

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at 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 publicly available. All submissions should refer to File Number SR-NYSE-2011-55 or SR-NYSEAmex-2011-84 and should be submitted on or before March 22, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66466; File No. SR-NYSEArca-2011-97]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the Teucrium Agriculture Fund Under NYSE Arca Equities Rule 8.200

February 24, 2012.

#### I. Introduction

On December 20, 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 Teucrium Agriculture Fund under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on January 10, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares ("Shares") of the Teucrium Agriculture Fund ("Fund") 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>4</sup> The Fund is a commodity pool that is a series of the Teucrium Commodity Trust ("Trust"), a Delaware statutory trust.<sup>5</sup> The Fund is managed and controlled by Teucrium Trading, LLC ("Sponsor"), which is a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association. The Bank of New York Mellon ("Custodian" or "Administrator") is the custodian, transfer agent, and administrator for the Fund. Foreside Fund Services, LLC ("Distributor") is the distributor for the Fund's Shares.

#### Teucrium Agriculture Fund

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 ("Underlying Fund Average") of the NAVs per share of four other commodity pools that are series of the Trust and are sponsored by the Sponsor: Teucrium Corn Fund, Teucrium Wheat Fund, Teucrium Soybean Fund, and Teucrium Sugar Fund (collectively, "Underlying Funds").<sup>6</sup> The Fund seeks to achieve its investment objective by

investing under normal market conditions<sup>7</sup> in the publicly-traded shares of each Underlying Fund so that the Underlying Fund Average will have a weighting of 25% for each Underlying Fund, and the Fund's assets will be rebalanced, generally on a daily basis, to maintain the approximate 25% allocation to each Underlying Fund. The Fund does not intend to invest directly in futures contracts ("Futures Contracts") or other Commodity Interests (as defined below), although it reserves the right to do so in the future, including if an Underlying Fund ceases operations or if shares of an Underlying Fund cease trading on the Exchange.

While the Fund expects to maintain substantially all of its assets in shares of the Underlying Funds at all times, the Fund may hold some residual amount of assets in obligations of the United States government ("Treasury Securities") or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). The Fund will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through the Custodian.

The investment objective of each Underlying Fund is to have the daily changes in percentage terms of its shares' NAV reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for certain Futures Contracts for the commodity specified in the Underlying Fund's name.<sup>8</sup> The Teucrium Corn Fund's Benchmark is: (1) The second-to-expire Futures Contract for corn traded on the Chicago Board of Trade ("CBOT"), weighted 35%, (2) the third-to-expire CBOT corn Futures Contract, weighted 30%, and (3) the CBOT corn Futures Contract expiring in the December following the expiration month of the third-to-expire contract, weighted 35%. The Teucrium Wheat Fund's Benchmark is: (1) The second-to-expire CBOT wheat Futures Contract, weighted 35%, (2) the third-to-expire CBOT wheat Futures Contract, weighted

<sup>4</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>5</sup> See Amendment No. 1 to Form S-1 for the Trust, dated December 5, 2011 (File No. 333-173691) relating to the Fund ("Registration Statement").

<sup>6</sup> Additional information regarding the Underlying Funds is included in the Commission orders approving the listing and trading of the Underlying Funds and in their corresponding registration statements. See Securities Exchange Act Release Nos. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR-NYSEArca-2010-22) (order approving listing on the Exchange of Teucrium Corn Fund); 65344 (September 15, 2011), 76 FR 58549 (September 21, 2011) (SR-NYSEArca-2011-48) (order approving listing on the Exchange of the Teucrium Wheat Fund, Teucrium Soybean Fund, and Teucrium Sugar Fund). See also Amendment No. 4 to the Registration Statement on Form S-1 for Teucrium Commodity Trust, dated May 26, 2010 (File No. 333-162033) relating to the Teucrium Corn Fund; Amendment No. 3 to Form S-1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333-167591) relating to the Teucrium Wheat Fund; Amendment No. 3 to Form S-1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333-167590) relating to the Teucrium Soybean Fund; and Amendment No. 3 to Form S-1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333-167585) relating to the Teucrium Sugar Fund.

