

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58162; File No. SR-NYSEArca-2008-73)

July 15, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade 14 Funds of the Commodities and Currency Trust Pursuant to Unlisted Trading Privileges

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 July 11, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders it effective upon filing with the Commission. 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 trade pursuant to unlisted trading privileges (“UTP”) shares (“Shares”) of fourteen (14) funds (“Funds”) of the Commodities and Currency Trust (“Trust”) based on several currencies, commodities and commodities indexes.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at the Exchange’s principal office, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The 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 revise Commentary .02 to NYSE Arca Equities Rule 8.200 to permit the listing and trading, including trading pursuant to UTP, of trust issued receipts (“TIRs”) that hold investments in any combination of cash, securities, options on securities and indices, futures contracts, options on futures contracts, forward contracts, equity caps, collars and floors, and swap agreements (the “Financial Instruments”).<sup>5</sup> This proposal would permit the Exchange to trade the Shares pursuant to UTP under revised Commentary .02 to Rule 8.200. The American Stock Exchange LLC (“Amex”) has filed a proposed rule change to list the Shares.<sup>6</sup>

The Shares represent common units of fractional undivided beneficial interest in, and ownership of, each Fund. Each Fund will invest the proceeds of its offering of

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<sup>5</sup> Permissible securities in connection with Financial Instruments would not include foreign equity securities.

<sup>6</sup> See Securities Exchange Act Release No. 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) (SR-Amex-2008-39) (“Amex Proposal”). The Commission notes that, in a separate action today, it is approving the Amex Proposal. See Securities Exchange Act Release No. 58161 (July 15, 2008).

Shares in various Financial Instruments that will provide exposure to the Fund’s underlying currency, commodity or commodity index. In addition, the Funds will also maintain cash positions in cash or money market instruments for the purpose of collateralizing such positions taken in the Financial Instruments.

Shares of seven (7) of the Funds of the Trust will be designated as Ultra ProShares while the other seven (7) shares of the Trust will be designated as UltraShort ProShares. Each of the Funds will have a distinct investment objective.<sup>7</sup> The Funds will attempt, on a daily basis, to achieve their investment objective by corresponding to a specified multiple or an inverse multiple of the performance of a particular benchmark commodities index, commodity or currency (each an “Underlying Benchmark” and collectively, the “Underlying Benchmarks”) as described in the Amex Proposal.

Six (6) Funds will be based on the following benchmark commodities indexes: (i) the Dow Jones-AIG Commodity IndexSM; (ii) the Dow Jones-AIG Crude Oil Sub-IndexSM; and (iii) the Dow Jones-AIG Agriculture Sub-IndexSM (each, an “Underlying Index” and collectively, the “Underlying Indexes”). Four (4) Funds will be based on the following commodities: (i) gold; and (ii) silver (each, an “Underlying Commodity” and collectively, the “Underlying Commodities”). Four (4) Funds will be based on the following benchmark currencies versus the U.S. dollar: (1) the Euro; and (2) the Japanese Yen (each, an “Underlying Currency” and collectively, the “Underlying

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<sup>7</sup> The Funds are the Ultra DJ-AIG Commodity ProShares, UltraShort DJ-AIG Commodity ProShares, Ultra DJ-AIG Agriculture ProShares, UltraShort DJ-AIG Agriculture ProShares, Ultra DJ-AIG Crude Oil ProShares, UltraShort DJAIG Crude Oil ProShares, Ultra Gold ProShares, UltraShort Gold ProShares, Ultra Silver ProShares, UltraShort Silver ProShares, Ultra Euro ProShares, UltraShort Euro ProShares, Ultra Yen ProShares and UltraShort Yen ProShares.

Currencies”). The Exchange proposes to trade pursuant to UTP shares of the Funds that seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Benchmark (the “Ultra Funds”). If a Fund is successful in meeting its investment objective, the net asset value (“NAV”)<sup>8</sup> of the shares of each Fund is expected to gain on a percentage basis, approximately twice as much as each Fund’s respective Underlying Benchmark when the price of the Underlying Benchmark increases on a given day, and should lose approximately twice as much when such price declines on a given day, before fees and expenses.

