

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57636; File No. SR-NYSEArca-2008-09)

April 8, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change,<sup>TM</sup> and Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the AirShares<sup>TM</sup> EU Carbon Allowances Fund

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 March 14, 2008, 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, II, and III below, which Items have been substantially prepared by the Exchange. On April 4, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to adopt new NYSE Arca Equities Rule 8.204 (Commodity Futures Trust Shares) and to list and trade shares (“Shares”) of the AirShares<sup>TM</sup> EU Carbon Allowances Fund (“Fund”) pursuant to the proposed rule. The text of the proposed rule change 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

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

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

the proposed rule change. The text of these 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 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 Exchange proposes to adopt new NYSE Arca Equities Rule 8.204 to permit the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of shares issued by a trust that is a commodity pool, as defined in the Commodity Exchange Act (“CEA”) and regulations thereunder, and that is managed by a commodity pool operator (“CPO”) registered with the Commodity Futures Trading Commission (“CFTC”). Such shares would hold long positions in futures contracts on a specified commodity or interests in a commodity pool which, in turn, would hold such long positions. In addition, such shares would be issuable and redeemable daily in specified aggregate amounts at net asset value (“NAV”).<sup>3</sup> The Exchange also proposes to amend NYSE Arca Equities Rule 7.34 (Trading Sessions) to reference the securities described in proposed NYSE Arca Equities Rule 8.204. Additionally, the Exchange

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<sup>3</sup> The Commission has approved similar NYSE Arca Equities rules to list and trade products based on or related to commodities. See Securities Exchange Act Release Nos. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12) (approving new NYSE Arca Equities Rule 8.203 “Commodity-Indexed Trust Shares” for trading pursuant to UTP the iShares GSCI Commodity-Indexed Trust); 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132) (approving new NYSE Arca Equities Rule 8.201 “Commodity-Based Trust Shares” for trading pursuant to UTP the iShares COMEX Gold Trust); 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (approving listing of shares of iShares COMEX Gold Trust pursuant to NYSE Arca Equities Rule 8.201); 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11) (approving new NYSE Arca Equities Rule 8.300 “Partnership Shares” for trading pursuant to UTP the United States Oil Fund, LP); and 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22) (approving new Commentary .02 to NYSE Arca Equities Rule 8.200 “Investment Shares” for trading pursuant to UTP the DB Commodity Index Tracking Fund).

proposes to amend its listing fees by incorporating the securities described in proposed NYSE Arca Equities Rule 8.204 in the term “Derivative Securities Products.”

Further, pursuant to this proposed rule change, the Exchange proposes to list and trade the Shares of the Fund. The Shares, which represent ownership of a fractional undivided beneficial interest in the net assets of the Fund, will conform to the initial and continued listing criteria under proposed NYSE Arca Equities Rule 8.204. The Fund is a commodity pool, as defined in the CEA and the applicable rules of the CFTC, and was formed as a Delaware statutory trust on August 13, 2007.<sup>4</sup> XShares Advisors LLC, a Delaware limited liability company, will serve as sponsor of the Fund (“Sponsor”). The Sponsor was formed on March 15, 2006, is a wholly owned subsidiary of XShares Group LLC, a Delaware limited liability company, and will serve as the CPO of the Fund. The Sponsor will be registered as a CPO with the CFTC and will be a member of the National Futures Association (“NFA”) prior to the commencement of operations of the Fund.

a. Proposed Listing Rules

Proposed NYSE Arca Equities Rule 8.204(c) defines a “Commodity Futures Trust Share” as a security that: (1) is issued by a trust that (a) is a commodity pool, as defined in the CEA and regulations thereunder, managed by a CPO registered with the CFTC, and (b) holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (2) is issued and redeemed daily in specified aggregate amounts at NAV. The term “futures contract” is a “contract of sale of a

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<sup>4</sup> The Fund is not an investment company registered under the Investment Company Act of 1940, according to the Registration Statement on Form S-1 for the Fund, which was filed with the Commission on December 14, 2007 (File No. 333-145448) (“Registration Statement”). The information in this proposed rule change is based upon representations in the Registration Statement.

commodity for future delivery” set forth in Section 2(a) of the CEA. The term “commodity” is defined in Section 1(a)(4) of the CEA.

Proposed NYSE Arca Equities Rule 8.204(d) provides that the Exchange may trade, either by listing or pursuant to UTP, Commodity Futures Trust Shares that are based on an underlying commodity futures contract. Each issue of Commodity Futures Trust Shares would be designated as a separate series and would be identified by a unique symbol.

The Commodity Futures Trust Shares will be subject to the criteria for the listing and trading set forth in proposed NYSE Arca Equities Rule 8.204(e). Proposed NYSE Arca Equities Rule 8.204(e)(1) provides that the Exchange will establish a minimum number of Commodity Futures Trust Shares that will be required to be outstanding at the time of commencement of trading. The proposed continued listing criteria in proposed NYSE Arca Equities Rule 8.204(e)(2) provide for the suspension of trading in or removal from listing of the Commodity Futures Trust Shares under any of the following circumstances:

- If, following the initial 12-month period beginning upon the commencement of trading of the Shares: (1) the trust has fewer than 50,000 Shares issued and outstanding; (2) the market value of all Shares is less than \$1,000,000; or (3) there are fewer than 50 record and/or beneficial holders of Commodity Futures Trust Shares for 30 consecutive trading days;
- If the value of the underlying futures contract is no longer calculated or available on at least a 15-second delayed basis during the Exchange’s Core Trading Session, as defined in NYSE Arca Equities Rule 7.34(a), from a source unaffiliated with the sponsor, the trust, or the trustee;
- If the NAV for the trust is no longer disseminated to all market participants at the

- same time;
- If the Indicative Trust Value is no longer disseminated on at least a 15-second delayed basis during the Exchange's Core Trading Session, as defined in NYSE Arca Equities Rule 7.34(a); or
  - If such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove the Commodity Futures Trust Shares from listing upon termination of the trust.

Proposed NYSE Arca Equities Rule 8.204(e)(3) provides that the term of a trust is as stated in the trust's prospectus, but that the trust may be terminated earlier as may be specified in the prospectus. Proposed NYSE Arca Equities Rule 8.204(e)(4) sets forth proposed requirements for the trustee of a trust: (1) the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business; in cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee; and (2) no change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange. Proposed NYSE Arca Equities Rule 8.204(e)(5) provides that voting rights will be as set forth in the applicable trust prospectus.

Proposed NYSE Arca Equities Rule 8.204(f) sets forth certain restrictions on ETP Holders acting as registered Market Makers in Commodity Futures Trust Shares to facilitate surveillance. Proposed NYSE Arca Equities Rules 8.204(f)(2)-(3) require that the ETP Holder acting as a registered Market Maker in the Commodity Futures Trust Shares provide the Exchange with necessary information relating to its trading in the underlying commodity, related

futures or options on futures, or any other related derivatives. Proposed NYSE Arca Equities Rule 8.204(f)(4) prohibits the ETP Holder acting as a registered Market Maker in the Commodity Futures Trust Shares from using any material non-public 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 commodity, related futures or options on futures, or any other related derivative (including the Commodity Futures Trust Shares). In addition, proposed NYSE Arca Equities Rule 8.204(f)(1) prohibits the ETP Holder acting as a registered Market Maker in the Commodity Futures Trust Shares from being affiliated with a market maker in the underlying commodity, related futures or options on futures, or any other related derivative, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

Proposed NYSE Arca Equities Rule 8.204(g) relates to the Exchange's limitation of liability. Proposed NYSE Arca Equities Rule 8.204(h) specifically provides that the Exchange will file separate proposals under Section 19(b) of the Act<sup>5</sup> before listing and trading separate and distinct Commodity Futures Trust Shares.

