

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62527; File No. SR-NYSEArca-2010-44)

July 19, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the United States Commodity Index Fund

I. Introduction

On May 25, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the United States Commodity Index Fund under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the Federal Register on June 15, 2010.<sup>3</sup> The Commission received no comments on the proposal.

This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade shares (“Units”) of the United States Commodity Index Fund (“USCI” or “Fund”) pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200.<sup>4</sup> The Fund is a commodity pool that is a series of United States Commodity Index Funds

---

<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. 62237 (June 7, 2010), 75 FR 33861 (“Notice”).

<sup>4</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to the listing and trading, or trading pursuant to unlisted trading privileges, of Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments” is defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200 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.

Trust (“Trust”), a Delaware statutory trust.<sup>5</sup> The investment objective of USCI is to have the daily changes in percentage terms of the Units’ net asset value (“NAV”) reflect the daily changes in percentage terms of the SummerHaven Dynamic Commodity Index Total Return (“Index”),<sup>6</sup> less USCI’s expenses. The Index, which is designed to reflect the performance of a diversified group of commodities, is owned and maintained by SummerHaven Index Management, LLC (“SummerHaven Indexing”) and calculated and published by Bloomberg, L.P. (“Bloomberg”). United States Commodity Funds LLC (“USCF” or “Sponsor”) is the sponsor of the Trust.<sup>7</sup> USCI’s trading advisor, SummerHaven Investment Management, LLC (“SummerHaven”),<sup>8</sup> provides advisory services to the Sponsor with respect to the Index and the investment decisions of USCI. The Sponsor, SummerHaven Indexing, SummerHaven, and Bloomberg are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and

---

<sup>5</sup> The Fund has filed Amendment No. 3 to Form S-1, dated May 25, 2010 (File No. 333-164024) (“Registration Statement”).

<sup>6</sup> The Index is designed to reflect the performance of a fully margined or collateralized portfolio of 14 commodity futures contracts with equal weights, selected each month from a universe of 27 eligible commodity futures contracts. The Index is composed of physical, non-financial commodity futures contracts with active and liquid markets traded upon futures exchanges in major industrialized countries. The futures contracts are denominated in U.S. dollars and weighted equally by notional amount. The commodity sectors for the Index include grains (e.g., wheat, corn, soybeans, etc.), precious metals (e.g., gold, silver, platinum), industrial metals (e.g., zinc, nickel, aluminum, copper, etc.), livestock (e.g., live cattle, lean hogs, feeder cattle), softs (e.g., sugar, cotton, coffee, cocoa) and energy (e.g., crude oil, natural gas, heating oil, etc.). The eligible commodities and relevant futures exchanges on which the futures contract are listed are identified and discussed in the Registration Statement, along with a specific discussion of position limits for these contracts.

<sup>7</sup> The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission (“CFTC”) and a member of the National Futures Association (“NFA”). The Sponsor controls the operations of USCI.

<sup>8</sup> Summerhaven is a Delaware limited liability company that is registered as a commodity trading advisor and a commodity pool operator with the CFTC and is a member of the NFA.

dissemination of material, non-public information regarding the Index or the Fund's portfolio.<sup>9</sup>

It is anticipated that the net assets of USCI will consist primarily of investments in futures contracts (such futures contracts, collectively, "Futures Contracts") for commodities that are traded on the New York Mercantile Exchange ("NYMEX"), ICE Futures ("ICE"), Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME"), London Metal Exchange ("LME"), Commodity Exchange, Inc. ("COMEX"), or on other foreign exchanges (such exchanges, collectively, "Futures Exchanges") and, to a lesser extent, in order to comply with regulatory requirements or in view of market conditions, other commodity-based contracts and instruments such as cash-settled options on Futures Contracts, forward contracts relating to commodities, cleared swap contracts, and other over-the-counter transactions that are based on the price of commodities and Futures Contracts (collectively, "Other Commodity-Related Investments," and together with Futures Contracts, collectively, "Commodity Interests"). Market conditions that the Sponsor currently anticipates could cause USCI to invest in Other Commodity-Related Investments would be those allowing USCI to obtain greater liquidity or to execute transactions with more favorable pricing. The Sponsor expects to manage USCI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Index and USCF's selection of investments on behalf of USCI.