<sup>7</sup> The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the commodity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>8</sup> This weighted average is referred to herein as the Underlying Fund's "Benchmark," the Futures Contracts that at any given time make up an Underlying Fund's Benchmark are referred to herein as the Underlying Fund's "Benchmark Component Futures Contracts," and the commodity specified in the Underlying Fund's name is referred to herein as its "Specified Commodity."

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

<sup>15</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. 66098 (January 4, 2012), 77 FR 1526 ("Notice").

30%, and (3) the CBOT wheat Futures Contract expiring in the December following the expiration month of the third-to-expire contract, weighted 35%. The Teucrium Soybean Fund's Benchmark is: (1) The second-to-expire CBOT soybean Futures Contract, weighted 35%, (2) the third-to-expire CBOT soybean Futures Contract, weighted 30%, and (3) the CBOT soybean Futures Contract expiring in the November following the expiration month of the third-to-expire contract, weighted 35%, except that CBOT soybean Futures Contracts expiring in August and September will not be part of the Teucrium Soybean Fund's Benchmark because of the less liquid market for these Futures Contracts. The Teucrium Sugar Fund's Benchmark is: (1) The second-to-expire Sugar No. 11 Futures Contract traded on ICE Futures U.S. ("ICE Futures"),<sup>9</sup> weighted 35%, (2) the third-to-expire ICE Futures Sugar No. 11 Futures Contract, weighted 30%, and (3) the ICE Futures Sugar No. 11 Futures Contract expiring in the March following the expiration month of the third-to-expire contract, weighted 35%.

Each Underlying Fund seeks to achieve its investment objective by investing under normal market conditions in Benchmark Component Futures Contracts or, in certain circumstances, in other Futures Contracts for its Specified Commodity. In addition, and to a limited extent, an Underlying Fund also may invest in exchange-traded options on Futures Contracts for its Specified Commodity and in swap agreements based on its Specified Commodity that are cleared through a futures exchange or its affiliated provider of clearing services ("Cleared Swaps") in furtherance of the Underlying Fund's investment objective. Once position limits or accountability levels on Futures Contracts on an Underlying Fund's Specified Commodity are reached, each Underlying Fund's intention is to invest first in Cleared Swaps based on its Specified Commodity to the extent practicable under the position limits or accountability levels applicable to such Cleared Swaps and appropriate in light of the liquidity in the market for such Cleared Swaps, and then in contracts and instruments such as cash-settled options on Futures Contracts and forward contracts, swaps other than Cleared Swaps, and other over-the-counter transactions that are based on the price of its Specified Commodity or

Futures Contracts on its Specified Commodity (collectively, "Other Commodity Interests," and, together with Futures Contracts and Cleared Swaps, "Commodity Interests"). By utilizing certain or all of these investments, the Sponsor will endeavor to cause each Underlying Fund's performance to closely track that of its Benchmark.

The Underlying Funds seek to achieve their investment objectives primarily by investing in Commodity Interests such that daily changes in the Underlying Fund's NAV will be expected to closely track the changes in its Benchmark. Each Underlying Fund's positions in Commodity Interests will be changed or "rolled" on a regular basis in order to track the changing nature of its Benchmark. For example, several times a year (on the dates on which Futures Contracts on the Underlying Fund's Specified Commodity expire), a particular Futures Contract will no longer be a Benchmark Component Futures Contract, and the Underlying Fund's investments will have to be changed accordingly. In order that the Underlying Funds' 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 Underlying Funds' investments typically will not be rolled entirely on that day, but rather will typically be rolled over a period of several days.

Consistent with achieving each Underlying Fund's investment objective of closely tracking its Benchmark, the Sponsor may for certain reasons cause the Underlying Fund to enter into or hold Futures Contracts other than the Benchmark Component Futures Contracts, Cleared Swaps and/or Other Commodity Interests. For example, certain Cleared Swaps have standardized terms similar to, and are priced by reference to, a corresponding Benchmark Component Futures Contract. Additionally, Other Commodity Interests that do not have standardized terms and are not exchange-traded, referred to as "over-the-counter" Commodity Interests, can generally be structured as the parties to the Commodity Interest contract desire. Therefore, an Underlying Fund might enter into multiple Cleared Swaps and/or over-the-counter Commodity Interests related to its Specified Commodity that are intended to exactly replicate the performance of Benchmark Component Futures Contracts of the Underlying Fund, or a single over-the-counter Commodity Interest designed to replicate the performance of its Benchmark as a whole. Assuming that