The Exchange also proposes to trade pursuant to UTP shares of the Funds that seek daily investment results, before fees and expenses that correspond to twice the inverse (-200%) of the daily performance of the Underlying Benchmark (the “UltraShort Funds”). If each Fund is successful in meeting its objective, the NAV of the shares of each Fund is expected to increase approximately twice as much, on a percentage basis, as the respective Underlying Benchmark loses on a given day, or should decrease approximately twice as much as the respective Underlying Benchmark gains when the Underlying Benchmark rises on a given day, before fees and expenses.

The Exchange notes that the Commission has permitted the listing and trading on the Exchange and other national securities exchanges of securities linked to the

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<sup>8</sup> “Net asset value” means the total assets of a Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of such Fund, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. In particular, net asset value includes any unrealized profit or loss on open swaps and futures contracts, and any other credit or debit accruing to a Fund but unpaid or not received by a Fund.

performance of underlying currencies and commodities.<sup>9</sup> The Commission also has approved for trading on the Exchange on a UTP basis under NYSE Arca Equities Rule

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<sup>9</sup> The Commission has previously approved issues of Commodity-Based Trust Shares, Currency Trust Shares and Commodity Index Trust Shares, which have certain characteristics similar to the proposed TIRs, for exchange listing and trading. See, e.g., Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing on the New York Stock Exchange (“NYSE”) of streetTRACKS Gold Trust); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (order approving listing on the American Stock Exchange (“Amex”) of the iShares COMEX Gold Trust); Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR-Amex-2005-72) (order approving listing on Amex of the iShares Silver Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (order granting accelerated approval to list on NYSE Arca the iShares COMEX Gold Trust); Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE 2005-65) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Euro Trust); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR-NYSE-2006-35) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Australian Dollar Trust, CurrencyShares British Pound Sterling Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust); Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR-NYSE-2007-03) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Japanese Yen Trust); Securities Exchange Act Release No. 56131 (July 25, 2007), 72 FR 42212 (August 1, 2007) (SR-NYSEArca-2007-57) (order granting accelerated approval for listing on NYSE Arca of CurrencyShares Trusts); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17) (approving listing on the NYSE of the iShares GSCI Trust); Securities Exchange Act Release No. 55585 (April 5, 2007), 72 FR 18500 (April 12, 2007) (SR-NYSE-2006-75) (approving for NYSE listing the iShares GS Commodity Light Energy Indexed Trust; iShares GS Commodity Industrial Metals Indexed Trust; iShares GS Commodity Livestock Indexed Trust and iShares GS Commodity Non-Energy Indexed Trust); Securities Exchange Act Release No. 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR-NYSEArca-2007-112) (order granting accelerated approval to list iShares S&P GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR-NYSEArca-2007-91) (order granting accelerated approval for NYSE Arca listing the iShares S&P GSCI Energy Commodity-Indexed Trust; iShares S&P GSCI Natural Gas

5.2(j)(3) UltraFunds, Short Funds and UltraShort Funds of the ProShares Trust.<sup>10</sup>

Proposed Revision to Commentary .02 to Rule 8.200

Shares of each Fund will be generally subject to the rules that apply to TIRs. The Exchange also proposes to revise Commentary .02 to Rule 8.200 in order to permit the listing and trading of TIRs directly holding Financial Instruments. Current Commentary .02 to Rule 8.200 permits the Exchange to list and trade TIRs, including trading on a UTP basis, where the underlying trust, partnership, commodity pool or other similar entity holds “Investment Shares.”<sup>11</sup> The term "Investment Shares" is defined in Commentary .02(b)(1) as a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number. As a result, a TIR that is listed or UTP-traded pursuant to current Commentary .02 to Rule 8.200 is required to be in the form of a “master-feeder” structure, whereby the listed or UTP-traded security holds or invests in the security of the fund that is investing in the Financial Instruments. This proposal would provide an

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Commodity-Indexed Trust; iShares S&P GSCI Industrial Metals Commodity-Indexed Trust; iShares S&P GSCI Light Energy Commodity-Indexed Trust; iShares S&P GSCI Livestock Commodity-Indexed Trust; and iShares S&P GSCI Non-Energy Commodity-Indexed Trust).

