

necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2009-84 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-Phlx-2009-84. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2009-84 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60971; File No. SR-NYSEArca-2009-94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of ETFS Palladium Trust

November 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 20, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to list and trade shares of the ETFS Palladium Trust (the "Trust") pursuant to NYSE Arca Equities Rule 8.201. The text of the

proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to list and trade ETFS Palladium Shares ("Shares") of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."³ The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of Commodity-Based Trust Shares. The Commission has approved listing on the Exchange of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.⁴ Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange ("NYSE") and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC (now known as "NYSE Amex LLC").⁵ In

³ 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.

⁴ See Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR-NYSEArca-2007-76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

⁵ See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of streetTRACKS Gold Trust on NYSE); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.⁶ The Commission also has approved listing of the iShares Silver Trust on the Exchange⁷ and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC.⁸

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of palladium, less the expenses of the Trust's operations.⁹ ETFS Services USA LLC is the sponsor of the Trust ("Sponsor"), The Bank of New York Mellon is the trustee of the Trust ("Trustee")¹⁰, and HSBC Bank USA, N.A. is the custodian of the Trust ("Custodian").¹¹

⁶ See Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR-PCX-2005-117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

⁷ See Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR-NYSEArca-2008-124) (approving listing on the Exchange of the iShares Silver Trust).

⁸ See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

⁹ See Amendment No. 2 to the Registration Statement for the ETFS Palladium Trust on Form S-1, filed with the Commission on October 20, 2009 (No. 333-15830) ("Registration Statement"). The descriptions of the Trust, the Shares and the palladium market contained herein are based on the Registration Statement.

¹⁰ The Trustee is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include (1) transferring the Trust's palladium as needed to pay the Sponsor's Fee in palladium (palladium transfers are expected to occur approximately monthly in the ordinary course), (2) valuing the Trust's palladium and calculating the NAV of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and DTC, (4) selling the Trust's palladium as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor, (5) when appropriate, making distributions of cash or other property to Shareholders, and (6) receiving and reviewing reports from or on the Custodian's custody of and transactions in the Trust's palladium.

¹¹ The Custodian is responsible for safekeeping for the Trust palladium deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting the Zurich Sub-Custodians and its other direct sub-custodians, if any. The Custodian facilitates the transfer of palladium in and out of the Trust through the unallocated palladium accounts it will maintain for each Authorized Participant and the unallocated and allocated palladium accounts it will maintain for the Trust. The Custodian is responsible for

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.¹²

The investment objective of the Trust is for the Shares to reflect the performance of the price of physical palladium, less the Trust's expenses. The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in palladium. An investment in physical palladium requires expensive and sometimes complicated arrangements in connection with the assay, transportation, warehousing and insurance of the metal. Although the Shares will not be the exact equivalent of an investment in palladium, they provide investors with an alternative that allows a level of participation in the palladium market through the securities market.

Platinum Group Metals

Platinum and palladium are the two best known metals of the six platinum group metals (PGMs). Platinum and palladium have the greatest economic importance and are found in the largest quantities. The other four—iridium, rhodium, ruthenium and osmium—are produced only as co-products of platinum and palladium.

PGMs are found primarily in South Africa and Russia. Russia is the largest producer of palladium and most production is concentrated in the Norilsk region. South Africa is the world's leading platinum producer and the second largest palladium producer. All of South Africa's production is sourced from the Bushveld Igneous Complex, which hosts the world's largest resource of PGMs. Together, South Africa and Russia accounted for 78% of total platinum group metals supply in 2008.

Suppliers of Palladium

The main supplier of palladium is Russia. However, its contribution has fallen from 65% in 1999 to 44% of total supply in 2008. South Africa is the second largest source of supply, accounting for 29% of total supply in 2008. Similar to platinum, Russia's contribution to palladium supply has

allocating specific plates or ingots of physical palladium to the Trust's allocated palladium account. The Custodian will provide the Trustee with regular reports detailing the palladium transfers in and out of the Trust's unallocated and allocated palladium accounts and identifying the palladium plates or ingots held in the Trust's allocated palladium account.

¹² With respect to application of Rule 10A-3 (17 CFR 240.10A-3) under the Securities Exchange of 1934 ("Act") (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A-3(c)(7).

been variable while South Africa has consistently increased over the past ten years. North America contributes approximately 11% to supply while the recovery of palladium from autocatalysts has increased more than five-fold over the past ten years to account for 13% of supply in 2008.

Demand for Palladium

Autocatalysts are the largest component of palladium demand, with total demand increasing to 55% of total supply by the end of 2008. Industrial demand (electronics, dentistry, and chemical) has fallen to a low of 23% of total demand in 2001 to 28% of total demand in 2008. Jewelry demand for palladium has increased by the largest of all the key sectors, rising by 232% over the past ten years and contributing a total of 9% of total demand in 2008.¹³

The investment sector for palladium includes the investment and trading activities of both professional and private investors and speculators. These participants range from large hedge and mutual funds to day-traders on futures exchanges, and retail-level coin collectors. The fabrication and manufacturing sector for palladium represents all the commercial and industrial users of palladium for whom palladium is a daily part of their business. The auto catalyst and jewelry industries are the largest users of palladium.

Physical palladium prices performed strongly in early 2008, rising from an opening \$370 to a peak of \$588 in March—the highest prices since 2001. However, speculative fund interests in the palladium market were amply demonstrated in the third quarter as large fund sales sent the price of physical palladium spiraling to only \$199 per ounce at the close of the quarter, the lowest price since October 2005. Prices continued at these low levels as the price of palladium ended

¹³ The Registration Statement includes a table with data regarding World Palladium Supply and demand 1999–2008. According to the Registration Statement, the table illustrates that the palladium supply over the past ten years has averaged 8.1 million ounces with the majority of production from Russia. Production from Russia, on average accounts for approximately 50% of total production from 1999 to 2008. There is a 24% increase in palladium supply when comparing the average five-year periods ended 2003 and 2008, at 7.3 million ounces and 9.0 million ounces, respectively. The biggest source of demand for palladium output over the period shown has come from the autocatalyst sector which has accounted for an approximate average of 58% of all demand from 1999 to 2008. However, autocatalyst demand has decreased in 2008 from its 2001 peak of 72% of total demand to 55% by 2008. The annual demand for palladium over the past 10 years has averaged approximately 7.5 million ounces.

the year at \$184 per ounce in December 2008.

Operation of the Palladium Market

The global trade in palladium consists of Over-the-Counter (OTC) transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The OTC market trades on a 24-hour per day continuous basis and accounts for most global palladium trading.

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the The London Platinum Palladium Market ("LPPM"), the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the LPPM. The four market-making members of the LPPM are: J.Aron & Company (a division of Goldman Sachs International), Engelhard Metals Limited, HSBC Bank USA, N.A. (through its London branch), and Standard Bank. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place.

According to the Registration Statement, the main centers of the OTC market are London, New York, Hong Kong and Zurich. Mining companies, manufacturers of jewelry and industrial products, together with investors and speculators, tend to transact their business through one of these market centers. Centers such as Dubai and several cities in the Far East also transact substantial OTC market business, typically involving jewelry and small plates or ingots (1 kilogram or less) and will hedge their exposure by selling into one of these main OTC centers. Precious metals dealers have offices around the world and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association and/or the LPPM. In the OTC market, the standard size of palladium trades between market makers is 1,000 ounces.

Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's "buy" and "sell" prices. The period of greatest liquidity in the palladium market generally

occurs at the time of day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the NYMEX. This period lasts for approximately four hours each New York business day morning.

The London Palladium Market

Although the market for physical palladium is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the LPPM acts as the principal point of contact between the market and its regulators. A primary function of the LPPM is its involvement in the promotion of refining standards by maintenance of the "London/Zurich Good Delivery Lists," which are the lists of LPPM accredited melters and assayers of palladium.¹⁴ The LPPM also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

Palladium is traded generally on a loco Zurich basis, meaning the precious metal is physically held in vaults in Zurich or is transferred into accounts established in Zurich. The basis for settlement and delivery of a loco Zurich spot trade is payment (generally in U.S. dollars) two business days after the trade date against delivery. Delivery of the palladium can either be by physical delivery or through the clearing systems to an unallocated account.

