

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEALTR-2008-07), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58983; File No. SR-NYSEArca-2008-126]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing Shares of the GreenHaven Continuous Commodity Index Fund

November 20, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 5, 2008, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to list and trade shares ("Shares") of the GreenHaven Continuous Commodity Index Fund ("Fund") pursuant to Commentary.02 to NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

<sup>35</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

#### 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

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust issued receipts ("TIRs") investing in shares or securities ("Investment Shares") that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities. The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Equities Rule 8.200. The Shares represent beneficial ownership interests in the GreenHaven Continuous Commodity Index Master Fund's ("Master Fund") net assets, consisting solely of the common units of beneficial interest of the Master Fund ("Master Fund Units"). The Fund's primary objective is to reflect the performance of the Continuous Commodity Total Return Index ("Index").

The Fund is currently listed on NYSE Alternext U.S. LLC (NYSE Alternext U.S. (formerly, the American Stock Exchange LLC ("Amex"))<sup>4</sup> and is traded on the Exchange pursuant to unlisted trading privileges ("UTP").<sup>5</sup> Prior to listing on the Exchange, the Fund would be required to satisfy the applicable delisting procedures of NYSE Alternext U.S. and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Securities Exchange Act of 1934

<sup>4</sup> See Securities Exchange Act Release No. 56969 (December 14, 2007), 72 FR 72424 (December 20, 2007) (SR-Amex-2007-53) ("Amex Filing"). See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated November 13, 2008 ("November 13 e-mail").

<sup>5</sup> See Securities Exchange Act Release No. 57029 (December 21, 2007), 72 FR 74388 (December 31, 2007) (SR-NYSEArca-2007-68) ("UTP Filing").

("Act"),<sup>6</sup> relating to listing the Shares on the Exchange.<sup>7</sup>

A description of the Fund is included in the Amex Filing, the UTP Filing, and the Registration Statement for the Fund.<sup>8</sup> The Exchange represents that the Shares satisfy the applicable requirements of Rule 8.200, including Commentary .02 to Rule 8.200, and thereby qualify for listing on the Exchange.<sup>9</sup> The Exchange states that all of the facts describing the Fund, the Master Fund, Master Fund Units and the Shares contained in the Amex Filing are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Filing relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange. To the extent NYSE Alternext U.S. has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange represents that it would take the place of NYSE Alternext U.S. in such role and discharge such obligations.

The Fund will comply with the requirements of Rule 10A-3<sup>10</sup> under the Act.

##### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

The trading of the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant

<sup>6</sup> 15 U.S.C. 78(l).

<sup>7</sup> The Exchange will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext U.S. and listed on the Exchange. The Exchange notes that its approval of the Fund's listing application would be required prior to listing.

<sup>8</sup> See the Fund's Registration Statement on Form S-1, dated November 21, 2007 (No. 333-138424) ("Registration Statement").

<sup>9</sup> See November 13 e-mail, *supra*, note 4.

<sup>10</sup> 17 CFR 240.10A-3.

factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying Commodity Futures Contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares could be halted pursuant to the Exchange's "circuit breaker" rule<sup>11</sup> or by the halt or suspension of trading of the underlying Commodity Futures Contracts.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities included in, or options, futures or options on futures on, the Index or any other derivatives based on the Index, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the InterContinental Exchange and the London Metal Exchange, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group ("ISG") and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action

being required on the part of the Exchange. A list of ISG members is available at <http://www.isgportal.org>.

In addition, not more than 10% of the weight of the Index in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) 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; (3) how information regarding the Indicative Fund Value is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading the Shares during the Opening and late Trading Sessions when an updated Indicative Fund Value will not be calculated or publicly disseminated; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the registration statement for the Fund.

The Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, that the Commission has no jurisdiction over the trading of commodity futures contracts, and that the CFTC has regulatory jurisdiction over the trading of commodity futures contracts.

The Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from Section 11(d)(1) of the Act<sup>12</sup> and certain rules under the Act, including Rule 10b-10, Rule 14e-5, Rule 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M under the Act.

The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and Section 6(b)(5),<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will permit the listing of the Fund on the Exchange, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-126 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>13</sup> 15 U.S.C. 78f(b). See November 13 e-mail, *supra*, note 4.

<sup>14</sup> 15 U.S.C. 78f(b)(5). See November 13 e-mail, *supra*, note 4.

<sup>11</sup> See NYSE Arca Equities Rule 7.12.

<sup>12</sup> 15 U.S.C. 78k(d)(1).

Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-126. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-126 and should be submitted on or before December 23, 2008.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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 Shares have been approved for

listing and trading on Amex,<sup>17</sup> now known as NYSE Alternext US, and trading pursuant to UTP on the Exchange.<sup>18</sup>

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.200. NYSE Arca represents that the Shares satisfy the applicable requirements of Rule 8.200, which includes initial and continued listing criteria. The Exchange deems the Shares to be equity securities, thus subjecting the Shares to the Exchange's existing rules governing the trading of equity securities.