Commentary .01 to proposed NYSE Arca Equities Rule 8.204 requires ETP Holders to provide all purchasers of newly issued Commodity Futures Trust Shares with a prospectus. Commentary .02 to proposed NYSE Arca Equities Rule 8.204 provides that trading in the Commodity Futures Trust Shares will occur during the trading hours specified in NYSE Arca Equities Rule 7.34. Commentary .03 to proposed NYSE Arca Equities Rule 8.204 requires that if the Indicative Trust Value or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Indicative Trust Value or the value of the underlying futures contract

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15 U.S.C. 78s(b).

occurs. If the interruption to the dissemination of the Indicative Trust Value or the value of the underlying futures contract 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 a series of Commodity Futures Trust Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants. Commentary .04 to proposed NYSE Arca Equities Rule 8.204 provides that the Exchange's rules governing the trading of equity securities apply to Commodity Futures Trust Shares. Commentary .05 to proposed NYSE Arca Equities Rule 8.204 provides that the Exchange will implement written surveillance procedures for Commodity Futures Trust Shares.

b. Amendments to NYSE Arca Equities Rule 7.34

The Exchange proposes to amend NYSE Arca Equities Rule 7.34(a)(3) to add Commodity Futures Trust Shares to the list of securities for which the Core Trading Session on the Exchange concludes at 4:15 p.m. Eastern Time (“ET”). In addition, the Exchange proposes to amend NYSE Arca Equities Rule 7.34(a)(4) to include Commodity Futures Trust Shares under “Derivative Securities Products” with respect to trading halts of certain derivative securities products trading pursuant to UTP on the Exchange.

c. Amendments to Listing Fees

The Exchange proposes to add Commodity Futures Trust Shares to the securities included under the term “Derivative Securities Products” in note 3 of the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services.

d. Description of the Fund

The Sponsor has appointed Environmental Capital Management, LLC, an Arizona

limited liability company, to serve as the commodity trading advisor (“CTA”) of the Fund. The CTA will be registered with the CFTC prior to commencement of the Fund’s operations and will be a member of the NFA in such capacity. The CTA is not an affiliate of the Sponsor or the Fund. The Sponsor has appointed: (1) Brown Brothers Harriman (“Brown Brothers” or “Administrator”) as the administrator, custodian, and transfer agent of the Fund; and (2) ALPS Distributors, Inc. (“Distributor”) to assist the Sponsor and the Administrator with certain functions and duties relating to distribution and marketing. Newedge USA, LLC (“Newedge USA”) executes and clears the Fund’s futures transactions and provides other brokerage-related services. Newedge Alternative Strategies, Inc. may execute foreign exchange or other over-the-counter transactions with the Fund, as principal. A variety of executing brokers selected by the Sponsor may execute futures transactions on behalf of the Fund. The executing brokers will give up all such transactions to Newedge USA, which will serve as the Fund’s clearing broker.

The investment objective of the Fund is to provide investors with investment results that correspond generally, before payment of the Fund’s expenses and liabilities, to the performance of a basket of exchange-traded futures contracts for carbon equivalent emissions allowances (“EUAs”) issued under the European Union Emissions Trading Scheme (“EU ETS”). The EU ETS<sup>6</sup> is a “cap and trade” emissions trading program instituted by the European Union (“EU”), in furtherance of the joint commitment of its member states under the Kyoto Protocol to achieve certain reductions in their emissions of greenhouse gases from 2008 to 2012.

The net assets of the Fund will consist of long positions in ICE Futures ECX Carbon

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<sup>6</sup> According to the Registration Statement, while the investment objective of the Fund is to track generally the value of the underlying futures contracts, the Fund’s portfolio of fixed income securities, as well as other factors such as the Fund’s expenses, and its hedging activities may cause a lack of correlation between the NAV of the Shares and the value of the Fund’s portfolio of futures contracts.

