

trading violations. The Exchange may also obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of ISG.²⁶

(3) Standard and Poor's, which acts as the "Index Administrator" and is responsible for maintaining the Underlying Index, is neither a registered broker-dealer nor an "affiliated person," as defined in Section 2(a)(3) of the 1940 Act,²⁷ or an affiliated person of the Fund, Advisor, Sub-Advisor,²⁸ Distributor,²⁹ or the Corporation. In addition, the Distributor is not an affiliated person of the Advisor, the Sub-Advisor, the Fund, or the Corporation.³⁰

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders³¹ in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations; (2) NYSE Arca Equities Rule 9.2(a),³² which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares

²⁶ The Exchange notes that one or more of the underlying securities may trade on exchanges that are not members or affiliate members of ISG, and the Exchange may not have in place comprehensive surveillance sharing agreements with such exchanges.

²⁷ See 15 U.S.C. 80a-2(a)(3).

²⁸ BNY Investment Advisors acts as the "Sub-Advisor" to the Fund.

²⁹ ALPS Distributors, Inc. is a registered broker-dealer and acts as the "Distributor" and underwriter of the Creation Units.

³⁰ See NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(b)(1) (providing for restrictions to access of information concerning changes and adjustments to an index and requirements designed to prevent the use and dissemination of material, non-public information regarding the applicable index, among others).

³¹ The Exchange defines an "ETP Holder" as a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or "ETP" by NYSE Arca Equities for effecting approved securities transactions on NYSE Arca Equities' trading facilities. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act (15 U.S.C. 78o).

³² NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his or her other security holdings and as to his or her financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation.

during the Opening and Late Trading Sessions when an updated Intraday Indicative Value and Underlying Index value will not be calculated or publicly disseminated; (4) how information regarding the Intraday Indicative Value is 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 Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement,³³ discuss any exemptive, no-action, and/or interpretive relief granted by the Commission from any rules under the Act, and disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

This order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**.

As referenced above, the Commission notes that the Fund Shares are currently trading on the Exchange pursuant to UTP³⁴ and are substantially similar in structure, operation, and function to the shares of other HealthSharesTM exchange-traded funds, the shares of which are currently listed and trading on the Exchange pursuant to Rule 19b-4(e) under the Act.³⁵ In addition, the Commission notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by similar amounts.³⁶ Although the Fund Shares do not meet the initial listing requirement of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and therefore cannot be listed pursuant to Rule 19b-4(e),³⁷ the Commission believes that the Shares are substantially similar to the other HealthSharesTM trading on the Exchange and notes that the Shares would otherwise comply with all other generic listing requirements under NYSE Arca Equities Rule 5.2(j)(3).³⁸ The Commission also notes that the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2) applicable to Investment Company Units would apply to the Fund Shares. The listing and trading of the Shares do not appear to present any

³³ See *supra* note 8.

³⁴ See *supra* note 5.

³⁵ See *supra* note 17.

³⁶ See *supra* note 16.

³⁷ See *supra* note 6.

³⁸ See *id.*

new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Shares to trade on the Exchange without undue delay and should generate additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁹ that the proposed rule change (SR-NYSEArca-2007-111) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁰

Nancy M. Morris,
Secretary.

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DEPARTMENT OF STATE

[Public Notice 5975]

Presidential Permits Concerning Pipeline Facilities on the International Boundaries of the United States

AGENCY: Department of State.

ACTION: Notice.

Section 1(a) of Executive Order 13337, of April 30, 2004, designates and empowers the Secretary of State to "receive all applications for Presidential permits, as referred to in Executive Order 11423, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country." Furthermore, section 1(a) of Executive Order 11423 designates and empowers the Secretary of State to receive "all applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (i) Pipelines, conveyor belts, and similar facilities for the exportation or importation of all products, except those specified section 1(a) of [Executive Order 13337] to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country * * *". This authority is subject to certain exceptions with respect to facilities covered by Executive Order 10485 of September 3, 1953 (concerning electric power and natural gas facilities), and Executive Order 10530 of May 10,

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).

1954 (concerning submarine cables), section 2(b) of Executive Order 11423 and section 3(b) of Executive Order 13337 authorizes the Secretary of State to issue such further rules and regulations and to prescribe such further procedures as may from time to time be deemed necessary or desirable for the exercise of the authority conferred by the Executive Orders.

As noted in the preamble to Executive Order 11423, it is desirable to provide a systematic method of evaluation in connection with the issuance of Presidential permits. Moreover, Executive Order 13212 instructs federal agencies to expedite their review of permits for energy related projects or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. Therefore, in accordance with Executive Orders 11423 and 13337 and in furtherance of this foreign affairs function, the Department of State plans to assemble an interagency working group, consisting of relevant State Department personnel and personnel from other interested federal agencies, to develop guidance regarding a definition of "U.S. facilities at the borders of the United States for the exportation or importation of petroleum, petroleum products, coal, or other fuels" for purposes of Presidential permits issued under Executive Order 13337, and "construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of water or sewage to or from a foreign country" for purposes of Presidential permits under Executive Order 11423.

The Department intends to focus in particular on what portion of an international pipeline should be considered to constitute "facilities at the borders of the United States" for these purposes. The Department is also considering whether to apply this definition to all pending and future applications for Presidential permits under section 1(a) of Executive Order 13337 and section 1(a)(i)-(ii) of Executive Order 11423, both for new pipeline proposals and for modifications to or transfers of previously-permitted pipeline facilities. (In considering this change, the Department does not intend to issue a new or amended Presidential permit with respect to a previously-permitted pipeline facility, where the application is submitted solely for the purpose of limiting the definition of "U.S. facilities" in the existing permit.)

Establishing a consistent definition is expected to aid permit applicants to

prepare appropriate documentation in support of applications for Presidential permits subject to section 1(a) of Executive Order 13337 and section 1(a)(i)-(ii) of Executive Order 11423. The scope of the definition would also have implications for the scope of the environmental review conducted by the Department in accordance with the National Environmental Policy Act (42 U.S.C. 4321, *et. seq.*), regulations issued by the Council on Environmental Quality (40 CFR Parts 1500-1508), and the Department of State's implementing regulations (22 CFR Part 161; see, in particular 22 CFR 161.7(c)(1)).

The Department's final decision and guidelines, if any, on this issue will be published in the **Federal Register**.

DATES: The Department of State welcomes public comment and invites those who are interested in submitting comments relative to this issue to provide such comments on or before November 29, 2007 to Jeff Izzo, International Energy Commodity Policy, Room 4843, Department of State, Washington, DC 20520, or e-mail to izzojr@state.gov.

FOR FURTHER INFORMATION CONTACT: Jeff Izzo, Office of International Energy and Commodity Policy (EEB/ESC/IEC/EPC), Room 4843, Department of State, Washington, DC 20520, telephone 202-647-1291, facsimile 202-647-4037, e-mail izzojr@state.gov.

Dated: October 23, 2007.

Stephen J. Gallogly,

Director, Office of International Energy and Commodities Policy, Department of State.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-29137]

Agency Information Collections; Extension of a Currently Approved Collection: Transportation of Hazardous Materials, Highway Routing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests

approval to extend an existing information collection entitled "Transportation of Hazardous Materials, Highway Routing," which requires States and Indian tribes to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on the highway.

DATES: We must receive your comments on or before December 31, 2007.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA Docket Number FMCSA-2007-29137 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR