

company or company relying on section 3(c)(1) or 3(c)(7) of the Act in an amount in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund:

(a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

12. With respect to Registered Separate Accounts that invest in a DWS Fund of Funds, no sales load will be charged at the DWS Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will be charged at the DWS Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a DWS Fund of Funds, any sales charges and/or service fees charged with respect to shares of a DWS Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62237; File No. SR-NYSEArca-2010-44]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the United States Commodity Index Fund

June 7, 2010.

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 May 25, 2010, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the United States Commodity Index Fund under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts (“TIRs”) either by listing or pursuant to unlisted trading privileges (“UTP”).<sup>3</sup> The Exchange proposes to list and trade shares (“Units”) of the United States Commodity Index Fund (“USCI” or “Fund”) pursuant to NYSE Arca Equities Rule 8.200.<sup>4</sup> The Fund is a commodity

<sup>3</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>4</sup> The Commission previously has approved listing on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 of certain securities issuers holding commodities-related instruments. See, e.g., Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91) (order granting accelerated approval to list on NYSE Arca of 14 ProShares funds). The Commission also has approved issues of Partnership Units based on commodities, which are listed on the Exchange pursuant to NYSE Arca Equities Rule 8.300 and which have certain characteristics similar to the Units. See, e.g., Securities Exchange Act Release

pool that is a series of United States Commodity Index Funds Trust (“Trust”), a Delaware statutory trust.<sup>5</sup>

#### Overview of USCI

According to the Registration Statement, the investment objective of USCI is to have the daily changes in percentage terms of the Units’ net asset value (“NAV”) reflect the daily changes in percentage terms of the SummerHaven Dynamic Commodity Index (“SDCI”) Total Return (the “Index”), less USCI’s expenses. The Index is designed to reflect the performance of a diversified group of commodities. The Index is owned and maintained by SummerHaven Index Management, LLC (“SummerHaven Indexing”), and calculated and published by Bloomberg, L.P. (“Bloomberg”). The Index was developed based upon academic research by Yale University professors Gary B. Gorton and K. Geert Rouwenhorst, and Hitotsubashi University professor Fumio Hayashi.

USCI’s sponsor is United States Commodity Funds LLC (“USCF” or the “Sponsor”), a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission (“CFTC”) and a member of the National Futures Association (“NFA”). The Sponsor controls the operations of USCI. USCI’s trading advisor is SummerHaven Investment Management, LLC (“SummerHaven”), a Delaware limited liability company that is registered as a commodity trading advisor and a commodity pool operator with the CFTC and is a member of the NFA. SummerHaven provides advisory services to the Sponsor with respect to the Index and the investment decisions of USCI. The Sponsor, SummerHaven Indexing, SummerHaven, and Bloomberg are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material

Nos. 59173 (December 29, 2008), 74 FR 490 (January 6, 2009) (SR-NYSEArca-2008-125) (order approving listing and trading of United States Short Oil Fund, LP); and 61881 (April 9, 2010), 75 FR 20028 (April 16, 2010) (SR-NYSEArca-2010-14) (order approving listing on the Exchange of United States Brent Oil Fund).

<sup>5</sup> The Fund has filed Amendment No. 3 to Form S-1, dated May 25, 2010 (File No. 333-164024) (“Registration Statement”). The description of the Fund and the Units contained herein are based on the Registration Statement. See E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated June 2, 2010 (“Exchange Confirmation”).

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

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

nonpublic information regarding the Index or the Fund's portfolio.<sup>6</sup>

According to the Registration Statement, it is anticipated that the net assets of USCI will consist primarily of investments in futures contracts for commodities that are traded on the New York Mercantile Exchange ("NYMEX"), ICE Futures ("ICE"), Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME"), London Metal Exchange ("LME"), Commodity Exchange, Inc. ("COMEX") or on other foreign exchanges (such exchanges, collectively, the "Futures Exchanges") (such futures contracts, collectively, "Futures Contracts") and, to a lesser extent, in order to comply with regulatory requirements or in view of market conditions, other commodity-based contracts and instruments such as cash-settled options on Futures Contracts, forward contracts relating to commodities, cleared swap contracts and other over-the-counter transactions that are based on the price of commodities and Futures Contracts (collectively, "Other Commodity-Related Investments"). Market conditions that the Sponsor currently anticipates could cause USCI to invest in Other Commodity-Related Investments would be those allowing USCI to obtain greater liquidity or to execute transactions with more favorable pricing. Futures Contracts and Other Commodity-Related Investments collectively are referred to herein as "Commodity Interests." The Sponsor expects to manage USCI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Index and USCI's selection of investments on behalf of USCI.

