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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65602; File No. 4-640]

**Inaugural Roundtable of the Financial Reporting Series Entitled "Uncertainty in Financial Statements: How Much To Recognize and How Best To Communicate It"****AGENCY:** Securities and Exchange Commission.**ACTION:** Notice of roundtable discussion; request for comment.

**SUMMARY:** The Commission staff will hold a public roundtable discussion to consider financial statement measurements (and associated disclosures) that incorporate judgments about future events. The discussion will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen by webcast on the SEC Web site at <http://www.sec.gov>. The roundtable discussion will take place in the Multipurpose Room (Room L-006) at the SEC Headquarters located at 100 F Street, NE., Washington, DC. Feedback is welcomed regarding any of the topics to be addressed at the roundtable.

**DATES:** The roundtable discussion will take place on Tuesday, November 8, 2011, commencing at 10 a.m. and ending at 5 p.m. The Commission will accept comments regarding issues addressed at the roundtable until December 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** J. Mike Starr, Deputy Chief Accountant, or Eric West, Associate Chief Accountant, at (202) 551-5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-640 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 4-640. This file number should

be included on the subject line if e-mail is used. To help us 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>). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**SUPPLEMENTARY INFORMATION:** This will be the inaugural roundtable of the Financial Reporting Series. The Financial Reporting Series was instituted by SEC staff to assist in the proactive identification of risks related to, and areas of potential improvements in, the reliability and usefulness of financial information provided to investors. In this regard, the Financial Reporting Series is intended to facilitate balanced discussions of implementation issues or emerging issues in financial reporting.

Feedback is welcomed regarding any of the topics to be addressed at the roundtable. The panel discussions will focus on the following topics and questions:

1. Please provide feedback on any topics where the extent of uncertainty in an accounting measurement is less useful to investors and why a more certain measurement would be preferable. Likewise, provide feedback on those topics where a measurement with uncertainty gives investors useful information and why it is preferable to a more certain measurement.

2. For those topics where uncertain measurements are useful to investors, how should the uncertainties be incorporated into the measure? Please explain the reasons for the measurement method(s) you selected.

3. What information do investors utilize to understand uncertainty? Please describe why such information is useful and, if it is not disclosed in the financial statements, indicate its source.

4. What are the challenges for investors in understanding the nature and extent of measurement uncertainty?

5. As measurement uncertainty increases, please explain whether (and how, if applicable) it changes the investor's expectation of preparers and auditors.

6. For preparers, what are the challenges in or impediments to

providing investors with information to understand the nature and extent of measurement uncertainties?

7. What are the challenges for auditors in evaluating management's judgments related to measurement uncertainties?

8. Please provide feedback on whether (and how) a change in the auditor's responsibility or role would enhance the investor's understanding of the nature and extent of measurement uncertainties.

9. Please provide any additional comments or suggestions pertinent to how much uncertainty to recognize and how best to communicate it.

Dated: October 20, 2011.

By the Commission.

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2011-27696 Filed 10-25-11; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65601; File No. SR-NYSEArca-2011-63]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the United States Metals Index Fund, the United States Agriculture Index Fund and the United States Copper Index Fund Under NYSE Arca Equities Rule 8.200**

October 20, 2011.

**I. Introduction**

On August 19, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the United States Metals Index Fund ("USMI"), the United States Agriculture Index Fund ("USAI") and the United States Copper Index Fund ("USCUI") (collectively, the "Funds") under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on September 9, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

<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. 65249 (September 2, 2011), 76 FR 55956 ("Notice").

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (“Units”) of the Funds<sup>4</sup> pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.<sup>5</sup> The Units represent beneficial ownership interests in the Funds, as described in the Registration Statement. The Funds are commodity pools that are series of the Trust, a Delaware statutory trust. The Funds are managed and controlled by United States Commodity Funds 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 (“NFA”).

### A. USMI

USMI’s trading advisor is SummerHaven Investment Management, LLC (“SummerHaven”). The Sponsor expects to manage USMI’s investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Metals Index and the Sponsor’s selection of investments on behalf of USMI. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Metals Index or USMI’s portfolio.<sup>6</sup>

The investment objective of USMI is for the daily changes in percentage terms of its Units’ net asset value (“NAV”) to reflect the daily changes in percentage terms of the SummerHaven Dynamic Metals Index Total Return (the “Metals Index”), less USMI’s expenses.<sup>7</sup>

<sup>4</sup> See the Funds’ registration statement on Form S-1 for the United States Commodity Index Funds Trust, dated November 24, 2010 (File No. 333-170844) relating to the Funds (“Registration Statement”).

