

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-NYSE-2007-90 and should be submitted on or before November 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56695; File No. SR-NYSEArca-2007-111]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Shares of the HealthShares™ Ophthalmology Exchange-Traded Fund

October 24, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 19, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange ("Exchange Proposal"). This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

The Exchange proposes to list and trade shares of the HealthShares™ Ophthalmology Exchange-Traded Fund (the "Fund").<sup>3</sup> The text of the proposal is available at the Exchange, the

Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

##### 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 the shares of the Fund (the "Shares"), which is based on the HealthShares™ Ophthalmology Index (the "Underlying Index"), under NYSE Arca Equities Rule 5.2(j)(3). NYSE Arca Equities Rule 5.2(j)(3) states that the Exchange may consider for trading, whether by listing or pursuant to unlisted trading privileges ("UTP"), Investment Company Units.<sup>4</sup> The Fund is currently listed on the New York Stock Exchange LLC ("NYSE") and trades on NYSE Arca pursuant to UTP.<sup>5</sup> HealthShares, Inc. (the "Corporation") has determined to transfer the listing of the Fund Shares to the Exchange.<sup>6</sup>

<sup>4</sup> NYSE Arca Equities Rule 5.2(j)(3) defines an Investment Company Unit as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

<sup>5</sup> The Exchange states that the Fund Shares were listed on NYSE on March 12, 2007 pursuant to the "generic" listing criteria contained in Section 703.16(C) of the NYSE Listed Company Manual, which permits the listing of Investment Company Units pursuant to Rule 19b-4(e) under the Act (17 CFR 240.19b-4(e)). NYSE Arca further represents that the Fund Shares commenced trading on the Exchange pursuant to UTP under the generic listing criteria contained in NYSE Arca Equities Rule 5.2(j)(3) applicable to Investment Company Units and Rule 19b-4(e) under the Act on the first day the Fund Shares launched for trading on NYSE. E-mail from Tim Malinowski, Director, Exchange Traded Funds, NYSE Group, Inc., to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated October 23, 2007 ("Exchange Confirmation").

<sup>6</sup> The Exchange represents that, except for Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Fund Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3). See Exchange Confirmation. Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) requires that component stocks that, in the aggregate, account for at least 90% of the weight of

The Fund, which can invest in both U.S. securities and non-U.S. securities not listed on a national securities exchange, seeks to track the performance, before fees and expenses, of the Underlying Index. XShares Advisors, LLC, the investment adviser to the Fund ("Advisor"), uses a passive, or indexing, approach in managing the Fund, investing at least 90% of its assets in the common stocks of Ophthalmology companies in the Underlying Index, or in American Depositary Receipts ("ADRs") or Global Depositary Receipts ("GDRs") based on securities of international Ophthalmology companies in the Underlying Index. The Fund may also invest up to 10% of its assets in futures contracts, options on futures contracts, options, swaps on securities of companies in the Underlying Index, as well as cash and cash equivalents, such as money market instruments (subject to applicable limitations of the 1940 Act). The Fund attempts to replicate the Underlying Index by matching the weighting of securities in its portfolio with such securities' weightings in the Underlying Index.<sup>7</sup> In managing the Fund, the Advisor seeks a correlation of 0.95 or better between the Fund's performance and the performance of its Underlying Index. A figure of 1.00 would mean perfect correlation.

Detailed descriptions of the Fund, the Underlying Index (including the methodology used to determine the composition of the Underlying Index), procedures and payment requirements for creating and redeeming Shares,

the Underlying Index or portfolio, must each have a minimum worldwide trading volume during each of the last six months of at least 250,000 shares. The Exchange states that, as of October 1, 2007, those component stocks comprising the Underlying Index that individually exceed the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months account, in the aggregate, for only 88.2 % of the weight of the Underlying Index (i.e., 1.8% below the required 90% requirement). Therefore, NYSE Arca has filed the instant proposed rule change to obtain Commission approval to list and trade the Shares on the Exchange pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(1)) and Rule 19b-4 thereunder (17 CFR 240.19b-4). The Exchange further represents that the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2) applicable to Investment Company Units shall apply to the Fund Shares. See Exchange Confirmation.

<sup>7</sup> The Exchange states that, from time to time, it may not be possible, for regulatory or other legal reasons, to replicate the Underlying Index, and in such cases, the Advisor may pursue a sampling strategy in managing the portfolio. Pursuant to this strategy, the Fund may invest the remainder of its assets in securities of companies not included in the Underlying Index if the Advisor believes that such securities will assist the Fund in tracking the Underlying Index. If a Fund pursues a sampling strategy, it will continue to invest at least 90% of its assets in the common stocks, ADRs, or GDRs of the companies in the Underlying Index.