there is no default by a counterparty to an over-the-counter Commodity Interest, the performance of the Commodity Interest will necessarily correlate exactly with the performance of the Underlying Fund's Benchmark or the applicable Benchmark Component Futures Contract.<sup>10</sup> The Underlying Funds might also enter into or hold Commodity Interests other than Benchmark Component Futures Contracts to facilitate effective trading. In addition, an Underlying Fund might enter into or hold Commodity Interests related to its Specified Commodity that would be expected to alleviate overall deviation between the Underlying Fund's performance and that of its Benchmark that may result from certain market and trading inefficiencies or other reasons.

The Underlying Funds invest in Commodity Interests to the fullest extent possible without being leveraged<sup>11</sup> or unable to satisfy their expected current or potential margin or collateral obligations with respect to their investments in Commodity Interests. After fulfilling such margin and collateral requirements, the Underlying Funds will invest the remainder of the proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash. Therefore, the focus of the Sponsor in managing the Underlying Funds is investing in Commodity Interests and in Treasury Securities, cash and/or cash equivalents. The Underlying Funds will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through the Custodian.

The Sponsor will endeavor to place the Fund's trades in the Underlying Funds and otherwise manage the Fund's investments so that the Fund's average daily tracking error against the Underlying Fund Average 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

<sup>10</sup> With respect to the Underlying Funds, the creditworthiness of each potential counterparty will be assessed by the Sponsor. The Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract pursuant to guidelines approved by the Sponsor.

<sup>11</sup> The Sponsor represents that the Fund and Underlying Funds will invest in their applicable Commodity Interests in a manner consistent with their respective investment objectives and not to achieve additional leverage.

<sup>9</sup> According to the Registration Statement, although sugar Futures Contracts are primarily traded on the ICE Futures, they may also be traded on the New York Mercantile Exchange ("NYMEX").

of which the Fund calculates its NAV, and B is the average daily change in the Underlying Fund Average over the same period.<sup>12</sup>

The Sponsor will employ a “neutral” investment strategy intended so that the Fund will track the changes in the Underlying Fund Average and each Underlying Fund will track the changes in its Benchmark regardless of whether the Underlying Fund Average or Benchmark goes up or down. According to the Registration Statement, the Fund’s and Underlying Funds’ “neutral” investment strategies are designed to permit investors generally to purchase and sell the Fund’s Shares for the purpose of investing indirectly in the agricultural commodities market in a cost-effective manner. Such investors may include participants in agricultural industries and other industries seeking to hedge the risk of losses in their commodity-related transactions, as well as investors seeking exposure to the agricultural commodities market. The Sponsor does not intend to operate the Fund or an Underlying Fund in a fashion such that its per share NAV will equal, in dollar terms, the spot price of a unit of a Specified Commodity or the price of any particular Futures Contract.

The Exchange represents that the Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange further represents that, with respect to application of Rule 10A-3 under the Act,<sup>13</sup> the Trust will rely on the exception contained in Rule 10A-3(c)(7),<sup>14</sup> and a minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

Additional details regarding the Trust; Fund; Shares; Underlying Funds; Commodity Interests and other aspects of the applicable commodities markets; trading policies of the Fund; creations and redemptions of the Shares; Underlying Fund Average and Underlying Fund Benchmarks; investment risks; fees; NAV calculation; the dissemination and availability of information about the underlying assets of the Fund and the Underlying Funds;

trading halts; applicable trading rules; surveillance; and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement,<sup>15</sup> as applicable, and the registration statements relating to the Underlying Funds and the releases approving the listing and trading of the Underlying Funds, as applicable.<sup>16</sup>

