

both charged as monthly fees, waiver of the operative delay would allow the Exchange to withdraw these products at the end of the calendar month on December 31, 2020, which would provide for a more orderly withdrawal for both the Exchange and current customers. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-088 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2020-088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-088 and should be submitted on or before January 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90791; File No. SR-NYSEArca-2020-113]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Change to the Index Underlying the United States Copper Index

December 23, 2020.

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 18, 2020, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 Exchange. The Commission is publishing this notice to solicit

<sup>19</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.

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 reflect a change to the index underlying the United States Copper Index Fund, shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.200-E. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of "Units" of the United States Copper Index Fund for listing and trading on the Exchange under NYSE Arca Rule 8.200-E ("Trust Issued Receipts").<sup>3</sup> The Exchange proposes to reflect a change to the SummerHaven Copper Index Total Return (the "Index"), which is the index underlying the Units.<sup>4</sup>

<sup>3</sup> See Securities Exchange Act Release Nos. 65249 (September 2, 2011), 76 FR 55956 (September 9, 2011) (SR-NYSEArca-2011-63) (Notice of Filing of 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) ("Prior Notice"); 65601 (October 20, 2011), 76 FR 66339 (October 26, 2011) (SR-NYSEArca-2011-63) (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) ("Prior Order" and, together with the Prior Notice, the "Prior Releases").

<sup>4</sup> On December 1, 2020 the Trust filed with the Commission an amended registration statement on Form S-1 under the Securities Act of 1933 relating

As stated in the Prior Releases, the 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 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.<sup>5</sup>

The Exchange proposes to amend this representation to state that, beginning December 31, 2020, the Index will be revised such that, on the new Selection Date, as defined below, it will be comprised of either one 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. The Trust announced this change in a Form 8-K filed with the Commission on December 1, 2020 and in the Registration Statement.<sup>6</sup> The Form 8-K and the Registration Statement state that this revision to the composition of the Index is intended to ensure that the Index components at any given time represent copper futures contracts for which there is an active and liquid trading market.

The Exchange also proposes to change the description in the Prior Notice regarding how Eligible Copper Futures Contracts are allocated in the Index. Specifically, the Prior Notice stated that, at the end of each month, (1) the copper futures curve is assessed to be in either backwardation or contango, and (2) the annualized percentage price difference between the closest-to-expiration Eligible Copper Futures Contract and each of the next four Eligible Copper Futures Contracts is calculated. If the copper futures curve is in backwardation at the end of a month, the Copper Index takes positions in the two Eligible Copper Futures Contracts with the highest annualized percentage price difference, each weighted at 50%. If the copper futures curve is in contango, then the Copper Index takes positions in three Eligible Copper

to the Trust (File No. 333-237184) (“Registration Statement”). The description of the operation of the Trust herein is based, in part, on the Prior Releases. The procedures described in this proposed rule change will not be implemented until this proposed rule change is effective and operative.

<sup>5</sup> Eligible Copper Futures Contracts that at any given time make up the Index are referred to in the Prior Releases as “Benchmark Component Copper Futures Contracts.”

<sup>6</sup> See Form 8-K filed with the Commission by the Trust on December 1, 2020 (File No. 001-34833).

Futures Contracts, as follows: First, the Copper Index takes positions in the two Eligible Copper Futures Contracts with the highest annualized percentage price difference, each weighted at 25%; then the Copper Index also takes a position in the nearest-to-maturity December Eligible Copper Futures Contract that has expiration more distant than the fourth nearest Eligible Copper Futures Contract, which position is weighted at 50%.

The Exchange proposes to change this representation to state that, if the copper futures curve is in backwardation on the “Selection Date”, the Index takes positions in the first Eligible Copper Futures Contract (which is the next nearest to maturity of the Eligible Futures Contracts), weighted at 100%. If the copper futures curve is in contango, then the Index takes positions in the first three Eligible Copper Futures Contracts, each position weighted at 33.33%.<sup>7</sup> The “Selection Date” is the 10th business day of each month. In addition, the rebalancing period for the Index will change from the first four business days of each month to the 11th–14th business days of each month, based on signals used for contract selection on the Selection Date, rather than the last business day of each month as is currently the case. As noted above, the Sponsor represents that these revisions to the composition of the Index are intended to ensure that the Index components at any given time represent copper futures contracts for which there is an active and liquid trading market.