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

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

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

<sup>3</sup> The Fund is registered under the Investment Company Act of 1940 (the "1940 Act").

transaction fees and expenses, dividends, distributions, taxes, reports to be distributed to beneficial owners of the Shares, availability of information regarding the Shares, calculation and dissemination of key values (*i.e.*, Intraday Indicative Value, Underlying Index value, and net asset value or "NAV"), trading rules and halts, surveillance, and the Information Bulletin can be found in the Exchange Proposal, the Corporation's Internet Web site ([www.healthsharesinc.com](http://www.healthsharesinc.com)), and/or in the Fund's Registration Statement,<sup>8</sup> as applicable.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

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

The Exchange does not believe that the proposed rule change would impose 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*

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

## III. 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 ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

Number SR-NYSEArca-2007-111 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2007-111. 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 ([www.sec.gov/rules/sro.shtml](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-2007-111 and should be submitted on or before November 20, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to either originally list and trade Investment Company Units or trade Investment Company Units pursuant to UTP, the Shares do not meet the generic listing requirements of NYSE Arca Equities Rule 5.2(j)(3), which permit the listing and trading of such securities in reliance upon Rule 19b-4(e) under the Act,<sup>13</sup> because the components of the Underlying Index do not meet the requirements of Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3).<sup>14</sup> Commentary .01(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) requires that, upon the initial listing of any series of Investment Company Units pursuant to Rule 19b-4(e) under the Act, component stocks that, in the aggregate, account for at least 90% of the weight of the Underlying Index or portfolio, must each have a minimum worldwide trading volume during each of the last six months of at least 250,000 shares. The Exchange states that, as of October 1, 2007, those component stocks comprising the Underlying Index that individually exceed the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months account, in the aggregate, for only 88.2% of the weight of the Underlying Index. Because such percentage misses the minimum required threshold by approximately 1.8%, the Shares cannot be listed and traded pursuant to the generic listing standards of NYSE Arca Equities Rule 5.2(j)(3).

The Commission believes, however, that the listing and trading of the Shares would be consistent with the Act. The Commission notes that, based on the Exchange's representations, the Fund Shares otherwise meet all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).<sup>15</sup> The Commission further notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by only a slight margin.<sup>16</sup>

<sup>13</sup> 17 CFR 240.19b-4(e).

<sup>14</sup> See *supra* note 6.

<sup>15</sup> See *id.*

<sup>16</sup> See Securities Exchange Act Release Nos. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR-NYSE-2007-46) (approving the listing and trading of shares of the HealthShares™ Orthopedic Repair exchange-traded fund where the component stocks comprising the index that individually

<sup>8</sup> See Registration Statement on Form N-1A, filed February 14, 2006 (Securities Act File No. 333-131842 and Investment Company File No. 811-21855), and amendments thereto filed with the Commission.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

The Commission also notes that the Fund Shares are currently already trading on the Exchange pursuant to UTP and are substantially similar in structure and operation to other shares of HealthShares<sup>TM</sup> exchange-traded funds, the shares of which are currently listed and traded on the Exchange.<sup>17</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>18</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CT").<sup>19</sup> In addition, the Exchange will disseminate through CT or a major market data vendor an amount per Share referred to as the Intraday Indicative Value at least every 15 seconds during Exchange trading hours.<sup>20</sup> The value of the Underlying Index will be updated intra-day on a real time basis as individual component securities change in price and will be

exceeded the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months accounted, in the aggregate, for 86.2 % of the weight of the index); 55699 (May 3, 2007), 72 FR 26435 (May 9, 2007) (SR-NYSEArca-2007-27) (approving the listing and trading of shares of the iShares FTSE NAREIT Residential Index Fund where the weighting of the five highest components of the underlying index was marginally higher than that allowed by NYSE Arca, Inc.'s relevant generic listing standards); and 52826 (November 22, 2005), 70 FR 71874 (November 30, 2005) (SR-NYSEArca-2005-67) (approving the listing and trading of shares of the iShares Dow Jones U.S. Energy Sector Index Fund and the iShares Dow Jones U.S. Telecommunications Sector Index Fund where the weightings of the most heavily weighted component stock and the five highest components of the underlying indexes, respectively, were higher than that required by NYSE Arca, Inc.'s relevant generic listing standards). See also Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR-NYSE-2002-28) (approving the trading pursuant to unlisted trading privileges of shares of Vanguard Total Stock Market VIPERs, iShares Russell 2000 Index Funds, iShares Russell 2000 Value Index Funds, and iShares Russell 2000 Growth Funds, none of which met the trading volume requirement of the relevant generic listing criteria for NYSE).

<sup>17</sup> See Exchange Confirmation, *supra* note 5 (noting that the shares of other HealthShares<sup>TM</sup> exchange-traded funds are listed and traded on the Exchange pursuant to Rule 19b-4(e) under the Act because they meet the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3)). See 17 CFR 240.19b-4(e).

<sup>18</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>19</sup> See Exchange Confirmation, *supra* note 5 (confirming the information regarding the Shares to be disseminated through CT).

<sup>20</sup> See NYSE Arca Equities Rule 7.34 (providing for an Opening, Core, and Late Trading Session, from 4:00 a.m. to 8:00 p.m. Eastern Time or "ET").

disseminated at least every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors.<sup>21</sup> In addition, the value of the Underlying Index will be disseminated by one or more major market data vendors once each trading day based on closing prices in the relevant exchange market. The NAV for the Fund is calculated by BNY Asset Management between 4:30 p.m. and 6:30 p.m. ET each trading day and disseminates such value to all market participants at the same time. The updated NAV is available on the Corporation's Web site at the same time that the NAV is made available to market participants. The Corporation's Web site also includes: (1) The Fund's Prospectus and Statement of Additional Information; (2) information regarding the Underlying Index; (3) the prior business day's NAV; (4) the mid-point of the bid-ask spread at the time of calculation of the NAV (the "Bid/Ask Price"); (5) a calculation of the premium or discount the Bid/Ask Price at the time of calculation of the NAV against such NAV; (6) the component securities of the Underlying Index; (7) and a description of the methodologies used in determining the composition of the Underlying Index and certain computations. Finally, the closing prices of the Fund's Deposit Securities<sup>22</sup> are readily available from, as applicable, the relevant exchange, automated quotation systems, published or other public sources, or on-line information services that are major market data vendors. Similarly, information regarding market prices and volume of the Shares is broadly available on a real-time basis throughout the trading day.

The Commission finds that the Exchange's proposed rules and procedures for trading of the Shares are consistent with the Act. The Shares will trade as equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Commission notes that trading of the Shares may be halted and/or the Shares

may be delisted based on circumstances set forth under NYSE Arca Equities Rule 5.5(g)(2).<sup>23</sup> In particular, if the Intraday Indicative Value or the value of the Underlying Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of such values occurs; if the interruption to the dissemination of any such value persists past the trading day in which it first occurred, the Exchange will halt trading of the Shares. In addition, the Exchange states that it will cease trading the Shares based on NYSE Arca Equities Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility) and may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Some of these factors may include (1) the extent to which trading is not occurring in the securities comprising the Underlying Index and/or the financial instruments of the Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares may also be halted pursuant to the Exchange's "circuit breaker" rule<sup>24</sup> or by the halt or suspension of trading of the securities comprising the Underlying Index.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange has appropriate rules to facilitate transactions in the Shares during all three trading sessions (Opening, Core, and Late Trading Sessions, from 4 a.m. to 8 p.m. ET).<sup>25</sup>

(2) The Exchange would utilize its existing surveillance procedures applicable to equity securities to monitor trading of the Shares of the Fund. Surveillance procedures applicable to trading of the Shares are comparable to those applicable to other Investment Company Units currently trading on the Exchange. The Exchange represents that such surveillance procedures are adequate to properly monitor the trading of the Fund Shares. 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

<sup>21</sup> The Exchange states that the official index sponsors for the Underlying Index currently do not calculate an updated Underlying Index value during the Exchange's Opening and Late Trading Sessions. See Exchange Confirmation, *supra* note 5 (confirming when the updated value of the Underlying Index is calculated and disseminated). However, if the index sponsors do so in the future, the Exchange represents that it would not trade this product unless such official Underlying Index value is widely disseminated.

<sup>22</sup> "Deposit Securities" is defined as the basket of stocks that are part of the Fund's Underlying Index and deposited with the Corporation by participants for purposes of purchasing a group of a fixed number of Shares, also known as a "Creation Unit."

<sup>23</sup> See *supra* note 6.

<sup>24</sup> See NYSE Arca Equities Rule 7.12.

<sup>25</sup> See *supra* note 20.

trading violations. The Exchange may also obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of ISG.<sup>26</sup>

(3) Standard and Poor's, which acts as the "Index Administrator" and is responsible for maintaining the Underlying Index, is neither a registered broker-dealer nor an "affiliated person," as defined in Section 2(a)(3) of the 1940 Act,<sup>27</sup> or an affiliated person of the Fund, Advisor, Sub-Advisor,<sup>28</sup> Distributor,<sup>29</sup> or the Corporation. In addition, the Distributor is not an affiliated person of the Advisor, the Sub-Advisor, the Fund, or the Corporation.<sup>30</sup>

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders<sup>31</sup> in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations; (2) NYSE Arca Equities Rule 9.2(a),<sup>32</sup> which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares

during the Opening and Late Trading Sessions when an updated Intraday Indicative Value and Underlying Index value will not be calculated or publicly disseminated; (4) how information regarding the Intraday Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a Prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement,<sup>33</sup> discuss any exemptive, no-action, and/or interpretive relief granted by the Commission from any rules under the Act, and disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

This order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**.

As referenced above, the Commission notes that the Fund Shares are currently trading on the Exchange pursuant to UTP<sup>34</sup> and are substantially similar in structure, operation, and function to the shares of other HealthShares<sup>TM</sup> exchange-traded funds, the shares of which are currently listed and trading on the Exchange pursuant to Rule 19b-4(e) under the Act.<sup>35</sup> In addition, the Commission notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by similar amounts.<sup>36</sup> Although the Fund Shares do not meet the initial listing requirement of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and therefore cannot be listed pursuant to Rule 19b-4(e),<sup>37</sup> the Commission believes that the Shares are substantially similar to the other HealthShares<sup>TM</sup> trading on the Exchange and notes that the Shares would otherwise comply with all other generic listing requirements under NYSE Arca Equities Rule 5.2(j)(3).<sup>38</sup> The Commission also notes that the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2) applicable to Investment Company Units would apply to the Fund Shares. The listing and trading of the Shares do not appear to present any

new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Shares to trade on the Exchange without undue delay and should generate additional competition in the market for such products.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-NYSEArca-2007-111) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>40</sup>

Nancy M. Morris,  
Secretary.

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## DEPARTMENT OF STATE

[Public Notice 5975]

### Presidential Permits Concerning Pipeline Facilities on the International Boundaries of the United States

AGENCY: Department of State.

ACTION: Notice.

Section 1(a) of Executive Order 13337, of April 30, 2004, designates and empowers the Secretary of State to "receive all applications for Presidential permits, as referred to in Executive Order 11423, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country." Furthermore, section 1(a) of Executive Order 11423 designates and empowers the Secretary of State to receive "all applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (i) Pipelines, conveyor belts, and similar facilities for the exportation or importation of all products, except those specified section 1(a) of [Executive Order 13337] to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country \* \* \*". This authority is subject to certain exceptions with respect to facilities covered by Executive Order 10485 of September 3, 1953 (concerning electric power and natural gas facilities), and Executive Order 10530 of May 10,

<sup>26</sup> The Exchange notes that one or more of the underlying securities may trade on exchanges that are not members or affiliate members of ISG, and the Exchange may not have in place comprehensive surveillance sharing agreements with such exchanges.

<sup>27</sup> See 15 U.S.C. 80a-2(a)(3).

<sup>28</sup> BNY Investment Advisors acts as the "Sub-Advisor" to the Fund.

<sup>29</sup> ALPS Distributors, Inc. is a registered broker-dealer and acts as the "Distributor" and underwriter of the Creation Units.

<sup>30</sup> See NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(b)(1) (providing for restrictions to access of information concerning changes and adjustments to an index and requirements designed to prevent the use and dissemination of material, non-public information regarding the applicable index, among others).

<sup>31</sup> The Exchange defines an "ETP Holder" as a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or "ETP" by NYSE Arca Equities for effecting approved securities transactions on NYSE Arca Equities' trading facilities. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act (15 U.S.C. 78o).

<sup>32</sup> NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his or her other security holdings and as to his or her financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation.

<sup>33</sup> See *supra* note 8.

<sup>34</sup> See *supra* note 5.

<sup>35</sup> See *supra* note 17.

<sup>36</sup> See *supra* note 16.

<sup>37</sup> See *supra* note 6.

<sup>38</sup> See *id.*

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 17 CFR 200.30-3(a)(12).