

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80486; File No. SR-NYSEArca-2016-177)

April 19, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of Shares of the USCF Canadian Crude Oil Index Fund under NYSE Arca Equities Rule 8.200

I. Introduction

On December 30, 2016, 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 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the USCF Canadian Crude Oil Index Fund (“Fund”) under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the Federal Register on January 23, 2017.<sup>3</sup> On March 8, 2017, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

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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. 79793 (January 13, 2017), 82 FR 7885 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 80180, 82 FR 13702 (March 14, 2017). The Commission designated April 23, 2017 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

## II. Exchange's Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.200, Commentary .02, which governs the listing and trading of Trust Issued Receipts.<sup>7</sup> The Fund is a series of the United States Commodity Index Funds Trust ("Trust")<sup>8</sup> and is a commodity pool that will continuously issue common shares of beneficial interest that may be purchased and sold on the Exchange. The Trust and the Fund are managed and controlled by United States Commodity Funds LLC ("USCF" or "Sponsor"), which is registered as a commodity pool operator with the Commodity Futures Trading Commission and is a member of the National Futures Association. Brown Brothers Harriman & Co., Inc. will be the administrator and custodian for the Fund. ALPS Distributors, Inc. will be the marketing agent ("Marketing Agent") for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including the Fund's portfolio holdings and investment restrictions.<sup>9</sup>

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<sup>7</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

<sup>8</sup> According to the Exchange, the Trust filed with the Commission on June 16, 2016 a registration statement on Form S-1 under the Securities Act of 1933 relating to the Fund (File No. 333-212089) ("Registration Statement").

<sup>9</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, availability of information, trading rules and halts, surveillance, information bulletins, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, supra notes 3 and 8, respectively.

A. Investment Objective and Principal Investments of the Fund

According to the Exchange, the investment objective of the Fund is for the daily changes in percentage terms of its per-Share NAV to reflect the daily changes in percentage terms of the Canadian Crude Excess Return Index (“CCIER”),<sup>10</sup> plus interest income from the Fund’s short-term fixed income holdings, less the Fund’s expenses. The CCIER targets an exposure that represents an approximately 3-month rolling position in the following futures contracts: (i) ICE Crude Diff - TMX WCS 1B Index Futures (“WCS Futures”) and (ii) ICE WTI Crude Futures (“WTI Futures,” and together with WCS Futures, collectively, “Benchmark Component Futures Contracts”).<sup>11</sup>

The Fund will seek to achieve its investment objective by first entering into cash-settled over-the-counter (“OTC”) total return swap and forward transactions intended to replicate the return of the CCIER (“OTC Derivatives Contracts”) and, second, to the extent market conditions are more favorable for futures as compared to OTC Derivatives Contracts, investing in the Benchmark Component Futures Contracts that comprise the CCIER. The Fund will support these investments by holding the amounts of its margin, collateral, and other requirements relating to these obligations in short-term obligations of the United States of two years or less, cash, and cash equivalents.

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<sup>10</sup> The Exchange represents that the CCIER is owned and maintained by Auspice Capital Advisors Ltd. and is designed to measure the performance of the Canadian crude oil market. It is calculated and tracked daily and reported each trading day via major market data vendors.

<sup>11</sup> According to the Exchange, the WCS Futures are monthly cash-settled futures based on the TMX WCS (Western Canadian Select) Daily Weighted Average Price Index (“TMX WCS 1b Index”) traded on ICE Futures Europe. The TMX WCS 1b Index is expressed as a differential to the NYMEX WTI 1st Line Futures (Calendar Month Average). The WTI Futures are the ICE West Texas Intermediate (WTI) Light Sweet Crude Oil Futures Contracts traded on ICE Futures Europe. ICE Futures Europe, NYMEX, and other futures exchanges on which the Fund may trade listed futures contracts are referred to collectively as “Futures Exchanges.”

If constrained by regulatory requirements, or in view of market conditions, or if one or more of the other Benchmark Component Futures Contracts is not available, the Fund may next invest in exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Futures Contracts, e.g., futures contracts that are based on changes in the price of WTI oil traded on the Chicago Mercantile Exchange. When, in view of regulatory requirements and market conditions, the Fund has invested to the fullest extent possible in the OTC Derivatives Contracts and exchange-traded futures contracts, the Fund may then invest in other OTC derivative contracts and/or other contracts and instruments based on the Benchmark Component Futures Contracts or on the price of the crude oil underlying the Benchmark Component Futures Contracts, such as cash-settled options, cleared swap contracts, and swap contracts other than cleared swap contracts.<sup>12</sup>

The Fund will seek to achieve its investment objective by investing so that the average daily percentage change in the Fund's NAV for any period of 30 successive valuation days will be within plus/minus 10% of the average daily percentage change in the CCIER over the same period. The Sponsor believes that market arbitrage opportunities will cause daily changes in the Fund's Share price on the Exchange on a percentage basis to closely track the daily changes in the Fund's per Share NAV on a percentage basis. The Sponsor also believes that the net effect of this expected relationship and the expected relationship described above between the Fund's per

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<sup>12</sup> The Exchange notes that Benchmark Component Futures Contracts, other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Futures Contracts, and other contracts and instruments based on the Benchmark Component Futures Contracts, are referred to collectively as "Other Crude Oil-Related Investments," and together with OTC Derivatives Contracts, "Crude Oil Interests." The Exchange notes that market conditions that USCF currently anticipates could cause the Fund to invest in Other Crude Oil-Related Investments include those allowing the Fund to obtain greater liquidity, to execute transactions with more favorable pricing, or if the Fund or USCF exceeds position limits or accountability levels established by an exchange.

Share NAV and the CCIER will be that the daily changes in the price of the Fund's Shares on the Exchange on a percentage basis will closely track the daily changes in the CCIER on a percentage basis, plus interest income from the Fund's short-term fixed income holdings, less the Fund's expenses.

B. OTC Derivatives Contracts

According to the Exchange, the Fund will primarily invest in OTC Derivatives Contracts that are based on Benchmark Component Futures Contracts and, in the opinion of the Sponsor, are traded in sufficient volume to permit the ready taking and liquidation of positions.<sup>13</sup>

The Fund may enter into multiple OTC Derivatives Contracts for the purpose of achieving its investment objective. If an OTC Derivatives Contract is terminated, the Fund may either pursue the same or other alternative investment strategies with an acceptable counterparty,

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<sup>13</sup> The Exchange states that the OTC Derivatives Contracts will be entered between two parties, outside of public exchanges, in private contracts. Unlike the exchange-traded Benchmark Component Futures Contracts, each party to an OTC Derivatives Contract bears credit risk with respect to the other party. To reduce such credit risk, the Fund will generally enter into an agreement with each counterparty based on the Master Agreement published by the International Swaps and Derivatives Association, Inc. ("ISDA") that provides for the netting of overall exposure between counterparties. In accordance with the terms and conditions of the Fund's ISDA Master Agreement, pursuant to which the Fund's OTC Derivatives Contracts will be entered into, the Fund will be entitled to increase or decrease its notional exposure to the CCIER from time to time to, among other things, manage Share purchases and reinvestment of distributions, Fund Share redemptions and market repurchases of Shares, and meet other liquidity needs. Reducing notional exposure may be achieved through different methods, including the use of offsetting forwards and partial terminations of OTC Derivatives Contracts. Moreover, the Exchange states that, in connection with the Master Agreements, the Sponsor will enter into ISDA Credit Support Annexes with its counterparties to mitigate counterparty credit exposure. According to the Exchange, the Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an OTC Derivatives Contract pursuant to guidelines approved by the Sponsor's board. In respect of the OTC Derivatives Contracts, the Fund will have the ability to replace a counterparty or engage additional counterparties at any time.

or make direct investments in the Benchmark Component Futures Contracts or other investments that provide a similar return to investing in the Benchmark Component Futures Contracts.

The Fund may also enter into certain transactions where an OTC component is exchanged for a corresponding futures contract (“EFRP” transactions).<sup>14</sup> The Fund may also employ spreads or straddles in its trading to mitigate the differences in its investment portfolio and its goal of tracking the price of the Benchmark Component Futures Contracts.<sup>15</sup>

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-177 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>16</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>17</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed

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<sup>14</sup> According to the Exchange, in the most common type of EFRP transaction entered into by the Fund, the OTC component is the purchase or sale of one or more baskets of the Fund’s Shares.

<sup>15</sup> The Exchange states that the Fund would use a spread when it chooses to take simultaneous long and short positions in futures written on the same underlying asset, but with different delivery months.

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> Id.

to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”<sup>18</sup>

Under the proposal, the NAV for a normal trading day will be released after 4:00 p.m. Eastern Time (“E.T.”), and an Authorized Participant must place an order with the Marketing Agent to redeem one or more baskets of Shares by 10:30 a.m. E.T. or the close of regular trading on the Exchange, whichever is earlier. The Commission notes that the proposal does not specify the creation order cut-off time, and does not provide an explanation for the early redemption order cut-off time. The proposal also does not explain whether an early cut-off time would have any impact on the trading of the Shares, including any impact on arbitrage. Accordingly, the Commission seeks commenters’ views on the 10:30 a.m. E.T. (or the close of regular trading on the Exchange, whichever is earlier) cut-off time, and whether the Exchange’s statements relating to the creation and redemption process support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

In addition, under the proposal, the Fund will seek to achieve its investment objective by holding Crude Oil Interests.<sup>19</sup> The Exchange states that the Fund’s total portfolio composition will be disclosed each business day that the Exchange is open for trading on the Fund’s website. The website disclosure will include, with respect to OTC Derivatives Contracts and each Benchmark Component Futures Contract, their name, percentage weighting, and value. The Commission seeks commenters’ views on the sufficiency of the information that would be

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See supra note 12 (defining “Crude Oil Interests”).

provided with respect to the Fund's Crude Oil Interests, and whether the information will allow market participants to value these interests intraday.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>20</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>21</sup> in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

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<sup>20</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>21</sup> See supra note 3.

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-2016-177 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-2016-177. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2016-177 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(57).