USCI seeks to achieve its investment objective by investing in Futures Contracts and Other Commodity-Related Investments such that daily changes in USCI's NAV will closely

---

<sup>9</sup> In the event the Sponsor, SummerHaven Indexing, SummerHaven, or Bloomberg become affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Index or portfolio. E-mail from Michael Cavalier, Chief, Counsel, NYSE Euronext, to Steve Varholik, Special Counsel, Division of Trading and Markets, Commission, dated July 13, 2010.

track the changes in the Index.<sup>10</sup> The Index is comprised of 14 Futures Contracts that will be selected on a monthly basis from a list of 27 possible Futures Contracts. The Futures Contracts that at any given time make up the Index are referred to herein as “Benchmark Component Futures Contracts.” USCI anticipates that to meet its investment objective, it will invest first in the current Benchmark Component Futures Contracts and other Futures Contracts intended to replicate the return on the current Benchmark Component Futures Contracts and, thereafter, to comply with regulatory requirements or in view of market conditions, in Other Commodity-Related Investments intended to replicate the return on the Benchmark Component Futures Contracts, including cleared swap contracts, other over-the-counter transactions, and in other Futures Contracts.

USCI’s positions in Commodity Interests will be rebalanced on a monthly basis in order to track the changing nature of the Index. If Futures Contracts relating to a particular commodity remains in the Index from one month to the next, such Futures Contracts will be rebalanced to the 7.14% target weight, as described below. Specifically, on a specified day near the end of each month called the “Selection Date,” it will be determined if a current Benchmark Component Futures Contract will be replaced by a new Futures Contract in either the same or different underlying commodity to be used as a Benchmark Component Futures Contract for the following month, in which case USCI’s investments would have to be changed accordingly. In order that USCI’s trading does not unduly cause extraordinary market movements, and to make it more difficult for third parties to profit by trading based on market movements that could be expected from changes in the Benchmark Component Futures Contracts, USCI’s investments typically will not be rebalanced entirely on a single day, but rather will typically be rebalanced over a

---

<sup>10</sup> Futures Contracts may have various expiration dates.

period of four days. After fulfilling the margin and collateral requirements with respect to its Commodity Interests, USCI will invest the remainder of its proceeds from the sale of baskets in short-term obligations of the United States government (“Treasury Securities”) or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

The Sponsor endeavors to place USCI’s trades in Commodity Interests and otherwise manage USCI’s investments so that A will be within plus/minus 10 percent of B, where A is the average daily change in USCI’s NAV for any period of 30 successive valuation days, i.e., any NYSE Arca trading day as of which USCI calculates its NAV, and B is the average daily change in the Index over the same period.

The Sponsor will employ a “neutral” investment strategy intended to track the changes in the Index regardless of whether the Index goes up or goes down. The Sponsor does not intend to operate USCI in a fashion such that its per-Unit NAV will equal, in dollar terms, the spot prices of the commodities comprising the Index or the prices of any particular group of Futures Contracts.

The principal types of Commodity Interests in which USCI may invest are set forth in the Registration Statement and include futures contracts, forward contracts, swaps or options on futures contracts, forward contracts or commodities on the spot market. USCI will invest in Commodity Interests to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations with respect to its investments in Commodity Interests. The primary focus of the Sponsor is the investment in Commodity Interests and the management of USCI’s investments in Treasury Securities, cash, and/or cash equivalents.

The specific Commodity Interests purchased will depend on various factors, including a judgment by the Sponsor as to the appropriate diversification of USCI’s investments. While the

Sponsor anticipates significant investments in Futures Contracts on the Futures Exchanges, for various reasons, including the ability to enter into the precise amount of exposure to the commodities market and position limits on Futures Contracts, it may also invest in Other Commodity-Related Investments, such as swaps, in the over-the-counter market. If USCI is required by law or regulation, or by one of its regulators, including a Futures Exchange, to reduce its position in one or more Futures Contracts to the applicable position limit or to a specified accountability level, a substantial portion of USCI's assets could be invested in Other Commodity-Related Investments that are intended to replicate the return on the Index or particular Benchmark Component Futures Contracts. As USCI's assets reach higher levels, USCI is more likely to exceed position limits, accountability levels or other regulatory limits and, as a result, it is more likely that it will invest in Other Commodity-Related Investments at such higher levels.

The Sponsor may not be able to fully invest USCI's assets in Futures Contracts having an aggregate notional amount exactly equal to USCI's NAV. For example, as standardized contracts, the Benchmark Component Futures Contracts included in the Index are for a specified amount of a particular commodity, and USCI's NAV and the proceeds from the sale of a Creation Basket is unlikely to be an exact multiple of the amounts of those contracts. As a result, in such circumstances, USCI may be better able to achieve the exact amount of exposure to changes in price of the Benchmark Component Futures Contracts through the use of Other Commodity-Related Investments, such as over-the-counter contracts that have better correlation with changes in price of the Benchmark Component Futures Contracts. USCI anticipates that, to the extent it invests in Futures Contracts other than the Benchmark Component Futures Contracts and Other Commodity-Related Investments, it will enter into various non-exchange-traded

derivative contracts to hedge the short-term price movements of such Futures Contracts and Other Commodity-Related Investments against the current Benchmark Component Futures Contracts.

