

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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. 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-2010-120 and should be submitted on or before January 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63625; File No. SR-NYSEArca-2010-119]

### Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Teucrium WTI Crude Oil Fund Under NYSE Arca Equities Rule 8.200

December 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 20, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 list and trade shares of the Teucrium WTI Crude Oil Fund under NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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 self-regulatory organization 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 text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").<sup>3</sup> The Exchange proposes to list and trade shares ("Shares") of the Teucrium WTI Crude Oil Fund (the "Fund") pursuant to NYSE Arca Equities Rule 8.200.

The Exchange notes that the Commission has previously approved the listing and trading of other issues of Trust Issued Receipts on the American Stock Exchange LLC,<sup>4</sup> trading on NYSE Arca pursuant to unlisted trading privileges ("UTP"),<sup>5</sup> and listing on NYSE Arca.<sup>6</sup> Among these is the Teucrium

<sup>3</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs 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>4</sup> See, e.g., Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39).

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73).

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91).

Corn Fund, a series of the Teucrium Commodity Trust ("Trust").<sup>7</sup> In addition, the Commission has approved other exchange-traded fund-like products linked to the performance of underlying commodities.<sup>8</sup>

The Shares represent beneficial ownership interests in the Fund, as described in the Registration Statement for the Fund.<sup>9</sup> The Fund is a commodity pool that is a series of the Trust, a Delaware statutory trust. The Fund is managed and controlled by Teucrium Trading, LLC ("Sponsor"). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator ("CPO") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association.

##### Teucrium WTI Crude Oil Fund

According to the Registration Statement, the investment objective of the Fund is to have the daily changes in percentage terms of the Shares' net asset value ("NAV") reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for futures contracts for Western Texas Intermediate ("WTI") crude oil, also known as Texas Light Sweet crude oil ("Oil Futures Contracts") traded on the New York Mercantile Exchange ("NYMEX"), specifically (1) the nearest to spot June or December Oil Futures Contract, weighted 35%; (2) the June or December Oil Futures Contract following the aforementioned (1), weighted 30%; and (3) the December Oil Futures Contract following the aforementioned (2),<sup>10</sup> weighted 35%; before taking Fund expenses and interest income into account. This weighted average of the three referenced

<sup>7</sup> See Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR-NYSEArca-2010-22) (order approving listing on the Exchange of Teucrium Corn Fund).

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR-NYSEArca-2007-91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR-NYSEArca-2009-28) (order granting accelerated approval for NYSE Arca listing the ETFs Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (order granting accelerated approval for NYSE Arca listing the ETFs Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (order approving listing on NYSE Arca of the ETFs Platinum Trust).

<sup>9</sup> See registration statement on Amendment No. 1 to Form S-1 for Teucrium Commodity Trust, dated September 7, 2010 (File No. 333-167594) ("Registration Statement"). The discussion herein relating to the Trust and the Shares is based on the Registration Statement.

<sup>10</sup> See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 22, 2010.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Oil Futures Contracts is referred to herein as the “Oil Benchmark,” and the three Oil Futures Contracts that at any given time make up the Oil Benchmark are referred to herein as the “Oil Benchmark Component Futures Contracts.”<sup>11</sup>

The Fund seeks to achieve its investment objective by investing under normal market conditions in Oil Benchmark Component Futures Contracts or, in certain circumstances, in other Oil Futures Contracts traded on the NYMEX and to a lesser extent the Intercontinental Exchange (“ICE”). The Fund may also invest in other kinds of crude oil futures contracts traded on the NYMEX or ICE or on other domestic or foreign exchanges. In addition, and to a limited extent, the Fund will invest in crude oil-based swap agreements that are cleared through the NYMEX or ICE or their affiliated providers of clearing services (“Cleared Oil Swaps”) in furtherance of the Fund’s investment objective, and to the extent permitted and appropriate in light of the liquidity in the Cleared Oil Swaps market. Once position limits and accountability levels in Oil Futures Contracts are applicable, the Fund’s intention is to invest first in Cleared Oil Swaps to the extent permitted by the position limits and accountability levels applicable to Cleared Oil Swaps and appropriate in light of the liquidity in the Cleared Oil Swaps market,<sup>12</sup> and then in contracts or instruments such as cash-settled options on Oil Futures Contracts and forward contracts, swaps other than Cleared Oil Swaps, and other over-the-counter transactions that are based on the price of crude oil and Oil Futures Contracts (collectively, “Other Oil Interests,” and together with Oil Futures Contracts and Cleared Oil Swaps, “Oil Interests”).<sup>13</sup> The circumstances under

which such investments in Other Oil Interests may be utilized (e.g., imposition of position limits or accountability levels) are discussed below.

