limits applicable under NYSE Arca Rule 6.8-O.

<sup>14</sup> See NYSE Arca Rules 4.15-O(a) – 4.16-O(d), the Exchange's rules governing margin.

with the listing of options on Commodity-Based Trust Shares.<sup>15</sup> The Exchange believes any additional traffic that would be generated from the trading of options on Commodity-Based Trust Shares would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Commodity-Based Trust Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange will utilize its existing surveillance procedures applicable to options on exchange traded funds (which will include Commodity-Based Trust Shares) to monitor such trading. In addition, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Commodity-Based Trust Shares, including adequate comprehensive surveillance sharing agreements (“CSSA”) with markets trading in non-U.S. components,<sup>16</sup> as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”)<sup>17</sup> from other exchanges who are members or affiliates of the ISG. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on Commodity-Based Trust Shares and to deter and detect violations of Exchange rules.

Finally, quotation and last sale information for Commodity-Based Trust Shares is available via the Consolidated Tape Association (“CTA”) high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on Commodity-Based Trust Shares will be available via OPRA<sup>18</sup> and major market data vendors.

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<sup>15</sup> OPRA is a securities information processor registered in accordance with Section 11A(b) of the Exchange Act. OPRA's members consist of the national securities exchanges that have been approved by the Commission to provide markets for the listing and trading of exchange-traded securities options.

<sup>16</sup> See NYSE Arca Rule 5.3-O(g)(2), the Exchange’s rule governing the applicable CSSA requirements for options on exchange-traded funds. The Exchange notes that any non-U.S. component securities (including fixed-income) in an index or portfolio of securities on which Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements may in the aggregate represent an amount equal to 50% of the weight of the index or portfolio.

<sup>17</sup> A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

<sup>18</sup> Last sale reports and quotations are the core of the information that OPRA disseminates. OPRA also disseminates certain other types of information with respect to the trading of options on the markets of the OPRA participants, such as the number of options contracts traded, open interest and end of day summaries. OPRA also disseminates certain kinds of administrative messages.



The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) of the Act<sup>19</sup> for ETFs based on indexes that consist of stocks listed on U.S. exchanges.<sup>20</sup> In addition, the Commission has previously approved proposals for the listing and trading of options on ETFs based on international indexes as well as global indexes (e.g., based on non-U.S. and U.S. component stocks).<sup>21</sup> In approving Commodity-Based Trust Shares for equities exchange trading, the Commission thoroughly considered the structure of the Commodity-Based Trust Shares, their usefulness to investors and to the markets, and SRO rules that govern their trading. The Exchange believes that allowing the listing of options overlying Commodity-Based Trust Shares that are listed pursuant to Commission approval on equities exchanges and applying Rule 19b-4(e)<sup>22</sup> should fulfill the intended objective of that rule by allowing options on those Commodity-Based Trust Shares that have satisfied the generic listing standards to commence trading, without the need for the public comment period and Commission approval. The proposed rule change has the potential to significantly reduce the time frame and costs associated with bringing options on Commodity-Based Trust Shares to market, thereby reducing the burden on issuers and other market participants, while also promoting competition among options exchanges, to the benefit of the investing public. The failure of a particular Commodity-Based Trust Share to comply with the generic listing standards under Rule 19b-4(e)<sup>23</sup> would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2),<sup>24</sup> requesting Commission approval to list and trade options on a particular Commodity-Based Trust Share.

The Exchange believes that the proposed rule change would promote transparency surrounding the listing process for options on Commodity-Based Trust Shares. Exchange

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<sup>19</sup> 17 CFR 240.19b-4(e).

<sup>20</sup> See Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-AMEX-2006-78) (approval order relating to generic listing standards for ETFs based on international or global indexes).

<sup>21</sup> See, e.g., Securities Exchange Act Release Nos. 56778 (November 9, 2007), 72 FR 65113 (November 19, 2007) (SR-AMEX-2007-100) (approval order to list and trade options on iShares MSCI Mexico Index Fund; and 55648 (April 19, 2007), 72 FR 20902 (April 26, 2007) (SR-AMEX-2007-09) (approval order to list and trade options on Vanguard Emerging Markets ETF). See also Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (SR-AMEX-2001-05) (approving the listing and trading of certain Vanguard International Equity Index Funds); and 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (SR-2001-34) (approving the listing and trading of series of the iShares Trust based on foreign stock indexes).