The Exchange represents that the Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to the application of Rule 10A-3 under the Act,<sup>11</sup> the Trust relies on the exception contained in Rule 10A-3(c)(7).<sup>12</sup> A minimum of 100,000 Units will be outstanding as of the start of trading on the Exchange.

Additional details regarding the Trust; trading and investment policies of the Fund, including the Fund's rebalancing of positions in Commodity Interests; creations and redemptions of the Units; information relating to the Index and Index methodology; information relating to Futures Contracts, Futures Exchanges, hours of trading on the Futures Exchanges, and position limits; investment risks; NAV calculation; dissemination of certain key values; availability of information about the Units; and information relating to trading halts, applicable Exchange trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.<sup>13</sup>

### III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>14</sup> and the rules and regulations

---

<sup>11</sup> 17 CFR 240.10A-3.

<sup>12</sup> 17 CFR 240.10A-3(c)(7).

<sup>13</sup> See supra notes 3 and 5.

<sup>14</sup> 15 U.S.C. 78f.

thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the Exchange's rules be 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission finds that the proposal to list and trade Units on the Exchange also is consistent with Section 11(a)(1)(C)(iii) of the Act,<sup>17</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors 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 regarding the Units will be disseminated through the facilities of the Consolidated Tape Association. In addition, values of the Index are computed by Bloomberg and disseminated approximately every 15 seconds from 8:00 a.m. to 5:00 p.m. Eastern Time ("E.T."). An Indicative Trust Value ("ITV"), which will be calculated by using the prior day's closing NAV per Unit of the Fund as a base and updated throughout the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. each trading day to reflect current changes in the value of the Futures Contracts, will be disseminated on a per-Unit basis by one or more major market data vendors every 15 seconds during the Core Trading Session.<sup>18</sup>

---

<sup>15</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>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>18</sup> While the ITV will be updated during the NYSE Arca Core Trading Session when Futures Exchanges are trading any Futures Contracts held by the Fund, a static ITV will

The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of Financial Instruments and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. The closing prices and settlement prices of the Futures Contracts are also available from the Web sites of the applicable futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or 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 Web sites. The specific contract specifications for the Futures Contracts are also available on such Web sites, as well as other financial informational sources. Also, the Fund's Web site will display the end-of-day closing index levels and NAV. The NAV for the Fund will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. The Exchange will make available on its Web site daily trading volume of each of the Units, closing prices of such Units, and number of Units outstanding.

The Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV is not being 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. Further, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value, ITV, or the value of the underlying Futures Contracts occurs. If the interruption to the dissemination of the Index value, ITV, or the value of

---

be disseminated between the close of trading of all applicable Futures Contracts on Futures Exchanges and the close of the NYSE Arca Core Trading Session.

the underlying Futures Contracts 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. In addition, the Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers 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 Purchasers. Accordingly, each investor will have access to the current portfolio composition of the Fund through the Fund's Web site. Lastly, the trading of Units will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders<sup>19</sup> acting as registered Market Makers<sup>20</sup> in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that Units are deemed equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

- (1) The Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.
- (2) The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions.
- (3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The

---

<sup>19</sup> See NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

<sup>20</sup> See NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

Exchange is able to obtain information regarding trading in the Units, the physical commodities included in, or options, futures, or options on futures on, Units 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 an Information Sharing Agreement with the ICE and LME for the purpose of providing information in connection with trading in or related to Futures Contracts traded on their respective exchanges. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the Intermarket Surveillance Group ("ISG"), including CME, CBOT, COMEX, and NYMEX. A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org).<sup>21</sup>

- (4) With respect to Fund assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (5) 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 Units. Specifically, the Information Bulletin will discuss the following: (a) the risks involved in trading the Units during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Units in

---

<sup>21</sup> The Exchange notes that not all Commodity Interests may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Creation Baskets and Redemption Baskets (and that Units 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 Units; (d) how information regarding the ITV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (f) trading information.

- (6) A minimum of 100,000 Units will be outstanding as of the start of trading on the Exchange.
- (7) With respect to the application of Rule 10A-3 under the Act, the Trust will rely on the exception contained in Rule 10A-3(c)(7).<sup>22</sup>

This approval order is based on the Exchange's representations.<sup>23</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

---

<sup>22</sup> See supra notes 11 and 12 and accompanying text.

<sup>23</sup> The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures on commodities. These limits may be directly set by the CFTC, or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures in commodities, even though such limits could impact a commodity-based exchange-traded product that is under the jurisdiction of the Commission.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NYSEArca-2010-44) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>24</sup> 15 U.S.C. 78s(b)(2)

<sup>25</sup> 17 CFR 200.30-3(a)(12)