Light Sweet Crude Oil Futures Contracts traded on the NYMEX are listed for the current year and the next 8 years. However, the nature of the Oil Benchmark is such that the Fund will not hold futures contracts beyond approximately the first 24 months of listed Oil Futures Contracts.<sup>14</sup>

It is the intent of the Sponsor to never hold the next-to-expire an Oil Benchmark Component Futures Contract (commonly called the “spot” contract). For example, in terms of the Oil Benchmark, in April of a given year, the Oil Benchmark Component Futures Contracts will be the contracts expiring in June (the first-to-expire Oil Benchmark Component Futures Contract), December (the second-to-expire Oil Benchmark Component Futures Contract), and June of the following year (the third-to-expire Oil Benchmark Component Futures Contract). Because the next-to-expire Oil Benchmark Component Futures Contract (the June contract) will become spot on the third-to-last trading day prior to the 25th calendar day in April, the Sponsor will “roll” or change that contract prior to the third-to-last trading day prior to the 25th calendar day in April for a position in December of the following year, not intending to hold any futures contract to spot.

According to the Registration Statement, the Fund seeks to achieve its investment objective primarily by investing in Oil Interests such that daily changes in the Fund’s NAV will be expected to closely track the changes in the Oil Benchmark. The Fund’s positions in Oil Interests will be changed or “rolled” on a regular basis in order to track the changing nature of the Oil Benchmark. For example, two times a year (in the month in which an Oil Benchmark Component Futures Contract is set to become the first-to-expire Oil Futures Contract listed on

NYMEX), the first-to-expire Oil Benchmark Component Contract will become the next-to-expire (spot) Oil Futures Contract and will no longer be an Oil Benchmark Component Futures Contract, and the Fund’s investments will have to be changed accordingly. In order that the Fund’s trading does not cause unwanted market movements and to make it more difficult for third parties to profit by trading based on such expected market movements, the Fund’s investments typically will not be rolled entirely on that day, but will typically be rolled over a period of several days.

Consistent with achieving the Fund’s investment objective of closely tracking the Oil Benchmark, the Sponsor may for certain reasons cause the Fund to enter into or hold Oil Futures Contracts other than Oil Benchmark Component Futures Contracts, Cleared Oil Swaps and/or Other Oil Interests. For example, certain Cleared Oil Swaps have standardized terms similar to, and are priced by reference to, a corresponding Oil Benchmark Component Futures Contract. Additionally, Other Oil Interests that do not have standardized terms and are not exchange-traded can generally be structured as the parties to the Oil Interest contract desire.

Therefore, the Fund might enter into multiple Cleared Oil Swaps and/or over-the-counter Other Oil Interests intended to exactly replicate the performance of each of the three Oil Benchmark Component Futures Contracts, or a single over-the-counter Other Oil Interest designed to replicate the performance of the Oil Benchmark as a whole. According to the Registration Statement, assuming that there is no default by a counterparty to an over-the-counter Other Oil Interest, the performance of the Other Oil Interest will necessarily correlate exactly with the performance of the Oil Benchmark or the applicable Oil Benchmark Component Futures Contract.<sup>15</sup> The Fund might also enter into or hold Other Oil Interests to facilitate effective trading, consistent with the discussion of the Fund’s “roll” strategy in the preceding paragraph. In addition, the Fund might enter into or hold Oil Interests that would be expected to alleviate overall deviation between the Fund’s performance and that of the Oil Benchmark that may result from certain

<sup>11</sup> Western Texas Intermediate crude oil futures volume on NYMEX for 2009 and 2010 (through November 30, 2010) was 137,352,118 contracts and 156,155,620 contracts, respectively. As of November 30, 2010, NYMEX open interest for Western Texas Intermediate crude oil was 1,342,325 contracts, and open interest for near month futures was 323,184 contracts. The contract price was \$84,110 (\$84.11 USD per barrel and 1,000 barrels per contract). The approximate value of all outstanding contracts was \$112.9 billion. The position limits for all months is 20,000 contracts and the total value of contracts if position limits were reached would be approximately \$1.68 billion (based on the \$84.11 contract price). Western Texas Intermediate crude oil futures are also traded on ICE and the Singapore Mercantile Exchange.

<sup>12</sup> See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 27, 2010.