The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams is equivalent to 32.1507465 troy ounces, and one troy ounce is equivalent to 31.1034768 grams. A London/Zurich good delivery plate or ingot is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as Good Delivery, a plate or ingot must contain between 32 and 192 troy ounces of palladium with a minimum fineness (or purity) of 999.5 parts per 1,000 (99.95%), be of good appearance, and be easy to handle and stack. The palladium content of a palladium plate or ingot is calculated by multiplying the gross weight (expressed in units of 0.025 troy ounces) by the fineness of the plate or ingot. A Good Delivery plate or ingot must also bear the stamp of one of the melters and assayers who are on the LPPM approved list. Unless otherwise specified, the palladium spot price always refers to that of Good Delivery

Standards. Business is generally conducted over the phone and through electronic dealing systems.

Twice daily during London trading hours there is a fix which provides reference palladium prices for that day's trading. Many long-term contracts will be priced on the basis of either the morning (a.m.) or afternoon (p.m.) London fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. The London fix is the most widely used benchmark for daily palladium prices and is quoted by various financial information sources.

Formal participation in the London fix is traditionally limited to four members, each of which is a bullion dealer and a member of the LPPM. The chairmanship now rotates annually among the four member firms. The morning session of the fix starts at 9:45 a.m. London time and the afternoon session starts at 2 p.m. London time. The members of the LPPM fixing are currently: J.Aron & Company (a division of Goldman Sachs International), Engelhard Metals Limited, HSBC Bank USA N.A. (London branch), and Standard Bank London Limited. Any other market participant wishing to participate in the trading on the fix is required to do so through one of the four palladium fixing members.

Orders are placed either with one of the four fixing members or with another precious metals dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a "trying price," reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The palladium price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. The London fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

Futures Exchanges

The most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange ("TOCOM"). The NYMEX is the largest exchange in the world for trading precious metals futures and options and

¹⁴ Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

has been trading palladium since 1974. The TOCOM has been trading palladium since 1982. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. The NYMEX operates through a central clearance system. On June 6, 2003, TOCOM adopted a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

Market Regulation

The global palladium markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LPPM, falls under the authority of the Financial Services Authority ("FSA") as provided by the Financial Services and Markets Act 2000 ("FSM Act"). Under this act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and propriety, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of palladium not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (METI), the regulatory authority that oversees the operations of the TOCOM.

The Trust will not trade in palladium futures contracts on the NYMEX or on any other futures exchange. The Trust will only take delivery of physical palladium that complies with the NYMEX palladium delivery rules or the LPPM palladium delivery rules. Because the Trust will not trade in palladium futures contracts on any futures exchange, the Trust will not be

regulated by the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act¹⁵ ("CEA") as a "commodity pool," and will not be operated by a CFTC-regulated commodity pool operator.

Custody of the Trust's Palladium

Custody of the physical palladium deposited with and held by the Trust will be provided by the Custodian at its London, England vaults, by Zurich Sub-Custodians selected by the Custodian in their Zurich vaults and by other sub-custodians on a temporary basis only. The Custodian is a market maker, clearer and approved weigher under the rules of the LPPM. The Custodian is the custodian of the physical palladium credited to Trust Allocated Account in accordance with the Custody Agreements. The Custodian will segregate the physical palladium credited to the Trust Allocated Account from any other precious metal it holds or holds for others by entering appropriate entries in its books and records, and will require any Zurich Sub-Custodian it appoints to also segregate the physical palladium of the Trust from the other palladium held by them for other customers of the Custodian and the Zurich Sub-Custodian's other customers. The Custodian will require any Zurich Sub-Custodian it appoints to identify in such Zurich Sub-Custodian's books and records the Trust as having the rights to the physical palladium credited to its Trust Allocated Account.

The Custodian, as instructed by the Trustee, is authorized to accept, on behalf of the Trust, deposits of palladium in unallocated form. Acting on standing instructions specified in the Custody Agreements, the Custodian will or will require a Zurich Sub-Custodian to allocate palladium deposited in unallocated form with the Trust by selecting plates or ingots of physical palladium for deposit to the Trust Allocated Account. All physical palladium allocated to the Trust must conform to the rules, regulations, practices and customs of the LPPM.