<sup>10</sup> See Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR-NYSEArca-2006-87); Securities Exchange Act Release No. 57017 (December 20, 2007), 72 FR 73955 (December 28, 2007) (SR-NYSEArca-2007-108).

<sup>11</sup> See Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22)

alternative for issuers so that a security may be listed and traded, including UTP-traded, on the Exchange that directly invests in or holds Financial Instruments rather than through an additional security of a fund.

The proposal will expand the application of Commentary .02 to Rule 8.200 to both Investment Shares and Financial Instruments. Accordingly, new Commentary .02(b)(4) to Rule 8.200 would be added to define “Financial Instrument” as any combination of cash, securities, options on securities and indices, futures contracts, options on futures contracts, forward contracts, equity caps, collars and floors and swap agreements. Throughout Commentary .02 to Rule 8.200, the term “Financial Instrument” will be added to “Investment Shares” indicating that TIRs directly holding Financial Instruments may be listed and traded, including UTP-traded, on the Exchange.

Additional information regarding the Underlying Indexes, the Commodities Benchmarks, the Currencies Benchmarks, the structure and investment objective of the Funds, the portfolio investment methodology, investment techniques, creation and redemption of Shares is provided in the Amex Proposal.

#### Availability of Information Regarding the Shares

According to the Amex Proposal, the Web sites for the Funds and/or the Amex, which are publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day’s NAV per Share and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV per Share as of the time it is calculated (the “Bid-Asked Price”); (c) calculation of the premium or discount of such price against the NAV per Share; (d) 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 (4) previous calendar quarters; (e) the Prospectus; and (f) other applicable quantitative information.

The NAV per Share will be calculated and disseminated daily. The Amex will disseminate for the Funds on a daily basis by means of CTA/CQ High Speed Lines information with respect to the corresponding “Indicative Value” (as discussed below), recent NAV per Share and Shares outstanding. The Amex will also make available on its Web site ([www.amex.com](http://www.amex.com)) daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The closing price and settlement prices of the futures contracts held by the Funds are also readily available from the Chicago Mercantile Exchange (“CME”), New York Mercantile Exchange (“NYMEX”), Chicago Board of Trade (“CBOT”), Intercontinental Exchange/New York Board of Trade (“ICE/NYBOT”), London Metal Exchange (“LME”), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Real-time dissemination of spot pricing for gold, silver, euro and Japanese yen is available on a 24-hour basis worldwide from various major market data vendors.

#### Portfolio Disclosure

Each Fund’s total portfolio composition will be disclosed on the Web site of the Trust ([www.proshares.com](http://www.proshares.com)) or another relevant Web site as determined by the Trust and/or the Amex. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and number of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Managing Owner of the

portfolio composition to Authorized Participants, 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 Participants. Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Web site, at [www.proshares.com](http://www.proshares.com), and/or at the Amex's Web site.

**Availability of Information about the Underlying Benchmarks**

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, e.g., [www.ino.com](http://www.ino.com) and [www.finance.yahoo.com](http://www.finance.yahoo.com). Data regarding each Underlying Index is also available from the respective index provider to subscribers. In addition, data is also available regarding the underlying component commodities of each Underlying Index from those futures exchanges that list and trade futures contracts on those commodities. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both index constituents and index levels and vendors displaying index levels only).

Data regarding spot pricing of the Underlying Commodities (gold and silver) is publicly available on a 24-hour basis from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London fix for gold and silver is also disseminated by various market data vendors and is available from the London Bullion Market Association ("LBMA") Web site at <http://www.lbma.org.uk>.

Data regarding futures contracts and options on futures contracts in connection with the Underlying Commodities is also available from the NYMEX at

<http://nymex.com>. There is considerable public price and data information regarding the Underlying Currencies (euro and Japanese yen). Spot pricing related to foreign exchange is available to investors and market professionals on a 24-hour basis. A variety of public Web sites and professional and subscription services provide market and price information regarding the euro and the yen. Current spot prices are also generally available from foreign exchange dealers.

The value of each Underlying Benchmark will be updated intra-day on a real time basis as its components change in price.

#### Dissemination of Net Asset Value and Indicative Value

The Administrator calculates and disseminates, once each trading day, the NAV per Share to market participants. The Amex Proposal represents that the Amex will obtain a representation (prior to listing of the Funds) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Administrator causes to be made available on a daily basis the corresponding Cash Deposit Amounts to be deposited in connection with the issuance of the respective Shares.

In order to provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem the Shares, the Amex will disseminate an updated Indicative Value. The Indicative Value will be disseminated on a per Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:00 p.m. ET. The Indicative Value will be calculated based on the cash required for creations and redemptions for a Fund adjusted to reflect the price changes of the Financial Instruments.

## Trading Rules

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

Further, NYSE Arca Equities Rule 8.200, Commentary .02 sets forth certain restrictions on equity trading permit holders (“ETP Holders”) acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. Rule 8.200, Commentary .02(e)(3) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable physical asset or commodity, related futures or options on futures, or any other related derivatives as may be requested. NYSE Arca Equities Rule 8.200, Commentary .02(e)(4) prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable underlying physical asset or commodity, related futures or options on futures, or any other related derivative (including the TIRs). In addition, NYSE Arca Equities Rule 8.200, Commentary .02(e)(1) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable physical asset or commodity, related futures or any other related derivatives unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and any person or entity controlling an ETP Holder. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including TIRs, 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 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 Shares, and certain of the Financial Instruments held by TIRs including securities, options on securities and indices, commodities, futures contracts, and options on futures contracts, 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 comprehensive surveillance sharing agreements with

ICE, LME and NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Underlying Benchmarks. The Exchange also notes that CBOT, CME and NYBOT are members of the Intermarket Surveillance Group (“ISG”).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated Indicative Value is not calculated and disseminated and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Baskets; (2) NYSE Arca Equities Rule 9.2(a),<sup>12</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; (3) how information regarding the Indicative Value is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information. For example, the

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<sup>12</sup> NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) 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 proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Funds (by delivery of the Basket Amount) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in each Fund's Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, that the Commission has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the Shares is based.

#### Trading Halts

The Exchange represents that it will cease trading the Shares of the Funds if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12. UTP trading in the Shares will also be governed by the trading halt provisions of NYSE Arca Equities Rule 7.34, relating to temporary interruptions in the calculation or wide dissemination of the Indicative Value or the value of the underlying index, as applicable.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is

not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the Exchange becomes aware that the NAV for a Fund is not disseminated to all market participants at the same time, it will halt trading until such time as the NAV is available to all market participants.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>13</sup> in general and furthers the objectives of Section 6(b)(5)<sup>14</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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Exchange believes that the proposal will facilitate the listing and trading of additional types of commodity and currency-based investments that will enhance competition among market participants, to the benefit of investors and the marketplace.

In addition, the proposed rule change is consistent with Rule 12f-5 under the Exchange Act<sup>15</sup> because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 17 CFR 240.12f-5.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>18</sup>

The Exchange has asked the Commission to waive the 30-day operative delay, provided that the proposed rule change will not be operative prior to the Commission

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> Rule 19b-4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

approval of the Amex Proposal. The Exchange believes the waiver of this period is necessary to permit the Exchange to begin trading the Shares at the time trading in the Shares begins on the Amex. The Commission believes such waiver is consistent with the protection of investors and the public interest because the Exchange’s proposal is nearly identical to the Amex Proposal, which has been subject to a full notice-and-comment period and approved by the Commission.<sup>19</sup> The Exchange’s proposal raises no novel or substantial issues and should benefit investors by creating, without undue delay, additional competition in the market for the Shares. For these reasons, the Commission designates the proposal to be operative simultaneous with the Amex Proposal.<sup>20</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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  
[\(http://www.sec.gov/rules/sro.shtml\)](http://www.sec.gov/rules/sro.shtml); or

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<sup>19</sup> See supra note 6.

<sup>20</sup> For purposes only of waiving this designation, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2008-73 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-73. 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 will also 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-2008-73 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Florence E. Harmon  
Acting Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).