

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63067; File No. SR-NYSEArca-2010-78)

October 8, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading Shares of Jefferies Commodity Real Return ETF

I. Introduction

On August 17, 2010, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of Jefferies Commodity Real Return ETF (the “Fund”). The proposed rule change was published for comment in the Federal Register on September 3, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which governs the listing and trading of Trust Issuer Receipts (“TIRs”) that invest in “Financial Instruments.” The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.200, Commentary .02, and thereby qualify for listing on the Exchange.

As described in greater detail in the Notice, the Fund will invest substantially all of its assets in exchange-traded futures in commodities that comprise the Thomson Reuters / Jefferies

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62768 (August 26, 2010), 75 FR 54199 (“Notice”).

CRB 3 Month Forward Index (“Index”), or in other derivatives. The Fund establishes long positions in futures contracts on the nineteen physical commodities that comprise the Index (“Index Commodities”) with the goal of tracking the changes, either positive or negative, to the Index over time. The Managing Owner of the Fund adjusts the Fund’s portfolio from time to time to conform to periodic changes in the identity and/or relative weighting of the Index Commodities.

The Exchange deems the Shares to be equity securities, which subjects trading in the Shares to the Exchange’s existing rules governing the trading of equity securities, and has represented that trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 8.200(e). The Exchange has also represented that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Additional details regarding the Shares and the Fund including, among other things, the organization and structure of the Fund, the dissemination and availability of information about the Fund and the Index, trading halts, applicable trading rules, surveillance, and the Information Bulletin can be found in the Notice.⁴

III. Discussion and Commission’s Findings

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

⁴ See supra note 3.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

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 Commission notes that it has previously permitted the listing and trading of TIRs based on commodities indexes.⁷ In addition, the Shares will be listed and traded pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, and the Exchange represents that the Shares will conform to the existing initial and continued listing criteria under this rule.

In addition, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,⁸ 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 information for the Shares will be disseminated through the facilities of the Consolidated Tape Association. The Intra-day Indicative Value ("IIV") will be published by the Fund's Index Calculation Agent every 15 seconds through one or more major market data vendors and on the Fund's Managing Owner's website. The Net Asset Value ("NAV") of the Fund will be published by the Managing Owner of the Fund, and will be disseminated to all market participants at the same time. The Exchange has also noted that information regarding the closing prices and settlement prices of futures on the Index Commodities are readily available from websites of the applicable futures exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or

⁷ See Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91) (Listing of fourteen funds of the Currency and Commodity Trust pursuant to Rule 8.200, Commentary .02.)

⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Reuters. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective websites. Moreover, the Fund's website (<http://www.jamfunds.com/jcis>) will also disseminate the Fund holdings on a daily basis.

The Exchange shall make available on its website daily trading volume of the Shares, closing prices of the Shares, and the corresponding NAV. In addition, the Fund's website will provide the following information: (1) the current net asset value per share daily and the prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated; (3) a calculation of the premium or discount of such price against such NAV; (4) data in chart format 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; (5) the Fund's prospectus; and (6) other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange has represented that the NAV for the Fund will be disseminated to all market participants at the same time. If the Exchange becomes aware that the NAV with respect to the Shares is not being 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. Furthermore, the Exchange has represented that it may halt trading during the day in which the day in which the interruption to the dissemination of the IIV, the Index or the value of the underlying futures occurs.

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 on the Exchange in the Shares 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 futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule or by the halt or suspension of trading in the underlying futures contracts.

In addition, NYSE Arca Equities Rule 8.200(e) sets forth certain requirements for ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance.

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

- (1) The Fund will meet the initial and continued listing criteria under NYSE Arca Equities Rule 8.200, Commentary .02.
- (2) The Exchange's 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.
- (3) 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. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (c) 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; (d) how information regarding the IIV is disseminated; (e) 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 (f) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.

⁹ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSEArca-2010-78), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).