The process of withdrawing palladium from the Trust for a redemption of a Basket will follow the same general procedure as for depositing palladium with the Trust for a creation of a Basket, only in reverse. Each transfer of palladium between the Trust Allocated Account and the Trust Unallocated Account connected with a creation or redemption of a Basket may result in a small amount of palladium being held in the Trust Unallocated

Account after the completion of the transfer. In making deposits and withdrawals between the Trust Allocated Account and the Trust Unallocated Account, the Custodian will use commercially reasonable efforts to minimize the amount of palladium held in the Trust Unallocated Account as of the close of each business day.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940¹⁶ and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the CEA, as administered by the CFTC. The Trust is not a commodity pool for purposes of the CEA, and neither the Sponsor nor the Trustee is subject to regulation by the CFTC as a commodity pool operator or a commodity trading advisor in connection with the Shares.

Sponsor's Estimate of Expected Size of the Trust

The Sponsor has made representations to the Commission regarding the expected size of the Trust and the expected impact of the offering of the Shares on the global palladium market.¹⁷ In the May 15, 2009 Letter, the Sponsor has stated its expectation that the Trust's assets under management ("AUM") would be between \$100 million and \$200 million after three years of the Trust's operation, and using the palladium spot market price of \$242.00 per ounce as of May 8, 2009, the Trust would be expected to be acquiring between approximately 138,000 to 275,000 ounces of palladium on an annual basis.¹⁸ The Sponsor has represented that it does not believe that the currently expected size of the Trust will have a meaningful effect on the global supply or demand for palladium, and that the Trust's highest forecast palladium acquisitions would represent 3.4% and 3.6%, respectively, of the 10-year average annual supply and demand for palladium through the end of 2008.¹⁹ The Sponsor, therefore, has stated its belief that, in view of the amount of Shares sought to be registered, the Trust believes there will be a market neutral impact given that the Shares can be a

¹⁵ 15 U.S.C. 80a.

¹⁷ See Supplemental Comment Response regarding the Trust, dated May 15, 2009, from Peter J. Shea, Katten Muchin Rosenman LLP, to the Commission (submitted via EDGAR) ("May 15, 2009 Letter").

¹⁸ The Exchange notes that ETF Securities Ltd., the Sponsor's parent entity, has sponsored ETFS Palladium ETP, traded on the London Stock Exchange (ticker symbol: PHPD), which had AUM of approximately \$61.4 million as of May 8, 2009.

¹⁹ See note 13, *supra*.

¹⁵ 17 U.S.C. 1 *et seq.*

current source of supply at then current prices through redemptions.²⁰

In the May 15, 2009 Letter, the Sponsor also states that it expects that the offering of the Shares will not have a meaningful impact on the global palladium market, founded on the Sponsor's belief that the present Share offering is limited to an appropriate size and that arbitrage opportunities between palladium market prices and the Trust's net asset value together with the low cost creation and redemption process utilizing physical metal will neutralize any impact of the Trust on the broader palladium market.²¹

According to the Registration Statement, since there is no limit on the amount of palladium that the Trust may acquire, the Trust, as it grows, may have an impact on the supply and demand of palladium that ultimately may affect the price of the Shares in a manner unrelated to other factors affecting the global market for palladium.

Secondary Market Trading

While the Trust's investment objective is for the Shares to reflect the performance of palladium, less the expenses of the Trust, the Shares may trade in the secondary market on the NYSE Arca at prices that are lower or higher relative to their net asset value ("NAV") per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the NYMEX and London. While the Shares will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the global palladium market will be reduced after the close of the NYMEX at 1 p.m. New York time. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Trust Expenses

The Trust's only ordinary recurring expense is expected to be equal to the Sponsor's Fee. In exchange for the Sponsor's Fee, the Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: The Trustee's monthly fee and out-of-pocket expenses, the Custodian's

fee, Exchange listing fees, SEC registration fees, printing and mailing costs, audit fees and up to \$100,000 per annum in legal expenses. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's Fee will accrue daily at an annualized rate equal to a specified percentage of the adjusted net asset value of the Trust and will be payable monthly in arrears. The Sponsor, from time to time, may temporarily waive all or a portion of the Sponsor's Fee at its discretion for a stated period of time.