Financial Instrument Futures Contracts (“ECX CFI Futures Contracts”).<sup>7</sup> The ECX CFI Futures Contracts are standardized contracts developed by the European Climate Exchange (“ECX”) and are listed and admitted to trading on ICE Futures<sup>8</sup> on the London-based electronic platform, owned and operated by IntercontinentalExchange, Inc. (also known as the ICE Platform). ECX CFI Futures Contracts are standardized contractual instruments for futures on deliverable EUAs issued under the EU ETS. Each ECX CFI Futures Contract provides for delivery of 1,000 EUAs on a specified date at a specified price, with each EUA being an entitlement to emit one ton of carbon dioxide equivalent gas.<sup>9</sup>

The ECX CFI Futures Contracts trade on the London-based ICE Platform from 7:00 a.m. to 5:00 p.m. Greenwich Mean Time. According to ECX, ICE Futures is the most liquid, pan-European platform for carbon emissions trading, attracting over 80% of the exchange-traded volume in that market.

Initially, the Fund will hold long positions in ECX CFI Futures Contracts. The Fund may also invest in other EUAs, including those that trade on other exchanges.<sup>10</sup> The Exchange will

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<sup>7</sup> The Fund represents that the ECX CFI Futures Contracts meets the definition of “futures contract” as set forth in Section 2(a) of the CEA. The Exchange states that carbon equivalent emissions allowances meet the definition of “commodity” as defined in Section 1(a)(4) of the CEA.

<sup>8</sup> The Exchange states that ICE Futures, which is a subsidiary of the IntercontinentalExchange, Inc. is a Recognised Investment Exchange in the United Kingdom and is supervised by the Financial Services Authority under the terms of the Financial Services and Markets Act (2000).

<sup>9</sup> The ECX CFI Futures Contract had average daily trading volume of \$135,717,089 (USD), or approximately 87,587,602 Euro, representing 3,551 contracts traded daily from January 1, 2008 through March 11, 2008.

<sup>10</sup> The Exchange will file a Form 19b-4 to obtain Commission approval for the continued listing and trading of the Shares should the Fund hold positions in EUAs other than ECX CFI Futures Contracts.

file a proposed change pursuant to Rule 19b-4 under the Act<sup>11</sup> seeking approval to continue trading the Shares if the Fund invests in EUAs that constitute more than 10% of the weight of the Fund and where the principal trading market for such component is not a member or affiliate member of the Intermarket Surveillance Group (“ISG”) or where the Exchange does not have a comprehensive surveillance sharing agreement with such market. If the Kyoto Protocol or the EU ETS is extended beyond 2012, the Sponsor will determine and publicly disclose by no later than September 30, 2012 whether it will extend the operation of the Fund beyond December 2012. The Fund will not be actively managed in that it will not engage in activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of its portfolio of EUAs.

More information about the Kyoto Protocol, the EU ETS, the ECX CFI Futures Contracts, the Fund’s investment strategy, as well as further descriptions of the Shares, risks, NAV, creation, and redemption is contained in the Registration Statement.<sup>12</sup>

e. Description of the Shares

The Fund will create and redeem Shares from time to time, but only by authorized participants in one or more baskets, with each basket constituting a block of 100,000 Shares. In connection with the Fund, a minimum of 100,000 Shares will be required to be outstanding at the start of trading. The Exchange states that this minimum number of Shares required to be outstanding is generally higher than requirements that have been applied to previously listed series of exchange-traded funds. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading will be sufficient to provide market liquidity.

f. Dissemination and Availability of Information About the

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<sup>11</sup> 15 U.S.C. 78a.

<sup>12</sup> See supra at note 4.

### Underlying Futures Contracts and the Shares

The daily settlement prices for the EUAs are publicly available on the ICE Futures Web site at [www.icefutures.com](http://www.icefutures.com). In addition, various market data vendors and news publications publish futures prices and related data. Quote and last-sale information for the EUAs are widely disseminated through a variety of market data vendors worldwide. ICE Futures also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the EUAs are also available on the ICE Futures Web site.