<sup>5</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>6</sup> The Sponsor represents that, in the event the Sponsor, SummerHaven Indexing, or SummerHaven becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

<sup>7</sup> The Metals Index is owned and maintained by SummerHaven Index Management, LLC

The Metals Index is a metal sector index designed to broadly represent industrial and precious metals while overweighting the components that are assessed to be in a low inventory state and underweighting the components assessed to be in a high inventory state. The Metals Index consists of six base metals—aluminum, copper, zinc, nickel, tin, and lead—and four precious metals: gold, silver, platinum, and palladium. Each metal is assigned a base weight in the Metals Index based on an assessment of market liquidity and the metal’s overall economic importance.

Futures contracts for metals in the Metals Index that are traded on New York Mercantile Exchange (“NYMEX”), London Metal Exchange (“LME”), and Commodity Exchange, Inc. (“COMEX”) are collectively referred to herein as “Eligible Metals Futures Contracts.” The 10 Eligible Metals Futures Contracts that at any given time have been designated as a component of the Metals Index are referred to as the “Benchmark Component Metals Futures Contracts.” The relative weighting of the Benchmark Component Metals Futures Contracts will change on a monthly basis, based on quantitative formulas developed by SummerHaven Indexing relating to the prices of the Benchmark Component Metals Futures Contracts.<sup>8</sup> USMI’s investments also will be rebalanced on a monthly basis to track the changing nature of the Metals Index.

USMI will seek to achieve its investment objective by investing to the fullest extent possible in Benchmark Component Metals Futures Contracts. Then, if constrained by regulatory requirements (as described below) or in view of market conditions (as described below), USMI will invest next in other Eligible Metals Futures Contracts based on the same metal as the futures contracts subject to such regulatory constraints or market conditions, and finally, to a lesser extent, in other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts if one or more other Eligible Metals Futures Contracts is not available. When USMI has invested to the fullest extent possible in exchange-traded futures contracts, USMI may then invest in other contracts and instruments based on the Benchmark Component Metals Futures Contracts or the metals included in the Metals Index, such as

(“SummerHaven Indexing”) and calculated and published by the Exchange.

<sup>8</sup> More information about the Metals Index is available in the Notice and also may be obtained from SummerHaven Indexing’s Web site at <http://www.summerhavenindex.com>.

cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts and other contracts and instruments based on the Benchmark Component Metals Futures Contracts, as well as metals included in the Metals Index, are collectively referred to as “Other Metals-Related Investments,” and together with Benchmark Component Metals Futures Contracts and other Eligible Metals Futures Contracts, “Metals Interests.”

USMI also invests in short-term Treasury Securities or holds cash to meet its current or potential margin or collateral requirements with respect to its investments in Metals Interests and invests cash not required to be used as margin or collateral.

*Regulatory Requirements.* As noted above, USMI may at times invest in other Eligible Metal Futures Contracts based on the same metal as the futures contracts subject to regulatory constraints (as described below), and then, to a lesser extent, in Other Metals-Related Investments in order to comply with regulatory requirements. An example of such regulatory requirements would be if USMI is required by law or regulation, or by one of its regulators, including a futures exchange, to reduce its position in one or more Benchmark Component Metals Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USMI’s assets could be invested in one or more other Eligible Metal Futures Contracts. If one or more such Eligible Metal Futures Contracts were unavailable or economically impracticable, USMI could invest in Other Metals-Related Investments that are intended to replicate the return on the Metals Index or particular Benchmark Component Metals Futures Contracts. Another example would be if, because USMI’s assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Metal Futures Contracts to the extent practicable and then in Other Metals-Related Investments.

When investing in Other Metals-Related Investments, USMI will first invest in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts and then in cash-settled

options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

*Market Conditions.* As also noted above, there may be market conditions that could cause USMI to invest in other Eligible Metal Futures Contracts that are based on the same metal as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Metals Futures Contracts exceeded supply and as a result USMI was able to obtain more favorable terms under other Eligible Metal Futures Contracts. An example of more favorable terms would be where the aggregate costs to USMI from investing in other Eligible Metal Futures Contracts (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Metal Futures Contracts. Only after USMI becomes subject to position limits in any Eligible Metal Futures Contracts will USMI invest in Other Metals-Related Investments to replicate exposure to the Eligible Metal Futures Contract that is position-limited. Generally, USMI will only invest in this manner in other Eligible Metal Futures Contracts or Other Metals-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USMI or its shareholders, such as being able to more closely track its benchmark.

#### B. USAI

USAI's trading advisor is SummerHaven. The Sponsor expects to manage USAI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Agriculture Index and the Sponsor's selection of investments on behalf of USAI. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Agriculture Index or USAI's portfolio.<sup>9</sup>

The investment objective of USAI is for the daily changes in percentage terms of its Units' NAV to reflect the daily changes in percentage terms of the SummerHaven Dynamic Agriculture Index Total Return (the "Agriculture

Index"),<sup>10</sup> less USAI's expenses. The Agriculture Index consists of fourteen agricultural markets: soybeans, corn, soft red winter wheat, hard red winter wheat, soybean oil, soybean meal, canola, sugar, cocoa, coffee, cotton, live cattle, feeder cattle and lean hogs. Each agricultural commodity is assigned a base weight in the Agriculture Index based on an assessment of market liquidity and the commodity's overall economic importance.<sup>11</sup>

Futures contracts for agricultural commodities in the Agriculture Index that are currently traded on the ICE Futures ("ICE Futures"), Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME"), Kansas City Board of Trade ("KCBT") and ICE Futures Canada are collectively referred to herein as "Eligible Agriculture Futures Contracts." The 14 Eligible Agriculture Futures Contracts that at any given time have been designated as a component of the Agriculture Index are referred to as the "Benchmark Component Agriculture Futures Contracts." The relative weighting of the Benchmark Component Agriculture Futures Contracts will change on a monthly basis, based on quantitative formulas developed by SummerHaven Indexing relating to the prices of the Benchmark Component Agriculture Futures Contracts. USAI's investments also will be rebalanced on a monthly basis to track the changing nature of the Agriculture Index.

USAI will seek to achieve its investment objective by investing to the fullest extent possible in Benchmark Component Agriculture Futures Contracts. Then, if constrained by regulatory requirements (described below) or in view of market conditions (described below), USAI will invest next in other Eligible Agriculture Futures Contracts based on the same agricultural commodity as the futures contracts subject to such regulatory constraints or market conditions, and finally, to a lesser extent, in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts, if one or more Eligible Agriculture Futures Contracts is not available. When USAI has invested to the fullest extent possible in exchange-traded futures contracts, USAI may then invest in other contracts and instruments based on the Benchmark Component Agriculture Futures

Contracts or the agricultural commodities included in the Agriculture Index, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts and other contracts and instruments based on the Benchmark Component Agriculture Futures Contracts, as well as metals included in the Agriculture Index, are collectively referred to as "Other Agriculture-Related Interests," and together with Benchmark Component Agriculture Futures Contracts and other Eligible Agriculture Futures Contracts, "Agriculture Interests."

USAI also invests in short-term Treasury Securities or holds cash to meet its current or potential margin or collateral requirements with respect to its investments in Agriculture Interests and invests cash not required to be used as margin or collateral.

*Regulatory Requirements.* As noted above, USAI may at times invest in Eligible Agriculture Futures Contracts based on the same agricultural commodity as the futures contracts subject to regulatory constraints (as described below), and then to a lesser extent in Other Agriculture-Related Investments in order to comply with regulatory requirements. An example of such regulatory requirements would be if USAI is required by law or regulation, or by one of its regulators, including a futures exchange, to reduce its position in one or more Benchmark Component Agriculture Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USAI's assets could be invested in one or more other Eligible Agriculture Futures Contracts. If one or more such Eligible Agriculture Futures Contracts was unavailable or economically impracticable, USAI could invest in Other Agriculture-Related Investments that are intended to replicate the return on the Agriculture Index or particular Benchmark Component Agriculture Futures Contracts. Another example would be if because USAI's assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Agriculture Futures Contracts to the extent practicable and then in Other Agriculture-Related Investments.

When investing in Other Agriculture-Related Investments, USAI will first invest in other exchange traded futures

<sup>10</sup> The Agriculture Index is owned and maintained by SummerHaven Indexing and calculated and published by the Exchange.

<sup>11</sup> More information about the Agriculture Index is available in the Notice and also may be obtained from SummerHaven Indexing's Web site at <http://www.summerhavenindex.com>.

<sup>9</sup> See *supra* note 6.

contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts and then in cash settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

*Market Conditions.* As also noted above, there may be market conditions that could cause USAI to invest in other Eligible Agriculture Futures Contracts that are based on the same agricultural commodity as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Agriculture Futures Contracts exceeded supply and as a result USAI was able to obtain more favorable terms under other Eligible Agriculture Futures Contracts. An example of more favorable terms would be where the aggregate costs to USAI from investing in other Eligible Agriculture Futures Contracts or Other Agriculture-Related Investments (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Agriculture Futures Contracts. Only after USAI becomes subject to position limits in any Eligible Agriculture Futures Contract will USAI invest in Other Agriculture-Related Investments to replicate exposure to the Eligible Agriculture Futures Contract that is position-limited. Generally, USAI will only invest in this manner in other Eligible Agriculture Futures Contracts or Other Agriculture-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USAI or its shareholders, such as being able to more closely track its benchmark.