The Commission believes 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' 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. The Exchange states that: (1) The representations included in the Amex Filing relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange; and (2) to the extent NYSE Alternext U.S. has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange will assume the role of NYSE Alternext U.S. and discharge such obligations. Accordingly, among other things:

1. Futures contract quotes and last-sale information for the Commodity Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters;<sup>20</sup>

2. Complete real-time data for the Commodity Futures Contracts is available by subscription from Reuters and Bloomberg;<sup>21</sup>

3. 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>22</sup>

4. The specific contract specifications for each Commodity Futures Contract are also available from the various futures exchanges on their Web sites as well as other financial informational sources;<sup>23</sup>

5. The Web sites for the Fund and/or the Exchange, which are publicly accessible at no charge, will disseminate the following information to everyone at the same time: (a) The current NAV per Share daily and the prior business day's NAV per Share and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV per Share as of the time it is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against the NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; (e) the Prospectus; (f) the composition of the portfolio of the Fund; and (g) other applicable quantitative information;<sup>24</sup>

6. On each business day, the Administrator will make available via the facilities of the Consolidated Tape Association ("CTA") immediately prior to the opening of trading on the Exchange the most recent Basket Amount for the creation of a Basket, and the Exchange will disseminate at least every 15 seconds throughout the trading day, via the CTA, an amount representing on a per Share basis, the current value of the Basket Amount;<sup>25</sup> and

7. The Exchange will disseminate through the facilities of CTA, an updated Indicative Fund Value ("IFV"), on a per Share basis, that will be updated at least every 15 seconds between 9:30 a.m. and 4:15 p.m. Eastern Time.<sup>26</sup>

The Commission also 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. Only Reuters determines the composition of the Index, and Reuters (1) considers information about changes to the Index and related matters to be potentially market-moving, material, and confidential; and (2) has policies and procedures in place to ensure to prevent [sic] the use and dissemination of such information.<sup>27</sup> With respect to trading halts, the Exchange may consider all relevant factors in exercising its

<sup>24</sup> *Id.*

<sup>25</sup> See Securities Exchange Act Release No. 56802 (November 16, 2007), 72 FR 65994, 65998 (November 26, 2007) (SR-Amex-2007-53) ("Amex Filing Notice").

<sup>26</sup> See Amex Filing Notice, *supra*, note 25 at 65999.

<sup>27</sup> See Amex Filing, *supra*, note 4, 72 FR at 72425.

<sup>17</sup> See Amex Filing, *supra*, note 4.

<sup>18</sup> See UTP Filing, *supra*, note 5.

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

<sup>20</sup> See Amex Filing, *supra*, note 4, 72 FR at 72425.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>15</sup> In approving this 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>16</sup> 15 U.S.C. 78f(b)(5).

discretion to halt or suspend trading in the Shares.<sup>28</sup> Specifically, however, if the Exchange becomes aware that the NAV is not being 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 pursuant to NYSE Arca Equities Rule 7.34(a)(5). Further, Commentary .02(e) to NYSE Arca Equities Rule 8.200 sets forth certain restrictions (described above) on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance.

In support of this proposal, the Exchange has made the following representations:

1. The Shares satisfy the requirements of NYSE Arca Equities Rule 8.200, Commentary .02, which includes the initial and continued listing criteria for TIRs that invest in Investment Shares.

2. The Exchange's surveillance procedures are adequate to properly monitor trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

3. The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission notes that it has previously approved the listing and trading of the Shares on Amex<sup>30</sup> and believes that the Exchange's proposal to list and trade such Shares does not appear to present any novel or significant regulatory issues. As such, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products.

<sup>28</sup> Trading may be halted because of market conditions or for reasons that make trading in the Shares inadvisable, including: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> See Amex Filing, *supra*, note 4. The Shares have also been approved for trading on the Exchange pursuant to UTP. See UTP Filing, *supra*, note 5.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-NYSEArca-2008-126) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59012; File No. SR-NYSEArca-2008-131]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Temporarily Increase the Number of Additional Quarterly Option Series

November 24, 2008.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 21, 2008, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to temporarily increase the number of additional Quarterly Options Series ("QOS"). The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to temporarily increase the number of additional QOS in ETF options from sixty (60) to one hundred (100) that may be added by the Exchange. To effect this change, the Exchange is proposing to add new subparagraph (iv) to Rule 6.4 Commentary .08.

Because of the current, unprecedented market conditions, the Exchange has received requests from market participants to add lower priced strikes for QOS in the Energy Select Sector SPDR ("XLE"), the DIAMONDS Trust, Series 1 ("DIA") and the Standard and Poor's Depository Receipts/SPDRs ("SPY"). For example, for December 2008 expiration, there is demand for strikes (a) ranging from \$20 up through and including \$40 for XLE, (b) ranging from \$60 up through and including \$75 for DIA, and (c) ranging from \$74 up through and including \$85 for SPY. These strikes are much lower than those currently listed for which there is open interest.

However, under current Rule 6.4 and commentary thereto, the Exchange cannot honor these requests because the maximum number of additional series, sixty (60), has already been listed. The Exchange is therefore seeking to temporarily increase the number of additional QOS that may be added to one hundred (100). The increase of additional series would be permitted immediately for expiration months currently listed and for expiration months added throughout the last quarter of 2008, including the new expiration month added after December 2008 expiration.

The Exchange believes that this proposal is reasonable and will allow for more efficient risk management. The Exchange believes this proposal will facilitate the functioning of the Exchange's market and will not harm investors or the public interest. The Exchange believes that user demand and the recent downward price movements

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.