USCI seeks to achieve its investment objective by investing in Futures Contracts and Other Commodity-Related Investments such that daily changes in USCI's NAV will closely track the changes in the Index.<sup>7</sup> The Index is comprised of 14 Futures Contracts that will be selected on a monthly basis from a list of 27 possible Futures Contracts. The Futures Contracts that at any given time make up the Index are referred to herein as "Benchmark Component Futures Contracts." USCI anticipates that to meet its investment objective it will invest first, in the current

Benchmark Component Futures Contracts and other Futures Contracts intended to replicate the return on the current Benchmark Component Futures Contracts and, thereafter, to comply with regulatory requirements or in view of market conditions, in Other Commodity-Related Investments intended to replicate the return on the Benchmark Component Futures Contracts, including cleared swap contracts and other over-the-counter transactions, and in other Futures Contracts.

USCI's positions in Commodity Interests will be rebalanced on a monthly basis in order to track the changing nature of the Index. If Futures Contracts relating to a particular commodity remains in the Index from one month to the next, such Futures Contracts will be rebalanced to the 7.14% target weight, as described below. Specifically, on a specified day near the end of each month called the Selection Date (as defined below),<sup>8</sup> it will be determined if a current Benchmark Component Futures Contract will be replaced by a new Futures Contract in either the same or different underlying commodity to be used as a Benchmark Component Futures Contract for the following month, in which case USCI's investments would have to be changed accordingly. In order that USCI's trading does not unduly cause extraordinary market movements, and to make it more difficult for third parties to profit by trading based on market movements that could be expected from changes in the Benchmark Component Futures Contracts, USCI's investments typically will not be rebalanced entirely on a single day, but rather will typically be rebalanced over a period of four days. After fulfilling the margin and collateral requirements with respect to its Commodity Interests, USCI will invest the remainder of its proceeds from the sale of baskets in short-term obligations of the United States government ("Treasury Securities") or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

According to the Registration Statement, the Sponsor endeavors to place USCI's trades in Commodity Interests and otherwise manage USCI's investments so that A will be within plus/minus 10 percent of B, where:

- A is the average daily change in USCI's NAV for any period of 30 successive valuation days, *i.e.*, any NYSE Arca trading day as of which USCI calculates its NAV, and

- B is the average daily change in the Index over the same period.

The Sponsor believes that market arbitrage opportunities will cause USCI's Unit price on NYSE Arca to closely track USCI's NAV per Unit. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between USCI's NAV and the Index will be that the changes in the price of USCI's Units on the NYSE Arca will closely track, in percentage terms, changes in the Index, less USCI's expenses.

The Sponsor will employ a "neutral" investment strategy intended to track the changes in the Index regardless of whether the Index goes up or goes down. The Sponsor does not intend to operate USCI in a fashion such that its per Unit NAV will equal, in dollar terms, the spot prices of the commodities comprising the Index or the prices of any particular group of Futures Contracts.

USCI creates and redeems Units only in blocks called Creation Baskets and Redemption Baskets, respectively. Only Authorized Purchasers may purchase or redeem Creation Baskets or Redemption Baskets. The creation and redemption of baskets are only made in exchange for delivery to USCI or the distribution by USCI of the amount of Treasury Securities and/or cash equal to the combined NAV of the number of Units included in the baskets being created or redeemed, determined as of 4 p.m. Eastern time ("E.T.") on the day the order to create or redeem baskets is properly received.

All proceeds from the sale of Creation Baskets will be invested as quickly as practicable in the investments described in the Registration Statement. Investments and related margin or collateral are held through USCI's custodian, Brown Brothers Harriman & Co. ("Custodian"), in accounts with USCI's commodity futures brokers or, in some instances when agreed to by USCI, in collateral accounts held by third parties with respect to its non-exchange traded or cleared over-the-counter Commodity Interests.

The principal types of Commodity Interests in which USCI may invest are set forth in the Registration Statement and include futures contracts, forward contracts, swaps or options on futures contracts,<sup>9</sup> forward contracts or commodities on the spot market.

USCI will invest in Commodity Interests to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or

<sup>6</sup> In the event the Sponsor, SummerHaven Indexing, SummerHaven, or Bloomberg become affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

<sup>7</sup> Futures Contracts may have various expiration dates.

<sup>8</sup> See Exchange Confirmation, *supra* note 5.

<sup>9</sup> See Exchange Confirmation, *supra* note 5.

collateral obligations with respect to its investments in Commodity Interests. The primary focus of the Sponsor is the investment in Commodity Interests and the management of USCI's investments in Treasury Securities, cash and/or cash equivalents.