The Trust will deliver palladium to the Sponsor to pay the Sponsor's Fee and sell palladium to raise the funds needed for the payment of all Trust expenses not assumed by the Sponsor. The purchase price received as consideration for such sales will be the Trust's sole source of funds to cover its liabilities. The Trust will not engage in any activity designed to derive a profit from changes in the price of palladium.

Creation and Redemption Procedures

The Trust will create and redeem Shares in one or more Baskets (a Basket equals a block of 50,000 Shares). The creation and redemption of Baskets will only be made "in-kind" in exchange for the delivery to the Trust or the distribution by the Trust of the amount of palladium and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received. The creation and redemption of Baskets may occur daily.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions and (2) participants in DTC. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Sponsor and the Trustee. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the palladium and any cash required for such creations and redemptions.

According to the Registration Statement, certain Authorized Participants are expected to have the facility to participate directly in the

physical palladium market and the palladium futures market. In some cases, an Authorized Participant may from time to time acquire palladium from or sell palladium to its affiliated palladium trading desk, which may profit in these instances. Certain Authorized Participants will be regulated under federal and state banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls and information barriers as it determines is appropriate in light of its own regulatory regime. Shareholders who are not Authorized Participants will only be able to redeem their shares by an Authorized Participant.

All palladium will be delivered to the Trust and distributed by the Trust in unallocated form through credits and debits between Authorized Participant Unallocated Accounts and the Trust Unallocated Account. Palladium transferred from an Authorized Participant Unallocated Account to the Trust in unallocated form will first be credited to the Trust Unallocated Account. Thereafter, the Custodian will allocate specific plates or ingots of palladium representing the amount of palladium credited to the Trust Unallocated Account (to the extent such amount is representable by whole palladium plates or ingots) to the Trust Allocated Account. The movement of palladium is reversed for the distribution of palladium to an Authorized Participant in connection with the redemption of Baskets.

All physical palladium represented by a credit to any Authorized Participant Unallocated Account and to the Trust Unallocated Account and all physical palladium held in the Trust Allocated Account with the Custodian must be of at least a minimum fineness (or purity) of 999.5 parts per 1,000 (99.95%) and otherwise conform to the rules, regulations practices and customs of the LPPM, including the specifications for a Good Delivery plate or ingot.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Creation and redemption orders will be accepted on "business days" when the NYSE Arca is open for regular trading. Settlements of such orders requiring receipt or delivery, or confirmation of receipt or delivery, of palladium in the United Kingdom, Zurich or another jurisdiction will occur on "business days" when (1) banks in the United Kingdom, Zurich or such other jurisdiction and (2) the London/Zurich

²⁰ The Sponsor states that it intends to recast its analysis each time it seeks to register additional Shares of the Trust in the future to ensure that additional Trust offerings will not be disruptive to palladium supply and demand. May 15, 2009 Letter at p. 4. As stated in the May 15, 2009 Letter, the Registration Statement seeks to register 12,880,000 Shares, and that, at an estimated palladium acquisition rate of 275,000 ounces per year, the Trust would complete its Share offering in approximately 4.7 years.

²¹ May 15, 2009 Letter at p. 5.

or such other palladium markets are regularly open for business. If such banks or the London/Zurich palladium markets are not open for regular business for a full day, such a day will only be a "business day" for settlement purposes if the settlement procedures can be completed by the end of such day. Settlement of palladium deliveries, which occur *loco* Zurich, may be delayed for longer than three business days. Settlement of orders requiring receipt or delivery, or confirmation of receipt or delivery, of Shares will occur, after confirmation of the applicable palladium delivery, on "business days" when the NYSE Arca is open for regular trading. Purchase orders must be placed by 4 p.m. or the close of regular trading on the NYSE Arca, whichever is earlier. The day on which the Trustee receives a valid purchase order is the purchase order date.

By placing a purchase order, an Authorized Participant agrees to deposit palladium with the Trust, or a combination of palladium and cash, as described below. Prior to the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

Determination of Required Deposits

The total deposit required to create each Basket (Creation Basket Deposit) will be an amount of palladium and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, 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. The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets.

The amount of the required palladium deposit is determined by dividing the number of ounces of palladium held by the Trust by the number of Baskets outstanding, as adjusted for estimated accrued but unpaid fees and expenses as described in the next paragraph.

The amount of any required cash deposit is determined as follows. The estimated unpaid fees, expenses and liabilities of the Trust accrued through the purchase order date are subtracted from any cash held or receivable by the Trust as of the purchase order date. The remaining amount is divided by the number of Shares outstanding immediately before the purchase order

date and then multiplied by the number of Shares being created pursuant to the purchase order. If the resulting amount is positive, this amount is the required cash deposit. If the resulting amount is negative, the amount of the required palladium deposit will be reduced by the number of fine ounces of palladium equal in value to that resulting amount, determined at the price of palladium used in calculating the NAV of the Trust on the purchase order date. Fractions of a fine ounce of palladium smaller than 0.001 of a fine ounce which are included in the palladium deposit amount are disregarded. All questions as to the composition of a Creation Basket Deposit will be finally determined by the Trustee. The Trustee's determination of the Creation Basket Deposit shall be final and binding on all persons interested in the Trust.

Delivery of Required Deposits

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required palladium deposit amount by the third business day in Zurich following the purchase order date. Upon receipt of the palladium deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer on the third business day following the purchase order date the palladium deposit amount from the Authorized Participant Unallocated Account to the Trust Unallocated Account and the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account.

Acting on standing instructions given by the Trustee, the Custodian will transfer the palladium deposit amount from the Trust Unallocated Account to the Trust Allocated Account by transferring palladium plates and ingots from its inventory to the Trust Allocated Account. The Custodian will use commercially reasonable efforts to complete the transfer of palladium to the Trust Allocated Account prior to the time by which the Trustee is to credit the Basket to the Authorized Participant's DTC account; if, however, such transfers have not been completed by such time, the number of Baskets ordered will be delivered against receipt of the palladium deposit amount in the Trust Unallocated Account, and all Shareholders will be exposed to the risks of unallocated palladium to the extent of that palladium deposit amount until the Custodian completes the allocation process.

The Trustee may reject a purchase order or a Creation Basket Deposit if such order or Creation Basket Deposit if [sic] not presented in proper form as described in the Authorized Participant Agreement or if the fulfillment of the order, in the opinion of counsel, might be unlawful.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 p.m. or the close of regular trading on the NYSE Arca, whichever is earlier. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket, or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than the third business day following the effective date of the redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

Determination of Redemption Distribution

The redemption distribution from the Trust will consist of (1) a credit to the redeeming Authorized Participant's Authorized Participant Unallocated Account representing the amount of the palladium held by the Trust evidenced by the Shares being redeemed plus or minus (2) the cash redemption amount. The cash redemption amount is equal to the value of all assets of the Trust other than palladium less all estimated accrued but unpaid expenses and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's redemption order. The Trustee will distribute any positive cash redemption amount through DTC to the account of the Authorized Participant as recorded on DTC's book entry system. If the cash redemption amount is negative, the credit to the Authorized Participant

Unallocated Account will be reduced by the number of ounces of palladium equal in value to the negative cash redemption amount, determined at the price of palladium used in calculating the NAV of the Trust on the redemption order date. The Sponsor anticipates that in the ordinary course of the Trust's operations there will be no cash distributions made to Authorized Participants upon redemptions. Fractions of a fine ounce of palladium included in the redemption distribution smaller than 0.001 of a fine ounce are disregarded. Redemption distributions will be subject to the deduction of any applicable tax or other governmental charges which may be due.

Delivery of Redemption Distribution

The redemption distribution due from the Trust will be delivered to the Authorized Participant on the third business day following the redemption order date if, by 9 a.m. New York time on such third business day, the Trustee's DTC account has been credited with the Baskets to be redeemed. Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

The Custodian will transfer the redemption palladium amount from the Trust Allocated Account to the Trust Unallocated Account and, thereafter, to the redeeming Authorized Participant's Authorized Participant Unallocated Account.

The Trustee may, in its discretion, and will when directed by the Sponsor, suspend the right of redemption, or postpone the redemption settlement date, (1) for any period during which the NYSE Arca is closed other than customary weekend or holiday closings, or trading on the NYSE Arca is suspended or restricted or (2) for any period during which an emergency exists as a result of which delivery, disposal or evaluation of palladium is not reasonably practicable.

The Trustee will reject a redemption order if the order is not in proper form as described in the Authorized Participant Agreement or if the fulfillment of the order, in the opinion of its counsel, might be unlawful.

Creation and Redemption Transaction Fee

To defray the costs incurred by the Trustee in providing services for processing the creation and redemption of Baskets, an Authorized Participant will be required to pay a transaction fee to the Trustee of \$500 per order to create or redeem Baskets. An order may include multiple Baskets. The

transaction fee may be reduced, increased or otherwise changed by the Trustee with the consent of the Sponsor. The Trustee shall notify DTC of any agreement to change the transaction fee and will not implement any increase in the fee for the redemption of Baskets until 30 days after the date of the notice.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than \$350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares ("Shareholders") owning at least 75% of the outstanding Shares.

The Trust expects to create and redeem the Shares from time to time, but only in one or more Baskets (a Basket equals a block of 50,000 Shares). The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of palladium and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed. The initial amount of palladium required for deposit with the Trust to create Shares is 5,000 ounces per Basket. The number of ounces of palladium required to create a Basket or to be delivered upon the redemption of a Basket will gradually decrease over time, due to the accrual of the Trust's expenses and the sale or delivery of the Trust's palladium to pay the Trust's expenses. Baskets may be created or redeemed only by Authorized Participants, who will pay a transaction fee for each order to create or redeem Baskets and may sell the Shares included in the Baskets they create to other investors.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Palladium, Definition of Net Asset Value and Adjusted Net Asset Value ("ANAV")

As of the London p.m. Fix on each day that the NYSE Arca is open for regular trading or, if there is no London p.m. Fix on such day or the London p.m. Fix has not been announced by 12 noon New York time on such day, as of 12 noon New York time on such day (Evaluation Time), the Trustee will evaluate the palladium held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's palladium on the basis of that day's London p.m. Fix or, if no London p.m. Fix is made on such day or has not been announced by the Evaluation Time, the next most recent London palladium price fix (a.m. or p.m.) determined prior to the Evaluation Time will be used, unless the Sponsor determines that such price is inappropriate as a basis for evaluation. In the event the Sponsor determines that the London p.m. Fix or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's palladium is not an appropriate basis for evaluation of the Trust's palladium, it shall identify an alternative basis for such evaluation to be employed by the Trustee. Neither the Trustee nor the Sponsor shall be liable to any person for the determination that the London p.m. Fix or last prior London palladium price fix is not appropriate as a basis for evaluation of the Trust's palladium or for any determination as to the alternative basis for such evaluation provided that such determination is made in good faith.²²

Once the value of the palladium has been determined, the Trustee will subtract all estimated accrued but unpaid fees, expenses and other liabilities of the Trust from the total value of the palladium and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

To determine the Trust's NAV, the Trustee will subtract the amount of estimated accrued but unpaid fees computed by reference to the ANAV of the Trust and to the value of the palladium held by the Trust from the ANAV of the Trust. The resulting figure

²² The Exchange, pursuant to NYSE Arca Equities Rule 7.12, has the discretion to halt trading in the Shares if the London Fix is not determined or available for an extended period based on extraordinary circumstances or market conditions.

is the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE Arca (which includes the net number of any Shares created or redeemed on such evaluation day).

The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include estimated accrued but unpaid fees and expenses). In determining the NAV of the Trust, the Trustee will value the palladium held by the Trust on the basis of the price of an ounce of palladium as set by the afternoon session of the twice daily fix of the price of an ounce of palladium which starts at 2 p.m. London, England time (London p.m. Fix) and is performed by the four members of the London Platinum and Palladium Market (LPPM). The Trustee will determine the NAV of the Trust on each day the NYSE Arca is open for regular trading, at the earlier of the London p.m. Fix for the day or 12 noon New York time. If no London p.m. Fix is made on a particular evaluation day or has not been announced by 12 noon New York time on a particular evaluation day, the next most recent London palladium price fix (a.m. or p.m.) will be used in the determination of the NAV of the Trust, unless the Sponsor determines that such price is inappropriate to use as basis for such determination. The Trustee will also determine the NAV per Share, which equals the NAV of the Trust, divided by the number of outstanding Shares.

The Shares will be book-entry only and individual certificates will not be issued for the Shares.

Liquidity

The Shares may trade at, above or below the NAV per Share. The NAV per Share will fluctuate with changes in the market value of the Trust's assets. The trading price of the Shares will fluctuate in accordance with changes in the NAV per Share as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the major palladium markets. While the Shares will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the market for palladium will be reduced after the close of the major world palladium markets, including London and the NYMEX. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Availability of Information Regarding Palladium Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as palladium, 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 palladium price and palladium market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis palladium pricing information based on the spot price for an ounce of palladium from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of palladium and last sale prices of palladium futures, as well as information about news and developments in the palladium market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on palladium prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot palladium, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for palladium futures and options prices traded on the NYMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on palladium, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London a.m. Fix and London p.m. Fix are publicly available at no charge at http://www.lbma.org.uk/statistics_current.htm or <http://www.thebulliondesk.com>.

The Trust Web site will provide an intraday indicative value ("IIV") per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV is calculated by multiplying the indicative spot price

of palladium by the quantity of palladium backing each Share. The Trust Web site will also provide the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The NAV as of the close of the prior business day and the mid-point of the bid-ask price²³ at the close of trading in relation to such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the following information: the Creation Basket Deposit, the Trust's prospectus, and the two most recent reports to stockholders. Finally, the Trust Web site will also provide the last sale price of the Shares as traded in the US market. The Exchange will provide on its Web site (<http://www.nyx.com>) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in Rule 8.201(e) for initial and continued listing of the Shares.²⁴

A minimum of 100,000 Shares will be required to be outstanding at the start of trading.²⁵ The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust and exchange-traded funds. It is anticipated that the initial price of a Share be approximately \$22.00. 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

²³ The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

²⁴ See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to David Liu, Assistant Director, Christopher W. Chow, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated November 9, 2009.

²⁵ *Id.*

equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), 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 palladium, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying palladium, related futures or options on futures or any other related derivative (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, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but 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 palladium 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.²⁶

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. 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 applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. 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. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying palladium, palladium futures contracts, options on palladium futures, or any other palladium derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.²⁷ NYMEX is an ISG member.

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 Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the 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 resulting premium or discount on the Shares may widen as a result of reduced liquidity of palladium trading during the Core and Late Trading Sessions after the close of the major world palladium 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 Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

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

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)²⁸ of the Act, in general, and furthers the objectives of Section 6(b)(5),²⁹ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange does not believe that the proposed rule change will impose

²⁶ See NYSE Arca Equities Rule 7.12.

²⁷ A list of ISG members is available at <http://www.isgportal.org>. The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market. In addition, the Exchange does not have access to information regarding palladium-related OTC transactions in spot, forwards, options or other derivatives.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-94 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2009-94. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2009-94 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-27494 Filed 11-16-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60965; File No. SR-NASDAQ-2009-097]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No.1, to Add Seventy-Five Options Classes to the Penny Pilot Program

November 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposal on November 5, 2009.³ 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

Nasdaq is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to designate seventy-five options classes to be added to the Penny Pilot in options classes in certain issues ("Penny Pilot" or "Pilot") on November 2, 2009.⁴ The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.⁵

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq's principal office, 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective November 2, 2009.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,⁶ the Exchange proposed expanding the Pilot four times on a

⁴ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-NASDAQ-2008-026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 60874 (October 23, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot).

⁵ See Chapter VI, Section 5 regarding the Penny Pilot.

⁶ See Securities Exchange Act Release No. 60874 (October 23, 2009) (SR-NASDAQ-2009-091) (notice of filing and immediate effectiveness).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq proposed to correct a technical error in Section III. The change has no effect on the substance of the proposed rule change.