

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91283; File No. SR-NYSEArca-2020-105)

March 9, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to List and Trade the Shares of the Teucrium Water Fund under NYSE Arca Rule 8.200-E, Commentary .02

On November 25, 2020, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade the shares (“Shares”) of the Teucrium Water Fund (“Fund”) under NYSE Arca Rule 8.200-E, Commentary .02. The proposed rule change was published for comment in the Federal Register on December 14, 2020.³

On January 14, 2021, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90608 (December 8, 2020), 85 FR 80854 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90927, 86 FR 6719 (January 22, 2021). The Commission designated March 14, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

I. Summary of the Proposal⁷

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts on the Exchange.⁸ The Fund, which will be managed and controlled by Teucrium Trading, LLC (“Sponsor”), is a series of Teucrium Commodity Trust (“Trust”).⁹ U.S. Bank, N.A. will be the custodian for the Fund, and U.S. Bancorp Fund Services, LLC (“Administrator”) will be the administrator and transfer agent for the Fund.¹⁰ Foreside Fund Services, LLC will serve as the distributor of the Shares (“Distributor”).¹¹

According to the Exchange, the investment objective of the Fund is for changes in the Shares’ Net Asset Value (“NAV”) to reflect the changes of the price of water rights in the state of California, as measured by the Fund’s Benchmark.¹² The “Benchmark” is a weighted average

⁷ The Commission notes that additional information regarding the Trust, the Shares, and the Fund, including investment strategies, calculation of net asset value and indicative fund value, creation and redemption procedures, and additional background information about the water market and water futures contracts, among other things, can be found in the Notice and the registration statement filed with the Commission on Form S-1 (File No. 333-248948) under the Securities Act of 1933, as applicable.

⁸ See NYSE Arca Rule 8.200-E, Commentary .02. NYSE Arca Rule 8.200-E permits the listing and trading of “Trust Issued Receipts,” defined as a security (1) that is issued by a trust that holds specific securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Commentary .02 applies to Trust Issued Receipts that invest in “Financial Instruments,” which are defined as 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.

⁹ See Notice, 85 FR at 80854.

¹⁰ See id.

¹¹ See id.

¹² See id.

of the closing settlement prices for three equally weighted Nasdaq Veles California Water index futures contracts (“Benchmark Component Futures Contracts”) that are traded on the Chicago Mercantile Exchange Inc. (“CME”).¹³ The Benchmark Component Futures Contracts are financially settled and trade eight consecutive quarterly contracts (March, June, September, and December) plus the two nearest serial months that are not included in the quarterly contracts.¹⁴ The Benchmark will have three components, consisting of equally weighted Benchmark Component Futures Contracts selected from the following contract months: May, June, July, August, and September.¹⁵ The Benchmark will always hold a June contract month.¹⁶ The Benchmark will roll upon the expiration of the February, May, June, July, and August contract months.¹⁷ The Benchmark is not designed to track the spot price of water or water rights.¹⁸

The Fund will seek to achieve its investment objective by investing in Benchmark Component Futures Contracts.¹⁹ Under normal market conditions, the Fund expects that 100% of the Fund’s assets will be invested in Benchmark Component Futures Contracts and in cash and cash equivalents, such as short-term Treasury Bills, money market funds, demand deposit accounts, and commercial paper.²⁰ The Fund may, to a lesser extent, obtain exposure to the

¹³ See id.

¹⁴ See id.

¹⁵ See id.

¹⁶ See id.

¹⁷ See id.

¹⁸ See Notice, 85 FR at 80855. According to the Exchange, the Nasdaq Veles California Water Index, which was designed to provide water market participants with a price for water through verifiable price discovery, sets a weekly benchmark spot price of water rights in California, based on the volume-weighted average of the transaction price in California’s five largest and most actively traded water markets.

¹⁹ See id.

²⁰ See id.

Benchmark through investment in over-the-counter (“OTC”) swap agreements, OTC forward contracts, both exchange-listed and OTC options, exchange-listed futures, and exchange-listed options on futures.²¹ Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded futures contracts or exchange-traded options on futures shall consist of futures contracts or options on futures whose principal market is not a member of the Intermarket Surveillance Group (“ISG”) or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement (“CSSA”).²²

The Fund’s NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares.²³ The Administrator will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Standard Time (“E.T.”).²⁴ In order to provide updated information relating to the Fund for use by investors and market professionals, ICE Data Indices, LLC will calculate an updated “Indicative Fund Value” (“IFV”). The IFV will be calculated by using the prior day’s closing NAV per Share of the Fund as a base and will be updated throughout the Exchange’s Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the value of the Fund’s water interests during the trading day. The IFV will be disseminated on a per-Share basis every 15 seconds during the Exchange’s Core Trading Session

²¹ See id.

²² For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

²³ See Notice, 85 FR at 80856.

²⁴ See id.

and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.²⁵

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2020-105 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁶ 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,²⁷ 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 to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."²⁸

²⁵ According to the Exchange, several major market data vendors display and/or make widely available IFVs taken from the CTA or other data feeds. In addition, the normal trading hours for Water Futures Contracts on CME are generally shorter than those of NYSE Arca. As a result, there is a gap in time at the beginning and the end of each day during which the Fund's Shares are traded on NYSE Arca, but real-time CME trading prices for Water Futures Contracts are not available. During such gaps, there will be no update to the IFV.

²⁶ 15 U.S.C. 78s(b)(2)(B).

²⁷ Id.

²⁸ 15 U.S.C. 78f(b)(5).

III. 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.²⁹

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,³⁰ in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether the market in Benchmark Component Futures Contracts represents a significant market, i.e., a market of significant size?

²⁹ Section 19(b)(2) of the Act, as amended by the Securities Act 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

³⁰ See Notice, supra note 3.

2. What are commenters' views on the possibility that the Fund could acquire a substantial portion of the market for some or all of the Benchmark Component Futures Contracts? What are commenters' views on whether such a concentration of holdings could affect the Fund's portfolio management, the liquidity of the Fund's portfolio, or the pricing of the Benchmark Component Futures Contracts?
3. What are commenters' views on the risks of price manipulation and fraud in the underlying spot water markets and how these risks might affect the Benchmark Component Futures Contracts? What are commenters' views on how these risks might affect the Fund's NAV and trading in the Shares of the Fund? What are commenters' views on how an investor may evaluate the price of the Shares in light of these risks?
4. In its proposal, the Exchange states that the Fund may obtain exposure to the Benchmark through investment in OTC swap agreements, OTC forward contracts, both exchange-listed and OTC options, exchange-listed futures, and exchange-listed options on futures. What are commenters' views on the current availability and price transparency of the OTC financial instruments? What are commenters' views on the ability of the Fund to invest in these instruments if the underlying spot or futures water market experiences emergencies, disruptions, or significant volatility? What are commenters' views on the potential effect of manipulation in the underlying water markets on the pricing of the Fund's OTC water interests?
5. What are commenters' views on whether the Fund would have the information necessary to adequately value, including fair value, the Fund's Benchmark Component Futures Contracts and other water interests when determining an appropriate NAV for the Fund?

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. Please include File Number SR-NYSEArca-2020-105 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-2020-105. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-105 and should be submitted by

[insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier
Assistant Secretary

³¹ 17 CFR 200.30-3(a)(57).