<sup>22</sup> 17 CFR 240.19b-4(e).

<sup>23</sup> Id.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

listing standards play a critical role in ensuring transparency in the market. Adopting objective criteria, such as those that would be applicable for the listing and trading of options on Commodity-Based Trust Shares would help investors to make informed decisions about which options to invest in and would provide a level of transparency that is essential for a well-functioning market.

The Exchange also believes that the standards for listing and trading options on Commodity-Based Trust Shares are reasonably designed to promote a fair and orderly market for such securities. As ETFs have grown in popularity, so has the ability to trade options on them. The Exchange believes the proposed rule change will benefit investors and market participants generally by shortening the time to list and trade options on Commodity-Based Trust Shares that have been approved by the Commission by not requiring the Exchange to submit a separate proposed rule change. The Exchange believes that the proposed rule change will facilitate the listing and trading of options on additional ETFs that will enhance competition among market participants, to the benefit of investors and the marketplace.

(b) Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>26</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system. In particular, the proposed rule change has the potential to reduce the time frame for bringing options on Commodity-Based Trust Shares to market, thereby reducing the burdens on issuers and other market participants, while also promoting competition among options exchanges, to the benefit of the investing public. The Exchange believes that enabling the listing and trading of options on Commodity-Based Trust Shares without requiring a rule filing under Section 19(b) of the Act<sup>27</sup> would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes the proposed rule change will also result in increased competition as other exchanges will likely adopt an identical rule to the one proposed by the Exchange that would allow the listing and trading of options on Commodity-Based Trust Shares that are approved for trading on those other markets. Multiple listing of ETFs, options and other securities and competition are some of the central features of the national market system. The Exchange believes that the proposal would encourage a more open market and national market system based on competition and multiple listing.

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<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78s(b).

The proposed rule change adds an additional listing mechanism for certain qualifying options on ETFs to be listed on the Exchange in a manner that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the general public.

The Exchange further believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange has an adequate surveillance program in place to detect manipulative trading in options on Commodity-Based Trust Shares. The Exchange represents that it and OPRA have the necessary systems capacity to support new options series that would be listed and traded pursuant to this proposed rule change.

4. 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. To the contrary, the Exchange believes that the proposal is, as discussed, pro-competitive and is a competitive response to the Exchange's inability to list options on Commodity-Based Trust Shares without submitting a separate proposed rule change. The Exchange believes the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Competition is one of the principal features of the national market system. The Exchange believes that this proposal will expand competitive opportunities to list and trade products on the Exchange as noted.

The Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade options on Commodity-Based Trust Shares. In fact, the Exchange believes other options exchanges will adopt an identical rule so that they may also list and trade options on Commodity-Based Trust Shares without submitting a separate proposed rule change.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of the Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEARCA-2024-06)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 5.3-O

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 16, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 5.3-O to permit the listing and trading of options on Commodity-Based Trust Shares. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

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

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

NYSE Arca Rule 5.3-O, Criteria for Underlying Securities, provides for Exchange listing and trading of option contracts. The rule sets forth the criteria to be met by underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange. The purpose of this filing is to amend NYSE Arca Rule 5.3-O, and more specifically, NYSE Arca Rule 5.3-O(g) to permit the listing and trading of options on Commodity-Based Trust Shares.<sup>4</sup>

Currently, Rule 5.3-O(g) deems appropriate for options trading Exchange-Traded Fund Shares ("ETFs" or "Fund Shares") that are traded on a national securities exchange and are defined as an "NMS stock" in Rule 600(b)(55) of Regulation NMS, and that (i) represent an interest in a registered investment company organized as open-end management investment company, a unit investment trust or a similar entity which holds securities and/or financial instruments, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government

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<sup>4</sup> The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (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/or cash; 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 and/or cash. See NYSE Arca Rule 8.201-E (c)(1).

securities and repurchase agreements (the “Money Market Instruments”) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments; or (ii) represent interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool Units”), or (iv) represent interests in the SPDR Gold Trust, or (v) represent interests in the iShares COMEX Gold Trust, or (vi) represent interests in the iShares Silver Trust, or, (vii) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”) or, (viii) represents interest in the ETFS Silver Trust or the ETFS Gold Trust, or (ix) represents

interests in the ETFS Palladium Trust or ETFS Platinum Trust.<sup>5</sup> This rule change proposes to expand the type of ETFs that may be approved for options trading on the Exchange to include Commodity-Based Trust Shares<sup>6</sup> without requiring a rule filing under Section 19(b) of the Act.<sup>7</sup>

Apart from allowing Commodity-Based Trust Shares to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the current listing standards set forth in NYSE Arca Rule 5.3-O.

Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Commodity-Based Trust Shares, although based upon a publicly disclosed portfolio of securities, each trade as a single exchange-listed equity security. Accordingly, rules pertaining to the listing and trading of standard equity options will apply to options on Commodity-Based Trust Shares.

#### Listing Criteria

The Exchange will consider listing and trading options on Commodity-Based Trust Shares provided the Commodity-Based Trust Shares meet (1) the criteria for underlying

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<sup>5</sup> See NYSE Arca Rule 5.3-O(g).

<sup>6</sup> See NYSE Arca Rule 8.201-E(c)(1).

<sup>7</sup> 15 U.S.C. 78s(b).



securities set forth in NYSE Arca Rule 5.3-O(a)<sup>8</sup> -(b),<sup>9</sup> or (2) the Commodity-Based Trust Shares are available for creation and redemption each business day as set forth in NYSE Arca Rule 5.3-O(g)(1)(B).

The Exchange proposes that Commodity-Based Trust Shares deemed appropriate for options trading represent an interest in a trust, as described below:

- *Commodity-Based Trust Shares* are securities (a) that are issued by a trust (“Trust”) that holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (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/or cash; 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 and/or cash.<sup>10</sup>

Additionally, the Exchange proposes that options on Commodity-Based Trust Shares may only be listed and traded on the Exchange if the underlying security has been reviewed and approved by the Securities and Exchange Commission under Section 19(b)(2) of the Act or noticed for immediate effectiveness under Section 19(b)(3)(A) of the Act, as applicable.

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<sup>8</sup> See NYSE Arca Rule 5.3-O(a) which sets forth minimum requirements for the underlying security which include, but are not limited to, 7,000,000 underlying shares, 2,000 shareholders, and trading volume of 2,400,000 shares over the preceding twelve months. Additionally, the rule requires that the market price per share of the underlying security must be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class. For underlying securities that are deemed Covered Securities, as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the closing market price of the underlying security must be at least \$3.00 per share for the previous three consecutive business days prior to the date of selection of an option class.

<sup>9</sup> See NYSE Arca Rule 5.3-O(b) which states that the underlying securities shall be registered and be an “NMS Stock” as defined in Rule 600 of Regulation NMS under the Act.

<sup>10</sup> See NYSE Arca Rule 8.201-E(c)(1).

Pursuant to Commission approval, the Exchange currently lists and trades 18 Commodity-Based Trust Shares.<sup>11</sup> While the Exchange's rules currently provide for the listing of options on a limited number of such Commodity-Based Trust Shares,<sup>12</sup> this proposed rule change would permit listing options on any Commodity-Based Trust Share, including the 11 Commodity-Based Trust Shares that have been approved for listing and trading by the Commission but are not currently eligible for options trading.

#### Continued Listing Requirements

The Exchange represents that the current continued listing standards for options on Exchange-Traded Fund Shares will apply to options on Commodity-Based Trust Shares. Specifically, under NYSE Arca Rule 5.4-O(k), options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions as follows: (1) the Commodity-Based Trust Share no longer meets the terms of paragraphs 1 through 4 of Rule 5.4-O(b); (2) following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (3) the value of the underlying

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<sup>11</sup> See e.g. Securities Exchange Act Release Nos. 94518 (March 25, 2022), 87 FR 18837 (March 31, 2022) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEArca-2021-65); 82249 (December 8, 2017), 82 FR 58884 (December 14, 2017) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the GraniteShares Platinum Trust Under NYSE Arca Rule 8.201-E) (SR-NYSEArca-2017-110); 68430 (December 13, 2012), 77 FR 75239 (December 19, 2012) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201) (SR-NYSEArca-2012-111); and 63043 (October 5, 2010), 75 FR 62615 (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of the Sprott Physical Silver Trust) (SR-NYSEArca-2010-84).

<sup>12</sup> See NYSE Arca Rule 5.3-O(g)(iv) which permits the listing and trading of options on the SPDR Gold Trust; NYSE Arca Rule 5.3-O(g)(v) which permits the listing and trading of options on the iShares COMEX Gold Trust; NYSE Arca Rule 5.3-O(g)(vi) which permits the listing and trading of options on the iShares Silver Trust; NYSE Arca Rule 5.3-O(g)(viii) which permits the listing and trading of options on the ETFS Silver Trust or ETFS Gold Trust; and NYSE Arca Rule 5.3-O(g)(ix) which permits the listing and trading of options on the ETFS Palladium Trust or ETFS Platinum Trust.

commodity is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, Commodity-Based Trust Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts covering Commodity-Based Trust Shares if such security ceases to be an "NMS stock" as provided for in NYSE Arca Rule 5.4-O(b)(5) or the Commodity-Based Trust Share is halted from trading on its primary market.<sup>13</sup>

Finally, all options on Commodity-Based Trust Shares listed pursuant to proposed Rule 5.3-O(g)(x) would be included within the definition of securities as such terms are used in the Exchange's rules and, as such, would be subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange, including Exchange rules governing the trading of equity options. Furthermore, the Exchange's rules pertaining to position and exercise limits<sup>14</sup> or margin<sup>15</sup> shall apply to options on Commodity-Based Trust Shares.

The Exchange notes that options on Commodity-Based Trust Shares would not be available for trading until The Options Clearing Corporation ("OCC") represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing of options on Commodity-Based Trust Shares.<sup>16</sup> The Exchange believes any additional traffic that would

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<sup>13</sup> See NYSE Arca Rule 5.4-O(k).

<sup>14</sup> Pursuant to NYSE Arca Rule 6.8-O, Commentary .05 and .06, Commodity-Based Trust Shares are subject to the same position limits applicable to options on stocks and Exchange-Traded Fund Shares. NYSE Arca Rule 6.9-O stipulates that exercise limits for options on stocks and other securities, including Commodity-Based Trust Shares, shall be the same as the position limits applicable under NYSE Arca Rule 6.8-O.

<sup>15</sup> See NYSE Arca Rules 4.15-O(a) – 4.16-O(d), the Exchange's rules governing margin.

<sup>16</sup> OPRA is a securities information processor registered in accordance with Section 11A(b) of the Exchange

be generated from the trading of options on Commodity-Based Trust Shares would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Commodity-Based Trust Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange will utilize its existing surveillance procedures applicable to options on exchange traded funds (which will include Commodity-Based Trust Shares) to monitor such trading. In addition, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Commodity-Based Trust Shares, including adequate comprehensive surveillance sharing agreements (“CSSA”) with markets trading in non-U.S. components,<sup>17</sup> as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”)<sup>18</sup> from other exchanges who are members or affiliates of the ISG. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on Commodity-Based Trust Shares and to deter and detect violations of Exchange rules.

Finally, quotation and last sale information for Commodity-Based Trust Shares is available via the Consolidated Tape Association (“CTA”) high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities

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Act. OPRA's members consist of the national securities exchanges that have been approved by the Commission to provide markets for the listing and trading of exchange-traded securities options.

<sup>17</sup> See NYSE Arca Rule 5.3-O(g)(2), the Exchange’s rule governing the applicable CSSA requirements for options on exchange-traded funds. The Exchange notes that any non-U.S. component securities (including fixed-income) in an index or portfolio of securities on which Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements may in the aggregate represent an amount equal to 50% of the weight of the index or portfolio.

<sup>18</sup> A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

are listed. Quotation and last sale information for options on Commodity-Based Trust Shares will be available via OPRA<sup>19</sup> and major market data vendors.