The Web site for the Fund at [www.airsharesfund.com](http://www.airsharesfund.com), which is publicly accessible at no charge, will contain the following information: (1) the prior business day's NAV per Share<sup>13</sup> and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV per Share as of the time the NAV is calculated ("Bid-Ask Price");<sup>14</sup> (3) calculation of the premium or discount of such price against such NAV per Share; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the Commission or required by the CFTC;<sup>15</sup> and (6) other applicable quantitative information.

The Fund's total portfolio composition, consisting primarily of long positions in ECX

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<sup>13</sup> The most recent end-of-day NAV of the Fund and NAV per Share will be published by the Sponsor as of 4:00 p.m. ET on Reuters and/or Bloomberg and on the Fund's Web site at [www.airsharesfund.com](http://www.airsharesfund.com). The end-of-day NAV per Share will also be published the following morning on the consolidated tape.

<sup>14</sup> The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV per Share.

<sup>15</sup> Monthly account statements conforming to CFTC and NFA requirements are posted on the Fund's Web site at [www.airsharesfund.com](http://www.airsharesfund.com). Additional reports may be posted on the Fund's Web site in the discretion of the Sponsor or as required by regulatory authorities.

CFI Futures Contracts and cash, will be disclosed each business day that the Exchange is open for trading on the Fund's Web site. The Fund has informed the Exchange that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name and value of each EUA and amount of cash held in the portfolio of the Fund.

As noted above, the Fund's NAV will be calculated and disseminated daily.<sup>16</sup> The Exchange will disseminate for the Fund on a daily basis by means of Consolidated Tape Association CQ High Speed Lines information with respect to the Indicative Fund Value (as discussed below), recent Fund NAV, Shares outstanding, and the Basket amount. The Exchange will also make available on its Web site daily trading volume, closing prices, and the Fund's NAV per Share. The closing price and settlement prices of the EUAs held by the Fund are also readily available from ICE Futures, automated quotation systems, published or other public sources, or on-line information services.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the facilities of the Consolidated Tape Association.

All pricing information will be quoted in U.S. dollars, other than the current trading value of the Euro-denominated EUAs, which will be quoted in Euro. The current trading price per Share will be published continuously as trades occur throughout each trading day on the consolidated tape, Reuters, and/or Bloomberg. The most recent trading value of each EUA is published on the Web site of the ECX at [www.ecxeurope.com](http://www.ecxeurope.com), under the heading "Market Data,"

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<sup>16</sup> The Exchange will obtain a representation from the Fund that the Fund's NAV per Share will be calculated daily and made available to all market participants at the same time.

and each vintage futures contract in the Fund’s portfolio will be published on the Fund’s Web site at [www.airsharesfund.com](http://www.airsharesfund.com), or any successor thereto.

To provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem the Shares, the Exchange or a major market data vendor will disseminate through the facilities of the Consolidated Tape Association an updated Indicative Fund Value (“Indicative Fund Value”).<sup>17</sup> The Indicative Fund Value, which is also known as intraday indicative value (IIV) or intraday optimized portfolio value (IOPV), is an estimate, updated on a real-time basis at least every 15 seconds, of the NAV, which is disclosed only once per day. The Indicative Fund Value for the Fund will be disseminated on a per-Share basis at least every 15 seconds during the Exchange’s Core Trading Session. The Indicative Fund Value will be calculated based on the previously-disclosed portfolio composition of the Fund, *i.e.*, the futures contracts in the Fund’s portfolio, and will be adjusted to reflect the price changes of the relevant EUAs.