### III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Fund is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>17</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>18</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 Fund and the Shares 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 Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>19</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 regarding the Shares and shares of the Underlying Funds will be disseminated through the facilities of the Consolidated Tape Association. In addition, the Underlying Fund Average and each Benchmark 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. Eastern Time (“E.T.”). In addition, an updated Indicative Fund Value (“IFV”) for the Fund, which is calculated by using the prior day’s closing NAV per Share of the Fund as a base and updating that value throughout the NYSE Arca Core Trading Session to reflect changes in the value of the Underlying Funds’ shares, and updated IFVs for each Underlying Fund will be widely disseminated on a per-share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.<sup>20</sup> The NAV for the Fund will be calculated by the Administrator once each trading day and will be disseminated daily to all market participants at the same time.<sup>21</sup> The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, quantity, price, and market value of the Underlying Funds held by the Fund, and other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. In addition, the Underlying Funds provide Web site disclosure of their respective portfolio holdings daily and include the names, quantity, price and market value of such holdings and the characteristics of such holdings. The closing price and settlement prices of the corn, wheat and soybean Futures Contracts are readily available from CBOT, and of sugar Futures Contracts from ICE Futures, and on other automated quotation systems, published or other public sources, or on-line information services. The Exchange represents that quotation and last sale information for the corn, wheat, soybean and sugar 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 such contracts is available by

<sup>12</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 Underlying Fund Average 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 the Underlying Fund Average.

<sup>13</sup> 17 CFR 240.10A-3.

<sup>14</sup> 17 CFR 240.10A-3(c)(7).

<sup>15</sup> See Notice and Registration Statement, *supra* notes 3 and 5, respectively.

<sup>16</sup> See *supra* note 6.

<sup>17</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).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>20</sup> The normal trading hours for Futures Contracts may begin after 9:30 a.m. and end before 4 p.m. E.T., and there is a gap in time at the beginning and the end of each day during which the Underlying Funds’ shares are traded on the Exchange but real-time trading prices for at least some of the Futures Contracts held by the Underlying Funds are not available. As a result, during those gaps there will be no update to the IFVs of the Underlying Funds holding such Futures Contracts, and such IFVs will be static.

<sup>21</sup> The NAV for the Fund will be calculated by taking the current market value of the Fund’s total assets and subtracting any liabilities. The Administrator will calculate the NAV of the Fund as of the earlier of the close of the New York Stock Exchange or 4 p.m. E.T. The NAV for a particular trading day will be released after 4:15 p.m. E.T.

subscription from Reuters and Bloomberg. CBOT and ICE Futures 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 such contracts are also available at the CBOT and ICE Futures Web sites, as well as other financial informational sources. The spot prices of corn, wheat, soybeans, and sugar are also available on a 24-hour basis from major market data vendors. In addition, the Web site for the Fund and/or the Exchange will contain the prospectus and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares 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 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. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IFV or the Underlying Fund Average or the value of the applicable Benchmark Component Futures Contracts or the applicable Benchmark occurs. If the interruption to the dissemination of the IFV, the Underlying Fund Average, the value of the applicable Benchmark Component Futures Contracts, or the applicable Benchmark 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.<sup>22</sup> In addition, the Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current portfolio composition of the

Fund and each Underlying Fund through the applicable fund's Web sites. The Exchange may halt trading in the Shares if trading is not occurring in the Futures Contracts or shares of the Underlying Funds, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>23</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Lastly, 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<sup>24</sup> acting as registered Market Makers<sup>25</sup> in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares 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 Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, including Trust Issued Receipts, 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.

(4) To the extent that the Fund invests in Futures Contracts, 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 ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, with respect to the Underlying 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 ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. With respect to the Underlying Funds, which are listed and traded on the Exchange, the Exchange can obtain market surveillance information from CBOT, NYMEX, and ICE Futures, which are ISG members, and from Kansas City Board of Trade ("KCBT") and Minneapolis Grain Exchange ("MGEX") in that the Exchange has in place a comprehensive surveillance sharing agreement with KCBT and MGEX.

(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 Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares 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 Shares in creation baskets and redemption baskets (and that Shares 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 Shares; (d) how information regarding the IFV is disseminated; (e) 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 (f) trading information.

(6) A minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

(7) With respect to the application of Rule 10A-3 under the Act, the Trust will rely on the exception contained in Rule 10A-3(c)(7).<sup>26</sup>

This approval order is based on all of the Exchange's representations.<sup>27</sup> The Commission notes that the Fund will primarily invest in shares of the

<sup>22</sup> The Exchange also notes that, for each of the Underlying Funds, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the applicable Benchmark Component Futures Contracts or Benchmark occurs.

<sup>23</sup> With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in the Shares of the Fund 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 Shares inadvisable.

<sup>24</sup> See NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

<sup>25</sup> See NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

<sup>26</sup> See *supra* notes 13 and 14 and accompanying text.

<sup>27</sup> The Commission notes that it does not regulate the market for futures in which the Fund and the Underlying Funds plan to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. 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.

Underlying Funds, which have been approved for listing and trading on the Exchange by the Commission.<sup>28</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>29</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>30</sup> that the proposed rule change (SR-NYSEArca-2011-97) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Kevin M. O'Neill,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66465; File No. SR-FINRA-2012-009]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 4(c) of Schedule A to the FINRA By-Laws To Increase Qualification Examination Fees and Assess a Service Charge for Regulatory Element Continuing Education Sessions Taken Outside the United States

February 24, 2012.

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> notice is hereby given that on February 23, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend Section 4(c) of Schedule A to the FINRA By-Laws to (1) increase qualification examination fees, and (2) assess a service charge for any Regulatory Element sessions taken in a test center located outside the territorial limits of the United States. The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

As discussed in further detail below, the proposed rule change amends Section 4(c) of Schedule A to the FINRA By-Laws to (1) increase qualification examination fees, and (2) assess a service charge for any Regulatory Element session taken in a test center located outside the territorial limits of the United States.

###### Qualification Examination Fees

NASD Rules 1021(a) and 1031(a) require that persons engaged, or to be engaged, in the investment banking or securities business of a FINRA member who are to function as principals or representatives register with FINRA in each category of registration appropriate to their functions as specified in NASD Rules 1022 and 1032.<sup>5</sup> Such individuals must pass an appropriate qualification

examination before their registration can become effective. These mandatory qualification examinations cover a broad range of subjects regarding financial markets and products, individual responsibilities, securities industry rules, and regulatory structure. FINRA develops, maintains, and delivers all qualification examinations for individuals who are registered or seeking registration with FINRA. FINRA also administers and delivers examinations sponsored (*i.e.*, developed) by the Municipal Securities Rulemaking Board ("MSRB"), the North American Securities Administrators Association, the National Futures Association, the Federal Deposit Insurance Corporation, and other self-regulatory organizations.

FINRA currently administers examinations via computer through the PROCTOR<sup>®</sup> system<sup>6</sup> at testing centers operated by vendors under contract with FINRA. FINRA charges an examination fee to candidates for FINRA-sponsored and co-sponsored examinations to cover the development, maintenance, and delivery of these examinations. For qualification examinations sponsored by a FINRA client and administered by FINRA, FINRA charges a delivery fee that represents either a portion of or the entire examination fee for the examination.<sup>7</sup>

FINRA regularly conducts a comprehensive review of the examination fee structure, including an analysis of the costs associated with developing, administering, and delivering examinations. Based on the results of its review, FINRA may propose changes to better align the examination fee structure with the costs associated with the programs. In this regard, the most recent review revealed that certain operational costs have increased and, based on current information, will continue to increase over the next few years. In particular, these costs consist of (1) fees that vendors charge FINRA for delivering qualification examinations, and (2) PROCTOR maintenance and enhancement expenses. FINRA believes that the proposed rule change will help

<sup>28</sup> See *supra* note 6.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See also NASD Rules 1041 and 1050 and FINRA Rule 1230(b)(6) regarding the qualification and registration requirements for Order Processing Assistant Representatives, Research Analysts and Operations Professionals, respectively.

<sup>6</sup> PROCTOR is a computer system that is specifically designed for the administration and delivery of computer-based testing and training.

<sup>7</sup> The delivery fee represents a portion of the entire examination fee when a FINRA client has established an additional fee for an examination that it sponsors. For example, the fee to take the Series 51 (Municipal Fund Securities Limited Principal) examination is currently \$145. Of this amount, \$85 is the FINRA administration and delivery fee, and \$60 is the development fee determined by the FINRA client, the MSRB. See MSRB Rule A-16.