The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e) of the Act<sup>20</sup> for ETFs based on indexes that consist of stocks listed on U.S. exchanges.<sup>21</sup> In addition, the Commission has previously approved proposals for the listing and trading of options on ETFs based on international indexes as well as global indexes (e.g., based on non-U.S. and U.S. component stocks).<sup>22</sup> In approving Commodity-Based Trust Shares for equities exchange trading, the Commission thoroughly considered the structure of the Commodity-Based Trust Shares, their usefulness to investors and to the markets, and SRO rules that govern their trading. The Exchange believes that allowing the listing of options overlying Commodity-Based Trust Shares that are listed pursuant to Commission approval on equities exchanges and applying Rule 19b-4(e)<sup>23</sup> should fulfill the intended objective of that rule by allowing options on those Commodity-Based Trust Shares that have satisfied the generic listing standards to commence trading, without the need for the public comment period and

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<sup>19</sup> Last sale reports and quotations are the core of the information that OPRA disseminates. OPRA also disseminates certain other types of information with respect to the trading of options on the markets of the OPRA participants, such as the number of options contracts traded, open interest and end of day summaries. OPRA also disseminates certain kinds of administrative messages.

<sup>20</sup> 17 CFR 240.19b-4(e).

<sup>21</sup> See Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-AMEX-2006-78) (approval order relating to generic listing standards for ETFs based on international or global indexes).

<sup>22</sup> See, e.g., Securities Exchange Act Release Nos. 56778 (November 9, 2007), 72 FR 65113 (November 19, 2007) (SR-AMEX-2007-100) (approval order to list and trade options on iShares MSCI Mexico Index Fund; and 55648 (April 19, 2007), 72 FR 20902 (April 26, 2007) (SR-AMEX-2007-09) (approval order to list and trade options on Vanguard Emerging Markets ETF). See also Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (SR-AMEX-2001-05) (approving the listing and trading of certain Vanguard International Equity Index Funds); and 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (SR-2001-34) (approving the listing and trading of series of the iShares Trust based on foreign stock indexes).

<sup>23</sup> 17 CFR 240.19b-4(e).

Commission approval. The proposed rule change has the potential to significantly reduce the time frame and costs associated with bringing options on Commodity-Based Trust Shares to market, thereby reducing the burden on issuers and other market participants, while also promoting competition among options exchanges, to the benefit of the investing public. The failure of a particular Commodity-Based Trust Share to comply with the generic listing standards under Rule 19b-4(e)<sup>24</sup> would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2),<sup>25</sup> requesting Commission approval to list and trade options on a particular Commodity-Based Trust Share.

The Exchange believes that the proposed rule change would promote transparency surrounding the listing process for options on Commodity-Based Trust Shares. Exchange listing standards play a critical role in ensuring transparency in the market. Adopting objective criteria, such as those that would be applicable for the listing and trading of options on Commodity-Based Trust Shares would help investors to make informed decisions about which options to invest in and would provide a level of transparency that is essential for a well-functioning market.

The Exchange also believes that the standards for listing and trading options on Commodity-Based Trust Shares are reasonably designed to promote a fair and orderly market for such securities. As ETFs have grown in popularity, so has the ability to trade options on them. The Exchange believes the proposed rule change will benefit investors and market participants generally by shortening the time to list and trade options on Commodity-Based Trust Shares that have been approved by the Commission by not requiring the Exchange to submit a separate

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<sup>24</sup> Id.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

proposed rule change. The Exchange believes that the proposed rule change will facilitate the listing and trading of options on additional ETFs that will enhance competition among market participants, to the benefit of investors and the marketplace.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>26</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>27</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system. In particular, the proposed rule change has the potential to reduce the time frame for bringing options on Commodity-Based Trust Shares to market, thereby reducing the burdens on issuers and other market participants, while also promoting competition among options exchanges, to the benefit of the investing public. The Exchange believes that enabling the listing and trading of options on Commodity-Based Trust Shares without requiring a rule filing under Section 19(b) of the Act<sup>28</sup> would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes the proposed rule change will also result in increased competition as other exchanges will likely adopt an identical rule to the one proposed by the Exchange that would allow the listing and trading of options on Commodity-Based Trust Shares that are approved for trading on those other markets. Multiple listing of ETFs, options and other securities and competition are some of the central features of the national market system. The

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<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78s(b).