USCI seeks to achieve its investment objective by investing in a mix of Commodity Interests such that the changes in its NAV will closely track the changes in the Index. USCI's positions in Commodity Interests will be rebalanced on a monthly basis in order to track the changing nature of the Index. The portfolio rebalancing takes place during the last four business days of the month ("Rebalancing Period"). At the end of each of the days in the Rebalancing Period, one fourth of the prior month portfolio positions are replaced by equally-weighted positions reflecting the particular Benchmark Component Futures Contracts determined on the selection date, which is the fifth business day before the end of the month ("Selection Date"). At the end of the Rebalancing Period, the Index will have an equal-weight position of approximately 7.14% in each of the selected Benchmark Component Futures Contracts which will be reflected in the rebalanced portfolio. After fulfilling the collateral requirements with respect to its Commodity Interests, USCI will invest the remainder of its proceeds from the sale of baskets in short-term Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

According to the Registration Statement, the specific Commodity Interests purchased will depend on various factors, including a judgment by the Sponsor as to the appropriate diversification of USCI's investments. While the Sponsor anticipates significant investments in Futures Contracts on the Futures Exchanges, for various reasons, including the ability to enter into the precise amount of exposure to the commodities market

and position limits on Futures Contracts, it may also invest in Other Commodity-Related Investments, such as swaps, in the over-the-counter market. If USCI is required by law or regulation, or by one of its regulators, including a Futures Exchange, to reduce its position in one or more Futures Contracts to the applicable position limit or to a specified accountability level, a substantial portion of USCI's assets could be invested in Other Commodity-Related Investments that are intended to replicate the return on the Index or particular Benchmark Component Futures Contracts. As USCI's assets reach higher levels, USCI is more likely to exceed position limits, accountability levels or other regulatory limits and, as a result, it is more likely that it will invest in Other Commodity-Related Investments at such higher levels.<sup>10</sup>

The Sponsor may not be able to fully invest USCI's assets in Futures Contracts having an aggregate notional amount exactly equal to USCI's NAV. For example, as standardized contracts, the Benchmark Component Futures Contracts included in the Index are for a specified amount of a particular commodity, and USCI's NAV and the proceeds from the sale of a Creation Basket is unlikely to be an exact multiple of the amounts of those contracts. As a result, in such circumstances, USCI may be better able to achieve the exact amount of exposure to changes in price of the Benchmark Component Futures Contracts through the use of Other Commodity-Related Investments, such as over-the-counter contracts that have better correlation with changes in price of the Benchmark Component Futures Contracts.<sup>11</sup>

USCI anticipates that, to the extent it invests in Futures Contracts other than the Benchmark Component Futures Contracts and Other Commodity-Related Investments, it will enter into various non-exchange-traded derivative contracts to hedge the short-term price

movements of such Futures Contracts and Other Commodity-Related Investments against the current Benchmark Component Futures Contracts.

Index Methodology

According to the Registration Statement, the Index is designed to reflect the performance of a fully margined or collateralized portfolio of 14 commodity futures contracts with equal weights, selected each month from a universe of 27 eligible commodity futures contracts. The Index is rules-based and rebalanced monthly based on observable price signals. The overall return on the Index is generated by two components: (i) Uncollateralized returns from the commodity Benchmark Component Futures Contracts<sup>12</sup> comprising the Index; and (ii) a daily fixed income return reflecting the interest earned on a hypothetical 3-month U.S. Treasury Bill collateral portfolio, calculated using the weekly auction rate for the 3-month U.S. Treasury Bills published by the U.S. Department of the Treasury. SummerHaven Indexing is the owner of the Index.

The Index is composed of physical non-financial commodity futures contracts with active and liquid markets traded upon futures exchanges in major industrialized countries. The Benchmark Component Futures Contracts<sup>13</sup> are denominated in U.S. dollars and weighted equally by notional amount. The commodity sectors for the Index include grains (e.g., wheat, corn, soybeans, etc.), precious metals (e.g., gold, silver, platinum), industrial metals (e.g., zinc, nickel, aluminum, copper, etc.), livestock (e.g., live cattle, lean hogs, feeder cattle), softs (e.g., sugar, cotton, coffee, cocoa) and energy (e.g., crude oil, natural gas, heating oil, etc.).

The eligible commodities and relevant Futures Exchange on which the Futures Contract is listed are as follows:<sup>14</sup>

Commodity	Designated contract	Exchange	Units	Position limits single month <sup>15</sup>	Position limits all months	Trading hours (E.T.)
Crude Oil (Brent) ...	Crude Oil .....	ICE-UK .....	1,000 barrels .....	none .....	none .....	8 p.m.-6 p.m. (next day).
Crude Oil (WTI) .....	Light, Sweet Crude Oil .....	NYMEX .....	1,000 barrels .....	none .....	none .....	10 a.m.-2:30 p.m.
Gas Oil .....	Gas Oil .....	ICE-UK .....	100 metric tons ...	none .....	none .....	8 p.m.-6 p.m. (next day).
Heating Oil .....	Heating Oil .....	NYMEX .....	42,000 gallons .....	none .....	none .....	9 a.m.-2:30 p.m.
Natural Gas .....	Henry Hub Natural Gas .....	NYMEX .....	10,000 mmbtu .....	none .....	none .....	9 a.m.-2:30 p.m.

<sup>10</sup> See note 15, *infra*.

<sup>11</sup> See Exchange Confirmation, *supra* note 5.

<sup>12</sup> See *id*.

<sup>13</sup> See *id*.

<sup>14</sup> See *id*.

Commodity	Designated contract	Exchange	Units	Position limits single month <sup>15</sup>	Position limits all months	Trading hours (E.T.)
Unleaded Gasoline	Reformulated Blendstock for Oxygen Blending "RBOB".	NYMEX	42,000 gallons	none	none	9 a.m.–2:30 p.m.
Feeder Cattle	Feeder Cattle	CME	50,000 lbs	1,600	1,600	10:05 a.m.–2 p.m.
Lean Hogs	Lean Hogs	CME	40,000 lbs	4,100	4,100	9:10 a.m.–1 p.m.
Live Cattle	Live Cattle	CME	40,000 lbs	5,400	5,400	10:05 a.m.–2 p.m.
Bean Oil	Bean Oil	CBOT	60,000 lbs	5,000	6,500	10:30 a.m.–2:15 p.m.
Corn	Corn	CBOT	5,000 bushels	13,500	22,000	10:30 a.m.–2:15 p.m.
Soybeans	Soybeans	CBOT	5,000 bushels	6,500	10,000	10:30 a.m.–2:15 p.m.
Soybean Meal	Soybean Meal	CBOT	100 tons	5,000	6,500	10:30 a.m.–2:15 p.m.
Wheat	Wheat	CBOT	5,000 bushels	5,000	6,500	10:30 a.m.–2:15 p.m.
Aluminum	High Grade Primary Aluminum.	LME	25 metric tons	none	none	6:55 a.m.–12 p.m.
Copper	Copper	COMEX	25,000 lbs.	none	none	8:10 a.m.–1 p.m.
Lead	Lead	LME	25 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Nickel	Primary Nickel	LME	6 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Tin	Tin	LME	5 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Zinc	Special High Grade Zinc.	LME	25 metric tons	none	none	3 p.m.–2:45 p.m. (next day).
Gold	Gold	COMEX	100 troy oz	none	none	8:20 a.m.–1:30 p.m.
Platinum	Platinum	NYMEX	50 troy oz	none	none	8:20 a.m.–1:05 p.m.
Silver	Silver	COMEX	5,000 troy oz	none	none	8:25 a.m.–1:25 p.m.
Cocoa	Cocoa	ICE-US	10 metric tons	none	none	4 a.m.–2 p.m.
Coffee	Coffee "C"	ICE-US	37,500 lbs	none	none	3:30 a.m.–2 p.m.
Cotton	Cotton	ICE-US	50,000 lbs	3,500	5,000	9 p.m.–2:30 p.m.
Sugar	World Sugar No. 11.	ICE-US	112,000 lbs	none	none	3:30 a.m.–2 p.m.

<sup>15</sup> The Sponsor has represented that the positions limits in the chart above reflect fixed limits on the maximum number of futures contracts that any person may hold in a single month or all months combined for a given contract as of date of the date of this filing. These limits are subject to change and may be altered if a proposed rule by the CFTC to impose new position limits on energy futures contracts is implemented (see 75 FR 1209 (January 26, 2010)), if federal financial regulatory reform is passed by Congress, or in a variety of other ways. In addition to the specific position limits noted above, many of the futures contracts listed in the chart above are also subject to position limits in the spot or expiration month of such contract, in addition to various accountability levels and/or other limits that allow the Futures Exchanges to exercise greater scrutiny and control over an investor's positions. A more complete description of the limits placed upon these futures contracts is available in the Registration Statement.

Values of the Index are computed by Bloomberg and disseminated approximately every fifteen seconds from 8 a.m. to 5 p.m., E.T., which also publishes a daily Index value at approximately 5:30 p.m., E.T. Additional information regarding calculation of the Index and the selection of eligible commodities is included in the Registration Statement. In addition, the Registration Statement contains detailed information regarding the Index methodology.

The Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A-3 under the

Act,<sup>16</sup> the Trust relies on the exception contained in Rule 10A-3(c)(7).<sup>17</sup> A minimum of 100,000 Units will be outstanding as of the start of trading on the Exchange.

A more detailed description of the Units, the Fund, the Index and Commodity Interests as well as investment risks, are set forth in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Availability of Information Regarding the Units

The NAV for the Fund will be calculated by the Administrator, (Brown

Brothers Harriman & Co., Inc.), once a day and will be disseminated daily to all market participants at the same time. The Exchange will make available on its Web site daily trading volume of each of the Units, closing prices of such Units, and number of Units outstanding.

The closing prices and settlement prices of the Futures Contracts are also readily available from the Web sites of the applicable futures exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Complete real-time data for the Futures Contracts is available by subscription from Reuters and Bloomberg. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge

<sup>16</sup> 17 CFR 240.10A-3.

<sup>17</sup> 17 CFR 240.10A-3(c)(7).

on their respective Web sites. The specific contract specifications for the Futures Contracts are also available on such Web sites, as well as other financial informational sources. Quotation and last-sale information regarding the Units will be disseminated through the facilities of the CTA. In addition, the Fund's Web site at <http://www.unitedstatescommodityindexfund.com> will display the end of day closing index levels, and NAV.

The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of Financial Instruments and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. This Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current portfolio composition of the Fund through the Fund's Web site.

#### Dissemination of Indicative Trust Value

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Indicative Trust Value ("ITV") will be calculated. The ITV is calculated by using the prior day's closing NAV per Unit of the Fund as a base and updating that value throughout the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. E.T. each trading day to reflect current changes in the value of the Futures Contracts. The ITV disseminated during the Trading Session should not be viewed as an actual real time update of the NAV, which is calculated only once a day.

The ITV will be disseminated on a per Unit basis by one or more major market data vendors every 15 seconds during the Core Trading Session. The value of a Unit may be influenced by non-concurrent trading hours between NYSE Arca and the applicable Futures Exchanges when the Units are traded on NYSE Arca after normal trading hours of such Futures Exchanges. The ITV will be updated during the NYSE Arca Core Trading Session when Futures Exchanges are trading any Futures Contracts held by the Fund. However, a static ITV will be disseminated between the close of trading of all applicable

Futures Contracts on Futures Exchanges and the close of the NYSE Arca Core Trading Session.

The Exchange believes that dissemination of the ITV provides additional information regarding the Fund that is not otherwise available to the public and is useful to professionals and investors in connection with the related Units trading on the Exchange or the creation or redemption of such Units.

#### Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. Units will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.

The trading of the Units will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying Futures Contracts,<sup>18</sup> or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule<sup>19</sup> or by the halt or suspension of trading of the underlying Futures Contracts.<sup>20</sup>

The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value, ITV or the value of the underlying Futures Contracts occurs. If the interruption to the dissemination of the Index value, ITV or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition,

if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus 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. The Exchange is able to obtain information regarding trading in the Units, the physical commodities included in, or options, futures or options on futures on, Units through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. The Exchange currently has in place an Information Sharing Agreement with the ICE and LME for the purpose of providing information in connection with trading in or related to Futures Contracts traded on their respective exchanges. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the Intermarket Surveillance Group ("ISG"), including CME, CBOT, COMEX and NYMEX. A list of ISG members is available at <http://www.isgportal.org>.<sup>21</sup>

In addition, with respect to Fund assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

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

<sup>18</sup> See Exchange Confirmation, *supra* note 5.

<sup>19</sup> See NYSE Arca Equities Rule 7.12.

<sup>20</sup> See Exchange Confirmation, *supra* note 5.

<sup>21</sup> The Exchange notes that not all Commodity Interests may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

## 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 Units. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Units during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Units in Creation Baskets and Redemption Baskets (and that Units are not individually redeemable); (3) 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 Units; (4) how information regarding the ITV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Units directly from the Fund will receive a prospectus. ETP Holders purchasing Units from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the Futures Contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Units of the Fund and that the NAV for the Units is calculated after 4 p.m. E.T. each trading day. The Bulletin will disclose that information about the Units of the Fund is publicly available on the Fund's Web site.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>23</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 and a national market system. The Exchange believes that the proposed rule change will permit the listing of an additional issuance of Trust Issued Receipts on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-44 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-2010-44. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2010-44 and should be submitted on or before July 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 17 CFR 200.30-3(a)(12).