### C. USCUI

USCUI's trading advisor is SummerHaven. The Sponsor expects to manage USCUI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Copper Index and the Sponsor's selection of investments on behalf of USCUI. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Copper Index or USCUI's portfolio.<sup>12</sup>

The investment objective of USCUI is for the daily changes in percentage terms of its Units' NAV to reflect the daily changes in percentage terms of the SummerHaven Copper Index Total Return (the "Copper Index"),<sup>13</sup> less USCUI's expenses. The Copper Index is designed to reflect the performance of the investment returns from a portfolio of futures contracts for copper that are traded on the COMEX (such futures contracts, collectively, "Eligible Copper Futures Contracts"). The Copper Index attempts to maximize backwardation and minimize contango while utilizing contracts in liquid portions of the futures curve.<sup>14</sup> The Copper Index is comprised of either two or three Eligible Copper Futures Contracts that are selected on a monthly basis based on quantitative formulas relating to the prices of the Eligible Copper Futures Contracts developed by SummerHaven Indexing. USCUI's positions in Copper Interests will be rebalanced on a monthly basis in order to track the changing nature of the Copper Index.

USCUI will seek to achieve its investment objective by investing to the fullest extent possible in the Benchmark Component Copper Futures Contracts, which are the Eligible Copper Futures Contracts that at any given time make up the Copper Index. Then if constrained by regulatory requirements (described below) or in view of market conditions (described below), USCUI will invest next in other Eligible Copper Futures Contracts, and finally to a lesser extent, in other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts if one or more other Eligible Copper Futures Contracts is not available. When USCUI has invested to the fullest extent possible in exchange-traded futures contracts, USCUI may then invest in other contracts and instruments based on the Benchmark Component Copper Futures Contracts, other Eligible Copper Futures Contracts or copper, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts and other contracts and instruments based on the Benchmark Component Copper Futures

Contracts, are collectively referred to as "Other Copper-Related Investments," and together with Benchmark Component Copper Futures Contracts and other Eligible Copper Futures Contracts, "Copper Interests."

After fulfilling the margin and collateral requirements with respect to USCUI's Copper Interests, the Sponsor will invest the remainder of USCUI's proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

*Regulatory Requirements.* As noted above, USCUI may at times invest in other Eligible Copper Futures Contracts based on the same metal as the futures contracts subject to regulatory constraints (as described below), and finally to a lesser extent, in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts if one or more other Eligible Copper Futures Contracts is not available in order to comply with regulatory requirements. An example of such regulatory requirements would be if USCUI is required by law or regulation, or by one of its regulators, including a futures exchange, to reduce its position in one or more Benchmark Component Copper Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USCUI's assets could be invested in one or more other Eligible Copper Futures Contracts. If one or more such Eligible Copper Futures Contracts were unavailable or economically impracticable, USCUI could invest in Other Copper-Related Investments that are intended to replicate the return on the Copper Index or particular Benchmark Component Copper Futures Contracts. Another example would be if, because USCUI's assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Copper Futures Contracts to the extent practicable and then in Other Copper-Related Investments.

When investing in Other Copper-Related Investments, USCUI will first invest in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts, other Eligible Copper Futures Contracts, and then in cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

<sup>13</sup> The Copper Index is owned and maintained by SummerHaven Indexing and calculated and published by the Exchange.

<sup>14</sup> More information about the Copper Index is available in the Notice and also may be obtained from SummerHaven Indexing's Web site at <http://www.summerhavenindex.com>.

<sup>12</sup> See *supra* note 6.

*Market Conditions.* As also noted above, there may be market conditions that could cause USCUI to invest in other Eligible Copper Futures Contracts that are based on the same metal as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Copper Futures Contracts exceeded supply and as a result USCUI was able to obtain more favorable terms under other Eligible Copper Futures Contracts. An example of more favorable terms would be where the aggregate costs to USCUI from investing in other Eligible Copper Futures Contracts (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Copper Futures Contracts. Only after USCUI becomes subject to position limits in any Eligible Copper Futures Contract will USCUI invest in Other Copper-Related Investments to replicate exposure to the Eligible Copper Futures Contract that is position-limited. Generally, USCUI will only invest in this manner in other Eligible Copper Futures Contracts or Other Copper-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USCUI or its shareholders, such as being able to more closely track its benchmark.