<sup>13</sup> The Commission has previously approved listing of similar funds which held forward contracts or swaps on the American Stock Exchange (“Amex”) and NYSE Arca. See, e.g., Securities

Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (order approving Amex listing of United States Oil Fund, LP); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR-Amex-2007-70) (order approving Amex listing of United States Heating Oil Fund, LP and United States Gasoline Fund, LP); 61881 (April 9, 2010), 75 FR 20028 (April 16, 2010) (SR-NYSEArca-2010-14) (order approving listing and trading of United States Brent Oil Fund, LP); and 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (order approving listing and trading of United States Commodity Index Fund).

<sup>14</sup> See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 22, 2010.

<sup>15</sup> According to the Registration Statements [sic], the Fund faces the risk of non-performance by the counterparties to over-the-counter contracts. Unlike in futures contracts, the counterparty to these contracts is generally a single bank or other financial institution, rather than a clearing organization backed by a group of financial institutions. As a result, there will be greater counterparty credit risk in these transactions.

market and trading inefficiencies or other reasons.

The Fund invests in Oil Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Oil Interests.<sup>16</sup> After fulfilling such margin and collateral requirements, the Fund will invest the remainder of its proceeds from the sale of baskets in obligations of the United States Government ("Treasury Securities") or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). Therefore, the focus of the Sponsor in managing the Fund is investing in Oil Interests and in Treasury Securities, cash and/or cash equivalents. The Fund will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through each Fund's custodian, the Bank of New York Mellon (the "Custodian" and the "Administrator").

The Sponsor endeavors to place the Fund's trades in Oil Interests and otherwise manage the Fund's investments so that the Fund's average daily tracking error against the Oil Benchmark will be less than 10 percent over any period of 30 trading days. More specifically, the Sponsor will endeavor to manage the Fund so that A will be within plus/minus 10 percent of B, where A is the average daily change in the Fund's NAV for any period of 30 successive valuation days, *i.e.*, any trading day as of which the Fund calculates its NAV, and B is the average daily change in the Oil Benchmark over the same period.<sup>17</sup>

According to the Registration Statement, the Sponsor employs a "neutral" investment strategy intended to track the changes in the Oil Benchmark regardless of whether the Oil Benchmark goes up or down. The Fund's "neutral" investment strategy is designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing indirectly in crude oil in a cost-effective manner. Such investors may include participants in the crude oil market and other

industries seeking to hedge the risk of losses in their crude oil-related transactions, as well as investors seeking exposure to the crude oil market. The Sponsor does not intend to operate the Fund in a fashion such that its per share NAV will equal, in dollar terms, the spot price of a barrel of WTI light, sweet crude oil or the price of any particular Oil Futures Contract.

The CFTC and U.S. designated contract markets such as the NYMEX have established accountability levels and position limits on the maximum net long or net short futures contracts in commodity interests that any person or group of persons under common trading control (other than as a hedge) may hold, own or control. For example, the current accountability level for investments at any one time is 20,000 Oil Futures Contracts. While this is not a fixed ceiling, it is a threshold above which the NYMEX may exercise greater scrutiny and control over an investor, including limiting an investor to holding no more than 20,000 Oil Futures Contracts. With regard to position limits, the NYMEX limits an investor from holding more than 3,000 net futures in the last 3 days of trading in the near month contract to expire. The Fund, however, does not believe the current position limits imposed by the NYMEX will have any impact on the Fund.<sup>18</sup>

In addition to accountability levels and position limits, the exchanges set price fluctuation limits on futures contracts. For Oil Futures Contracts, the

price fluctuation limit establishes the maximum amount that the price of futures contracts may vary either up or down from the previous day's settlement price or from the price at which the limit was last imposed. When a price fluctuation limit has been reached for a particular futures contract, no trades may be made at a price beyond that limit.<sup>19</sup>

The Fund does not intend to limit the size of the offering and will attempt to expose substantially all of its proceeds to the oil market utilizing Oil Interests. If the Fund encounters position limits, accountability levels, or price fluctuation limits for Oil Futures Contracts on the NYMEX or Cleared Oil Swaps on the NYMEX or ICE, it may then, if permitted under applicable regulatory requirements, purchase Other Oil Interests, including oil futures contracts listed on foreign exchanges. However, the oil futures contracts available on such foreign exchanges may have different underlying sizes, deliveries, and prices. The crude oil futures contracts available on such foreign exchanges may be subject to their own position limits and accountability levels. In any case, notwithstanding the potential availability of these instruments in certain circumstances, position limits and accountability levels could force the Fund to limit the number of Creation Baskets (as defined below) that it sells.

#### *Creation and Redemption of Shares*

The Fund creates and redeems Shares only in blocks called Creation Baskets and Redemption Baskets, respectively, each consisting of 25,000 Shares. Only Authorized Purchasers may purchase or redeem Creation Baskets or Redemption Baskets. An Authorized Purchaser is under no obligation to create or redeem baskets, and an Authorized Purchaser is under no obligation to offer to the public Shares of any baskets it does create. Baskets are generally created when there is a demand for Shares, including, but not limited to, when the market price per share is at (or perceived to be at) a premium to the NAV per share. Similarly, baskets are

<sup>18</sup> As stated in the Fund's Registration Statement, on July 21, 2010, "The Dodd-Frank Wall Street Reform and Consumer Protection Act" ("Dodd-Frank Act") was signed into law. This new law contains broad changes to the financial services industry including provisions changing the regulation of commodity interests. Such changes include the requirement that position limits on energy-based commodity futures contracts be established; new registration, recordkeeping, capital and margin requirements for "swap dealers" and "major swap participants"; the forced use of clearinghouse mechanisms for most over-the-counter transactions; and the aggregation, for purposes of position limits, of all positions in energy futures held by a single entity and its affiliates, whether such positions exist on U.S. futures exchanges, non-U.S. futures exchanges, or in over-the-counter contracts; and the aggregation, for purposes of position limits, of all positions in energy futures held by a single entity and its affiliates, whether such positions exist on U.S. futures exchanges, non-U.S. futures exchanges, or in over-the-counter contracts. The CFTC has announced that in accord with the significant amendments introduced to the Commodity Exchange Act of 1936 ("CEA") (7 U.S.C. 1) by the Dodd-Frank Act, the CFTC plans to issue a notice of rulemaking proposing position limits for regulated exempt commodity contracts, including energy commodity contracts, as directed by the CEA. See Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 FR 50950 (August 18, 2010).

<sup>16</sup> The Sponsor represents that the Fund will invest in Oil Interests in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

<sup>17</sup> The Sponsor believes that market arbitrage opportunities will cause the Fund's Share price on the NYSE Arca to closely track the Fund's NAV per share. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between the Fund's NAV and the Benchmark will be that the changes in the price of the Fund's Shares on the NYSE Arca will closely track, in percentage terms, changes in such Benchmark, less expenses.

<sup>19</sup> More specifically, the NYMEX imposes a \$10.00 per barrel (\$10,000 per contract) price fluctuation limit for Oil Futures Contracts. This limit is initially based off of the previous trading day's settlement price. If any Oil Futures Contract is traded, bid or offered at the limit for five minutes, trading is halted for five minutes. When trading resumes it begins at the point where the limit was imposed and the limit is reset to be \$10.00 per barrel in either direction of that point. If another halt were triggered, the market would continue to be expanded by \$10.00 per barrel in either direction after each successive five-minute trading halt. There is no maximum price fluctuation limit during any one trading session.

generally redeemed when the market price per share is at (or perceived to be at) a discount to the NAV per share. Retail investors seeking to purchase or sell Shares on any day are expected to effect such transactions in the secondary market, on the NYSE Arca, at the market price per share, rather than in connection with the creation or redemption of baskets.

The total deposit required to create each basket ("Creation Basket Deposit") is the amount of Treasury Securities and/or cash that is in the same proportion to the total assets of each Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the purchase order date as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the purchase order date. The redemption distribution from each Fund will consist of a transfer to the redeeming Authorized Purchaser of an amount of Treasury Securities and/or cash that is in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

Purchase or redemption orders for Creation and Redemption Baskets must be placed by 12 p.m. E.T. or the close of regular trading on the New York Stock Exchange, whichever is earlier.

The Funds 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 application of Rule 10A-3<sup>20</sup> under the Act, the Trust relies on the exception contained in Rule 10A-3(c)(7).<sup>21</sup> A minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

A more detailed description of Oil Interests as well as investment risks, are set forth in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Net Asset Value

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.<sup>22</sup> With respect to the Teucrium WTI Crude Oil Fund, in determining the value of Oil Futures Contracts, the Administrator will use the NYMEX closing price (usually determined as of 2:30 p.m. E.T.). The value of over-the-counter Oil Interests will be determined based on the value of the commodity or futures contract underlying such Oil Interest, except that a fair value may be determined if the Sponsor believes that the Fund is subject to significant credit risk relating to the counterparty to such Oil Interest.

Treasury Securities held by the Fund will be valued by the Administrator using values received from recognized third-party vendors and dealer quotes. NAV will include any unrealized profit or loss on open Oil Interests and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

The Exchange also will disseminate on a daily basis via the Consolidated Tape Association ("CTA") information with respect to recent NAV, and shares outstanding. The Exchange will also make available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and the corresponding NAV.

#### Availability of Information Regarding the Shares

The Web site for the Fund (<http://www.teucriumoilfund.com>) and/or the Exchange, 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 and the reported closing price; (b) the midpoint of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) the bid-ask price of Shares determined using the highest bid and lowest offer as of the time of calculation of the NAV; (e) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the prospectus; and (g) other applicable quantitative information. The Fund will

<sup>22</sup> The NAV will be calculated by taking the current market value of the Fund's total assets and subtracting any liabilities. Under the Fund's current operational procedures, the Administrator will calculate the NAV of the Fund's Shares as of the earlier of 4 p.m. Eastern Time ("E.T.") or the close of the New York Stock Exchange (ordinarily, 4 p.m. E.T.) each day. NYSE Arca will calculate an approximate net asset value every 15 seconds throughout each day that the Fund's Shares are traded on the NYSE Arca for as long as NYMEX's main pricing mechanism is open.

also disseminate Fund's holdings on a daily basis on the Fund's Web site.

The closing price and settlement prices of the Oil Futures Contracts are also readily available from the NYMEX (<http://www.cmegroup.com>) and ICE (<http://www.theice.com>), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Oil Benchmarks [sic] will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. E.T. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.nyse.com> to each Fund's Web site, which will display all intraday and closing Oil Benchmark levels, the intraday Indicative Trust Value (see below), and NAV.

In addition, various data vendors and news publications publish futures prices and data. The Exchange represents that quotation and last sale information for the Oil Futures Contracts are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for the Oil Futures Contracts is available by subscription from Reuters and Bloomberg. The NYMEX and ICE also provide delayed futures information on current and past trading sessions and market news free of charge on their Web sites. The specific contract specifications for the futures contracts are also available at the NYMEX and ICE Web sites, as well as other financial informational sources. The spot price of WTI Crude Oil also is available on a 24-hour basis from major market data vendors. Price and volume information for cleared swaps is available from major market data vendors and on the NYMEX Web site.

The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, quantity, price and market value of Financial Instruments held by the Fund and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. This 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

<sup>20</sup> 17 CFR 240.10A-3.

<sup>21</sup> 17 CFR 240.10A-3(c)(7).

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.

#### *Dissemination of Indicative Trust Value*

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Indicative Trust Value ("ITV") will be calculated. The ITV is calculated by using the prior day's closing NAV per share of the Fund as a base and updating that value throughout the trading day to reflect changes in the value of the applicable Oil Benchmark Component Futures Contracts. As stated in the respective Registration Statements [sic], changes in the value of over-the-counter Oil Interests, Treasury Securities and cash equivalents will not be included in the calculation of the ITV. The ITV disseminated during NYSE Arca trading hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day.

The ITV will be disseminated on a per Share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session. The normal trading hours for Oil Futures Contracts on NYMEX are 9 a.m. to 2:30 p.m. E.T. The ITV will not be updated, and, therefore, a static ITV will be disseminated, between the close of trading on NYMEX of Oil Futures Contracts and the close of the NYSE Arca Core Trading Session. The value of a Share may be influenced by non-concurrent trading hours between NYSE Arca and the NYMEX and ICE when the Shares are traded on NYSE Arca after normal trading hours of Oil Futures Contracts.

The Exchange believes that dissemination of the ITV provides additional information regarding the Fund that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

#### *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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all

trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See "Surveillance" below for more information.

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 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<sup>23</sup> or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the ITV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the ITV or the value of 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, if the Exchange becomes aware that the NAV with respect to the Shares is not 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.

#### *Surveillance*

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, 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, the physical commodities included in, or options, futures or options on futures on, Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYMEX and ICE, which are members of the Intermarket Surveillance Group ("ISG"). A list of ISG members is available at <http://www.isgportal.org>.<sup>24</sup>

In addition, with respect to the Fund's futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts 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.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### *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. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) 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; (4) how information regarding the ITV is

<sup>24</sup> The Exchange notes that not all Oil Interests may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>23</sup> See NYSE Arca Equities Rule 7.12.

disseminated; (5) 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 (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of Oil Futures Contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Fund and that the NAV for the Shares is calculated after 4 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Fund is publicly available on the Fund's Web site.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>26</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 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 Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Equities Rule 8.200 are intended to protect investors and the public interest.

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(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*

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-119 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2010-119. 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 Web site 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 a.m. and 3 p.m. Copies of such 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-2010-119 and should be submitted on or before January 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-33363 Filed 1-5-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63626; File No. SR-Phlx-2010-185]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pilot Program for Cabinet Trading Below \$1.00 Per Contract Until June 1, 2011

December 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 21, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.