Regarding the proposed changes to the Selection Date and roll dates for the Index and the Fund, the Sponsor represents that moving the Selection Date would allow the Index and the Fund to include or hold Eligible Copper Futures Contracts in nearer months (meaning shorter duration) and with the greatest liquidity. This is particularly important when copper is in backwardation when it is advantageous for the Index and the Fund to include or hold Eligible Copper Futures Contracts in the closest month possible.

The Exchange notes that the Prior Releases stated that the Fund will create Units only in blocks of 100,000 Units called “Creation Baskets” and redeem Units only in blocks of 100,000 Units called “Redemption Baskets”. The Registration Statement states that the Fund creates Units only in blocks of 50,000 Units and redeems Units only in blocks of 50,000 Units, which is the

<sup>7</sup> For each month, the “Eligible Copper Futures Contracts” are as set forth in a chart appearing in the Registration Statement.

current size of Creation Baskets and Redemption Baskets. United States Commodity Funds LLC (the “Sponsor”) represents that a lower size of a Creation or Redemption Basket is beneficial to investors by facilitating additional creation and redemption activity in the Shares that may result in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to net asset value.<sup>8</sup>

The Sponsor represents that the proposed changes described above will further assist the Trust to achieve its investment objective. Except for the changes noted above, all other representations made in the Prior Releases remain unchanged.<sup>9</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Sponsor represents that the proposed revisions to the composition of the Index are intended to ensure that the Index components at any given time represent copper futures contracts for which there is an active and liquid trading market, which may help prevent fraudulent and manipulative practices.

<sup>8</sup> The Trust’s Basket size of 50,000 Shares is consistent with the August 8, 2018 letter from the Division of Trading and Markets granting no-action relief to certain commodity-based investment vehicles from Rules 101 and 102 of Regulation M under the Act. See footnote 2 to letter, dated August 8, 2018, from Josephine J. Tao, Assistant Director, Division of Trading and Markets, to Eric Simanek, Sullivan & Worcester LLP. The Commission has previously approved listing and trading of Trust Issued Receipts on the Exchange where the size of a “Creation Unit” for a series of Trust Issued Receipts was 50,000 shares. See, e.g., Securities Exchange Act Release Nos. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Trust Issued Receipts that Directly Hold Investments in Certain Financial Instruments and to Permit the Listing and Trading of Shares of Fourteen Funds of the Commodities and Currency Trust); 66553 (March 9, 2012), 77 FR 15440 (March 15, 2012) (SR-NYSEArca-2012-04) (Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of Twenty-Six Series of ProShares Trust II under NYSE Arca Equities Rule 8.200).

<sup>9</sup> See note 4, *supra*. All terms referenced but not defined herein are defined in the Prior Releases.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

Regarding the proposed changes to the Selection Date and roll dates for the Index and the Fund, the Sponsor represents that moving the Selection Date would allow the Index and the Fund to include or hold Eligible Copper Futures Contracts in nearer months (meaning shorter duration) and with the greatest liquidity. This is particularly important when copper is in backwardation when it is advantageous for the Index and the Fund to include or hold Eligible Copper Futures Contracts in the closest month possible.

With respect to the lower size of a Creation or Redemption Basket (50,000 Shares rather than 100,000 Shares as stated in the Prior Releases), the Sponsor represents that such lower size is beneficial to investors by facilitating additional creation and redemption activity in the Shares that may result in increased secondary market trading activity, tighter bid/ask spreads and narrower premiums or discounts to net asset value.

The Sponsor represents that the proposed changes described above will further assist the Trust to achieve its investment objective. Except for the changes noted above, all other representations made in the Prior Releases remain unchanged.

#### *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 purpose of the Act and, by permitting the Index to include, and the Fund to hold, more liquid futures components at any given time, will enhance competition among issues of commodity-based Trust Issued Receipts.

#### *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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states the proposed rule change will accommodate the inclusion of more liquid and active copper futures contracts in the Index and, other than the changes to the index methodology and Creation and Redemption basket size described above, all other representations made in the Prior Releases remain unchanged. For this reason, the proposed rule change does not raise any novel regulatory issues, and the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2020-113 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2020-113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-113 and should be submitted on or before January 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).