

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58965; File No. SR-NYSEArca-2008-127)

November 17, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Units of the United States Oil Fund, United States Heating Oil Fund, United States Gasoline Fund, United States 12 Month Oil Fund, United States 12 Month Natural Gas Fund, and the United States Natural Gas Fund

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 5, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“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 comments on the proposed rule change from interested persons and approving 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 the following Partnership Units (“Units”) pursuant to NYSE Arca Equities Rule 8.300: United States Oil Fund, LP; United States Heating Oil Fund, LP; United States Gasoline Fund, LP; United States 12 Month Oil Fund, LP; United States 12 Month Natural Gas Fund, LP; and the United States Natural Gas Fund, LP (each, a “Partnership,” and collectively “Partnerships”). The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the Exchange’s principal office and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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 III 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

Under NYSE Arca Equities Rule 8.300, the Exchange may propose to list and trade or trade pursuant to unlisted trading privileges (“UTP”) Partnership Units (“Units”).³ The Exchange proposes to list and trade the following Units pursuant to NYSE Arca Equities Rule 8.300: United States Oil Fund, LP (“USOF”); United States Heating Oil Fund, LP (“USHO”); United States Gasoline Fund, LP (“USG”); United States 12 Month Oil Fund, LP (“12 Month Oil Fund”); United States 12 Month Natural Gas Fund, LP (“12 Month Natural Gas Fund”); and the United States Natural Gas Fund, LP (“USNG”). The Commission has previously approved listing of the Partnerships on the NYSE Alternext US LLC (“NYSE Alternext US”) (formerly,

³ On May 25, 2006, the Commission approved NYSE Arca Equities Rule 8.300, which sets forth the rules related to listing and trading criteria for Partnership Units. See Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11) (approving trading pursuant to UTP of Partnership Units of the United States Oil Fund, LP).

the American Stock Exchange LLC (“Amex”)⁴ and trading on the Exchange pursuant to UTP.⁵ Prior to listing on the Exchange, the issuer of the Units would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Securities Exchange Act of 1934 (“Act”),⁶ relating to listing the Units on the Exchange.⁷

Descriptions of the Partnerships and the Units are included in the Amex Filings, the UTP Filings, and the respective Registration Statements, as amended, for the Units.⁸ The Exchange represents that the Units satisfy the requirements of Rule 8.300 and thereby qualify for listing on the Exchange. The Exchange states that all of the facts describing the Partnerships and the Units

⁴ See Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (order approving Amex listing of USOF); 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR-Amex-2007-98) (order approving Amex listing of 12 Month Oil Fund and 12 Month Natural Gas Fund); 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR-Amex-2006-112) (order approving Amex listing of USNG); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR-Amex-2007-70) (order approving Amex listing of USHO and USG) (collectively, the “Amex Filings”).

⁵ See Securities Exchange Act Release No. 56832 (November 21, 2007), 72 FR 67328 (November 28, 2007) (SR-NYSEArca-2007-102) (order approving UTP trading of 12 Month Oil Fund and 12 Month Natural Gas Fund); Securities Exchange Act Release No. 56042 (July 11, 2007), 72 FR 39118 (July 17, 2007) (SR-NYSEArca-2007-45) (order approving UTP trading of USNG); Securities Exchange Act Release No. 57294 (February 8, 2008), 73 FR 8917 (February 15, 2008) (SR-NYSEArca-2007-78) (order approving UTP trading of USHO and USG) (collectively, with the orders cited in note 3, supra, the “UTP Filings”).

⁶ 15 U.S.C. 78(l).

⁷ The Exchange will seek the voluntary consent of the issuer of the Units currently listed on NYSE Alternext US to be delisted from NYSE Alternext US and listed on the Exchange.

⁸ See USHO’s Form S-1, dated April 19, 2007 (File No. 333-142211); USG’s S-1, dated April 18, 2007 (File No. 333-142206); the 12 Month Oil Fund’s Form S-1, dated July 5, 2007 (File No. 333-144348); the 12 Month Natural Gas Fund’s S-1, dated July 6, 2007 (File No. 333-144409); USNG’s Form S-1, dated October 6, 2006 (File No. 333-137871); USOF’s Form S-1, dated May 16, 2005 (File No. 333-124950).

contained in the Amex Filings are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Filings relating to the dissemination and availability of information regarding the Units will apply to listing and trading of the Units on the Exchange. To the extent NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Units, the Exchange represents that it would take the place of NYSE Alternext US in such role and discharge such obligations.

The Partnerships will comply with the requirements of Rule 10A-3⁹ under the Act as it applies to limited partnerships.

Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. Units will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. The minimum trading increment for Units on the Exchange will be \$0.01.

NYSE Arca Equities Rule 8.300(e) sets forth certain restrictions on ETP Holders acting as registered Market Makers in Units to facilitate surveillance. NYSE Arca Equities Rule 8.300(e)(2)-(3) requires that the ETP Holder acting as a registered Market Maker in the Units provide the Exchange with necessary information relating to its trading in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.300(e)(4) prohibits the ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the

⁹ 17 CFR 240.10A-3.

underlying asset or commodity, related futures or options on futures or any other related derivative (including the Units). In addition, NYSE Arca Equities Rule 8.300(e)(1) prohibits the ETP Holder acting as a registered Market Maker in the Units from being affiliated with a market maker in the underlying asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying 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 Units could be halted pursuant to the Exchange's "circuit breaker" rule.¹⁰ Under Rule 7.34(a)(5), if the Exchange becomes aware that the net asset value ("NAV") for the Units is not being disseminated to all market participants at the same time, it will halt trading in the Units on the Exchange until such time as the NAV is available to all market participants. In addition, if the portfolio composition applicable to Units, as disseminated on the Web site for the Units (as identified in the Amex Filings) is not disseminated to all market participants at the same time, the Exchange will halt trading in the affected Units.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Partnership Units, to monitor trading in the Units. The Exchange

¹⁰ See NYSE Arca Equities Rule 7.12.

represents that these 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.

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 Units, the applicable physical commodities included in, or options, futures or options on futures on, or any other derivatives based on such commodities, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the petroleum-based and natural gas futures underlying the Units, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange and the InterContinental Exchange pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current applicable petroleum-based and natural gas futures 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 www.isgportal.org.

In addition, to the extent that a Partnership invests in petroleum-based, natural gas and similar futures contracts traded on other exchanges, not more than 10% of the weight of the Partnership assets in the aggregate shall consist of such futures contracts 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 Units. Specifically, the Bulletin will discuss the following: (1) the risks involved in trading the Units during the Opening and Late Trading Sessions when an updated Indicative Partnership Value will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Units (and that Units are not individually redeemable); (3) 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; (4) how information regarding the Indicative Partnership Value is disseminated; (5) 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 (6) trading information.

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

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 heating oil, gasoline, crude oil, natural gas or petroleum-based fuels, and that the CFTC has regulatory jurisdiction over the trading of petroleum-based and natural gas futures contracts and related options.

The Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Bulletin will also disclose that the NAV for the Units will be calculated after 4:00 p.m. ET each trading day.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² 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 Units on the Exchange, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.300 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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. Please include File Number SR-NYSEArca-2008-127 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-2008-127. 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 10:00 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; 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-2008-127 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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.¹³ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹⁴ 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 it has approved the listing and trading of the Units on Amex,¹⁵ now known as NYSE Alternext US, and the trading of the Units pursuant to UTP on the Exchange.¹⁶

The Commission believes that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁷ 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 has stated that the

¹³ 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).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Amex Filings, supra, note 4.

¹⁶ See UTP Filings, supra, note 5.

¹⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

representations included in the Amex Filings relating to the dissemination and availability of information regarding the Units will apply to the listing and trading of the Units on the Exchange, and, to the extent NYSE Alternext US (formerly Amex) has any affirmative obligations with respect to dissemination of information or key values relating to the Units, the Exchange represents that it would take the place of NYSE Alternext US in such role and discharge such obligations.¹⁸ The Commission notes that, at a minimum, the Units must comply with NYSE Arca Equities Rules 8.300(d)(2)(ii) and (iii), which relate to the regular dissemination of the value of the underlying benchmark investment, commodity, or asset and the Indicative Partnership Value, respectively, for continued trading of the Units on the Exchange.

The Commission also 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. The Commission notes that, under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Units is not being disseminated to all market participants at the same time, it will halt trading in the Units on the Exchange until such time as the NAV is available to all market participants. In addition, if the portfolio composition applicable to the Units, as disseminated on the Web site for the Units (as identified in the Amex Filings), is not disseminated to all market participants at the same time, the Exchange will halt trading in the affected Units. Moreover, NYSE Arca Equities Rule 8.300(e) limits certain dealings and trading activity of ETP Holders acting as registered Market Makers in Units, prescribes various recordkeeping and disclosure requirements for ETP Holders, and prohibits the use of any

¹⁸ See Amex Filings, supra, note 4.

material non-public information regarding trading in the underlying physical asset or commodity, futures or options on futures, or any other related derivatives.

The Commission further believes that the trading rules and procedures to which the Units will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Units are equity securities subject to NYSE Arca's rules governing the trading of equity securities.

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

- (1) The Units satisfy the requirements of NYSE Arca Equities Rule 8.300, which includes the initial and continued listing criteria for Partnership Units.
- (2) The Exchange's surveillance procedures are adequate to properly monitor trading of the Units 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 its ETP Holders in connection with the trading of the Units.
- (4) The Partnerships will comply with the requirements of Rule 10A-3 under the Act¹⁹ as it applies to limited partnerships.

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

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ 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

¹⁹ 17 CFR 240.10A-3.

²⁰ 15 U.S.C. 78s(b)(2).

trading of the Units on Amex²¹ and believes that the Exchange's proposal to list and trade such Units 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.

²¹ See Amex Filings, supra, note 4. The Units have also been approved for trading on the Exchange pursuant to UTP. See UTP Filings, supra, note 5.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NYSEArca-2008-127) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon
Acting Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).