Additional details regarding the Trust, Units, trading policies of the Funds, creations and redemptions of the Units, investment risks, Benchmark performance, NAV calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.<sup>15</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Units of the Funds is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposed rule change is consistent

with the requirements of Section 6(b)(5) of the Act,<sup>17</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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Units must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>18</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets 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 for the Units will be available via the Consolidated Tape Association high-speed line, and the underlying index levels will be disseminated by the Exchange and will be updated at least every 15 seconds during NYSE Arca Core Trading Hours, from 9:30 a.m. E.T. to 4 p.m. E.T., except for the period between the close of trading of all applicable futures contracts on futures exchanges and the close of the NYSE Arca Core Trading Session, at which point the underlying index values will be static.<sup>19</sup> In addition, the Indicative Fund Value ("IFV") for each Fund will be disseminated on a per-Unit basis by the Exchange at least every 15 seconds during the NYSE Arca Core Trading Session.<sup>20</sup> The NAV for the Funds'

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>19</sup> In addition, the closing prices and settlement prices of the futures contracts held by the Funds are readily available from the Web sites of the relevant 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.

<sup>20</sup> The normal trading hours of the relevant futures exchanges vary, with some ending their trading hours before the close of the Core Trading Session on NYSE Arca (for example, the normal trading hours of the NYMEX are 10 a.m. E.T. to 2:30 p.m. E.T.). When a Fund holds applicable Benchmark Component Futures Contracts from futures exchanges with different trading hours than

Units will be calculated by the Administrator once a day and will be disseminated daily to all market participants after 4 p.m. E.T. The Funds 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 portfolios of the Funds. The closing prices and settlement prices of the futures contracts also are readily available from the Web sites of the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for the futures contracts is available by subscription from Reuters and Bloomberg. 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. Information regarding exchange-traded cash-settled options and cleared swap contracts will be available from the applicable exchanges and major market data vendors.

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 with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the IFV 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

NYSE Arca, there will be a gap in time at the beginning and/or the end of each day during which Units will be traded on NYSE Arca, but real-time futures exchange trading prices for Applicable Benchmark Component Futures Contracts traded on such futures exchanges will not be available. As a result, during those gaps there will be no update to the IFV. A static IFV will 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.

<sup>15</sup> See Notice and Registration Statement, *supra* notes 3 and 4, respectively.

<sup>16</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the beginning of the trading day following the interruption. In addition, the Web site disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants 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 Funds through each Fund's Web site. The Exchange may halt trading in the Units if trading is not occurring in the underlying futures contracts or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>21</sup> In addition, the Exchange represents that the Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the underlying index levels or the Funds' portfolios. Lastly, the trading of the Units will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders<sup>22</sup> acting as registered Market Makers<sup>23</sup> in Trust Issued Receipts to facilitate surveillance.

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

(1) The Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Units.

(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.

(4) With respect to the Funds' 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 the Intermarket Surveillance Group 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 IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Units in 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 IFV 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 for each Fund will be outstanding as of the start of trading on the Exchange.

(7) With respect to application of Rule 10A-3<sup>24</sup> under the Act, the Trust relies on the exception contained in Rule 10A-3(c)(7).<sup>25</sup>

This approval order is based on the Exchange's representations.<sup>26</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>27</sup> and the rules and

regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-NYSEArca-2011-63) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65599; File No. SR-FINRA-2011-043]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend FINRA Rule 0160 (Definitions in FINRA By-Laws)

October 20, 2011.

#### I. Introduction

On August 31, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers ("NASD")) 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 amend FINRA Rule 1060 (Definitions in FINRA By-Laws). The proposed rule change was published for comment in the **Federal Register** on September 16, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

FINRA is proposing to amend FINRA Rule 0160 (Definitions in FINRA By-Laws). As part of the process of developing the new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>4</sup> the proposed rule change

<sup>21</sup> With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Units of the Funds. Trading in the Units of the Funds will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable.

<sup>22</sup> See NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

<sup>23</sup> See NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

<sup>24</sup> 17 CFR 240.10A-3.

<sup>25</sup> 17 CFR 240.10A-3(c)(7).

<sup>26</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 Commodity Futures Trading Commission ("CFTC"). The CFTC has the authority to set limits on the positions that any person may take in futures. 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, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</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.

<sup>3</sup> See Securities Exchange Act Release No. 65313 (September 12, 2011), 76 FR 57784 ("Notice").

<sup>4</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE