

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73561; File No. SR-NYSEArca-2014-102)

November 7, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Proposing to List and Trade Shares of the Greenhaven Coal Fund under NYSE Arca Equities Rule 8.200, Commentary .02

I. Introduction

On September 5, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Greenhaven Coal Fund (the “Fund”), pursuant to NYSE Arca Equities Rule 8.200, Commentary .02. On September 18, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded and replaced the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on September 25, 2014.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the listing of Trust Issued Receipts (“TIRs”).<sup>4</sup> The

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

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

<sup>3</sup> See Securities Exchange Act Release No. 73149 (September 19, 2014), 79 FR 57640 (“Notice”).

<sup>4</sup> On September 5, 2014, the Fund filed with the Commission a pre-effective amendment to its registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) relating to the Fund. (File No. 333-182301) (“Registration Statement”).

Exchange has represented that the Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.<sup>5</sup> 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.<sup>6</sup>

The Fund is a commodity pool that is organized as a Delaware statutory trust. The Fund’s trustee is Christiana Trust, a division of Wilmington Savings Fund Society, FSB, and the Fund’s sponsor is GreenHaven Coal Services, LLC (“Sponsor”).<sup>7</sup> ALPS Distributors, Inc. will be the Fund’s marketing agent and distributor. Bank of New York Mellon will be the Fund’s administrator and transfer agent and will calculate the net asset value (“NAV”) on a daily basis. The Exchange states that the investment objective of the Fund is to provide investors with exposure to the daily change in the price of coal futures, before expenses and liabilities of the Fund. The Fund intends to achieve this objective by investing substantially all of its assets in a three-month strip<sup>8</sup> of the nearest calendar quarter of Rotterdam coal futures contracts (“Coal Futures”) traded on the CME’s Globex CME ClearPort clearing services trading platforms. All of the Fund’s positions in Coal Futures will be cleared by CME clearing member firms. The Sponsor will seek to invest the Fund’s cash collateral in 13-week U.S. Treasury Bills.

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<sup>5</sup> See Notice, *supra* note 3, 79 FR at 57645.

<sup>6</sup> See *id.* at 57646.

<sup>7</sup> The Sponsor is registered with the Commodity Futures Trading Commission as a commodity pool operator, and is approved as a member of the National Futures Association. The Sponsor is a wholly-owned subsidiary of GreenHaven Group, LLC and is affiliated with GreenHaven Commodity Services, LLC, a commodities trading firm.

<sup>8</sup> With regard to a “three-month strip,” “strip” is a term used in futures markets to describe a series of delivery months for an individual futures contract. A calendar strip is a three-month strip of one of the four calendar quarters. For example, a three-month calendar strip for the third quarter 2014 includes July 2014, August 2014, and September 2014 coal futures contracts.

Additional information regarding the Fund, including the NAV calculation, operation of the Fund, portfolio composition, restrictions, risks, fees, expenses, and Share creations and redemption can be found in the Notice and the Registration Statement.<sup>9</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade Shares of the Fund is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>11</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>12</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.

Quotation and last-sale for the Shares will be available via the facilities of the Consolidated Tape Association.<sup>13</sup> The Exchange's website will provide daily trading volume,

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<sup>9</sup> See supra notes 3 and 4, respectively.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>13</sup> See Notice, supra note 3, 79 FR at 57645.

closing prices, and NAV for the Shares.<sup>14</sup> NYSE Euronext Global Index Feed and online information services will provide the intraday Indicative Fund Value (“IFV”) on a per-Share basis, which will be calculated by one or more major market vendors every 15 seconds during the Exchange’s Core Trading Session.<sup>15</sup> The Fund’s website will post the daily NAV, as well as a breakdown of the holdings of the Fund.<sup>16</sup> The websites for the Fund or the Exchange will also provide the following information: (1) The current NAV per Share daily and the prior business day’s NAV and the reported closing price; (2) the midpoint of the bid-ask price in relation to the NAV as of the time the NAV is calculated (“Bid-Ask Price”); (3) calculation of the premium or discount of such price against such NAV; (4) the bid-ask price of Shares determined using the highest bid and lowest offer as of the time of calculation of the NAV; (5) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (6) the prospectus; and (7) other applicable quantitative information.<sup>17</sup>

Quotation and last-sale information for the Coal Futures will be widely disseminated through a variety of major market data vendors worldwide.<sup>18</sup> The spot price of coal is also available on a 24-hour basis from major market vendors. The Exchange further represents that complete real-time price (and volume) data for such contracts is available by subscription from certain market data vendors.<sup>19</sup> For Coal Futures, the CME also provides delayed futures price

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<sup>14</sup> See id.

<sup>15</sup> See id.

<sup>16</sup> See id.

<sup>17</sup> See id.

<sup>18</sup> See id.

<sup>19</sup> See id.

(and volume) information on current and past trading sessions and market news free of charge on its website.<sup>20</sup> The closing price and settlement prices of Coal Futures are also readily available from the CME.<sup>21</sup>

The Commission believes that the proposal to list and trade Shares is reasonably designed to promote fair disclosure of information that may be necessary to price Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.<sup>22</sup> If the IFV or value of Coal Futures is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption 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.<sup>23</sup> The Exchange will also consider halting trading for the following reasons: (1) the extent to which trading is not occurring in the Coal Futures; (2) if the creation or redemption of Shares is suspended for a period that, in the judgment of the Exchange, may detrimentally impact Exchange trading of the Shares; or (3) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>24</sup>

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<sup>20</sup> See id.

<sup>21</sup> See id.

<sup>22</sup> See id. at 57646.

<sup>23</sup> The Exchange also notes that the Exchange may halt trading during the day in which an interruption of the dissemination of the IFV or the value of the applicable futures contracts occurs. See id.

<sup>24</sup> See id. Additionally, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule. See NYSE Arca Equities Rule 7.12.

Moreover, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered market makers in TIRs to facilitate surveillance. The Commission notes that the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Coal Futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA may obtain trading information regarding trading in the Shares and the Coal Futures from such markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>25</sup>

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

- (1) A minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.<sup>26</sup>
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.<sup>27</sup>
- (3) Its trading surveillance 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.<sup>28</sup>
- (4) CME is a member of the ISG.<sup>29</sup>

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<sup>25</sup> See Notice, supra note 3, 79 FR at 57646.

<sup>26</sup> See id. at 57645.

<sup>27</sup> See id. at 57646.

<sup>28</sup> See id.

<sup>29</sup> See id.

- (5) Prior to commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the risks involved in trading the Shares during the Opening and Late Trading Sessions, or a portion of the Core Trading Session, when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Basket size (and that Shares 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 Shares; (4) how information regarding the IFV 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.<sup>30</sup>

This order is based on the Exchange's representations.

For the forgoing reasons, the Commission believes the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act.

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<sup>30</sup> See id.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>31</sup> that the proposed rule change (SR-NYSEArca-2014-102), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).