The value of a Share may be influenced by the non-concurrent trading hours between the Exchange and the exchanges on which the EUAs trade. While the Shares will trade from 4:00 a.m. to 8:00 p.m. ET, the ECX CFI Futures Contracts, for example, trade on the London-based ICE Platform from 7:00 a.m. to 5:00 p.m. local time in London, England. When the ICE Platform and the Exchange are both open for trading, the Indicative Fund Value can be expected to closely approximate the NAV per Share. When the ICE Platform is closed and the Exchange is open, trading spreads and the resulting premium or discount on the Shares may widen and, therefore, increase the difference between the public trading price of the Shares and the NAV per Share. The Indicative Fund Value on a per-Share basis disseminated during the Exchange’s

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<sup>17</sup> The Indicative Fund Value is referred to as the Indicative Trust Value in proposed new NYSE Arca Equities Rule 8.204(e)(2)(iv).

Core Trading Session should not be viewed as a real-time update of the Fund’s NAV, which is calculated only once a day.

g. Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.<sup>18</sup> Trading in the Shares will be halted if the circuit breaker parameters under NYSE Arca Equities Rule 7.12 are reached. Trading may also 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 trading is not occurring in the underlying EUA futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Commentary .03 to proposed NYSE Arca Equities Rule 8.204, which sets forth circumstances under which trading in the Shares may be halted.

h. Trading Rules

Under proposed NYSE Arca Equities Rule 8.204(b), Commodity Futures Trust Shares are included within the Exchange’s definition of “securities.” The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Commentary .02 to proposed NYSE Arca Equities Rule 8.204 provides that transactions in Commodity Futures Trust Shares will occur during the trading hours specified in Rule 7.34. Therefore, in accordance with NYSE Arca Equities Rule 7.34, the Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. ET. The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

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<sup>18</sup> See Commentary .04 to NYSE Arca Equities Rule 7.12.

i. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which will include Commodity Futures 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.

The Exchange may obtain information via the ISG from other exchanges who are members or affiliate members of the ISG. In addition, the Exchange has an Information Sharing Agreement in place with ICE Futures for the purpose of providing information in connection with trading in, or related to, futures contracts traded on ICE Futures. In addition, the Exchange will file a proposed change pursuant to Rule 19b-4 under the Act<sup>19</sup> seeking approval to continue trading the Shares if the Fund invests in EUAs (or pricing information is used for a new or existing component) that constitute more than 10% of the weight of the Fund where the principal trading market for such component is not a member or affiliate member of ISG or where the Exchange does not have a comprehensive surveillance sharing agreement with such market. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

j. Information Bulletin

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<sup>19</sup> 15 U.S.C. 78a.

Prior to the commencement of trading, the Exchange will inform its ETP Holders<sup>20</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 risks involved in trading the Shares during the Opening and Late Trading Sessions<sup>21</sup> when an updated Indicative Fund Value will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares (and that Shares are not individually redeemable); (3) Rule 9.2(a),<sup>22</sup> 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; (4) the risk involved in trading the Shares during the Core and Late Trading Sessions when the ECX CFI Futures Contracts are not trading on the ICE Platform; (5) how information regarding the Indicative Fund Value is disseminated; (6) 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 (7) trading information.

In addition, the Bulletin will reference that: (1) the Fund is subject to various fees and expenses described in the relevant registration statement; (2) that there is no regulated source of last-sale information regarding physical commodities; (3) the Commission has no jurisdiction over the trading of EUAs; and (4) the Financial Services Authority in the United Kingdom has

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<sup>20</sup> See NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

<sup>21</sup> The Opening Trading Session is from 4:00 am to 9:30 am ET and the Late Trading Session is from 4:15 pm to 8:00 pm ET. See NYSE Arca Equities Rule 7.34.

<sup>22</sup> NYSE Arca Equities Rule 9.2(a) provides that ETP Holders, 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 other security holdings and as to his 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 the ETP Holder believes would be useful to make a recommendation.

regulatory jurisdiction over the trading of EUAs and related options. The Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act and disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>23</sup> that a national securities exchange have rules that are 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, 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. The Exchange believes that the proposed rules will facilitate the listing and trading of additional types of exchange-traded products 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 the proposed rules 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

Written comments on the proposed rule change were neither solicited nor received.

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

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

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-09 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-2008-09. 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 10:00 a.m. and 3:00 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-NYSEArca-2008-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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