Exchange believes that the proposal would encourage a more open market and national market system based on competition and multiple listing.

The proposed rule change adds an additional listing mechanism for certain qualifying options on ETFs to be listed on the Exchange in a manner that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the general public.

The Exchange further believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange has an adequate surveillance program in place to detect manipulative trading in options on Commodity-Based Trust Shares. The Exchange represents that it and OPRA have the necessary systems capacity to support new options series that would be listed and traded pursuant to this proposed rule change.

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. To the contrary, the Exchange believes that the proposal is, as discussed, pro-competitive and is a competitive response to the Exchange's inability to list options on Commodity-Based Trust Shares without submitting a separate proposed rule change. The Exchange believes the proposed rule change will result in additional investment options and opportunities to achieve the



investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Competition is one of the principal features of the national market system. The Exchange believes that this proposal will expand competitive opportunities to list and trade products on the Exchange as noted.

The Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal. Additionally, the Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade options on Commodity-Based Trust Shares. In fact, the Exchange believes other options exchanges will adopt an identical rule so that they may also list and trade options on Commodity-Based Trust Shares without submitting a separate proposed rule change.

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 up to 90 days (i) as the Commission may designate 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 (<https://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-2024-06 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-2024-06. 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-06 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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<sup>29</sup> 17 CFR 200.30-3(a)(12).

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## **RULES OF THE NYSE ARCA, INC.**

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### **RULE 5-O OPTION CONTRACTS TRADED ON THE EXCHANGE**

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#### **Section 2. Underlying Securities**

##### **Rule 5.3-O. Criteria for Underlying Securities**

Underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria:

(a) - (f) No Change.

(g) *Exchange-Traded Fund Shares*. Securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares" or "Fund Shares") that are traded on a national securities exchange and are defined as an "NMS stock" in Rule 600(b)(55) of Regulation NMS, and that (i) represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities and/or financial instruments, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (ii) represent interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool Units"), or (iv) [represent interests in the SPDR Gold Trust, or (v) represent interests in the iShares COMEX Gold Trust, or (vi) represent interests in the iShares Silver Trust, (vii)] represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified

aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share"), or, (viii) represents interests in the ETFS Silver Trust or ETFS Gold Trust, or, (ix) represents interests in the ETFS Palladium Trust or ETFS Platinum Trust,] (v) represent interests in Commodity-Based Trust Shares, as defined in Rule 8.201-E, provided:

- (1) (A) the Exchange-Traded Fund Shares meet the criteria and guidelines for underlying securities set forth in Rule 5.3-O(a) and (b); or
  - (B) the Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from or through the issuing trust, investment company, commodity pool or other issuer at a price related to the net asset value. In addition, the issuing trust, investment company, commodity pool, or other issuer is obligated to issue Fund Shares in a specified aggregate number even though some or all of the investment assets needed to be deposited have not been received by the issuing trust, investment company, commodity pool, or other issuer, provided the authorized creation participant has undertaken to deliver the investment assets as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of Fund Shares which underlie the option as described in the Fund Shares’ prospectus; and
  
- (2) The Exchange-Traded Fund Shares meet the following criteria:
  - (A) the Exchange-Traded Fund Shares are listed pursuant to generic listing standards for series of portfolio depositary receipts or index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required; or
  - (B) (i) any non-U.S. component securities (including fixed-income) in an index or portfolio of securities on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;
    - (ii) component securities (including fixed-income) of an index or portfolio of securities on which Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index;
    - (iii) component securities (including fixed-income) of an index or portfolio of securities on which Fund Shares are based for which the primary market is in any

two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index;

(iv) for Funds that hold a specified non-U.S. currency deposited with the trust, the Exchange has entered into an appropriate comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency, which are utilized by the national securities exchange where the underlying Funds are listed and traded; and

(v) for Commodity Pool Units, the Exchange has entered into a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool Units are listed and traded.

(h) - (j) No Change.

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