

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61843; File No. SR-NYSEArca-2010-12)

April 5, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing of the One Fund under NYSE Arca Equities Rule 8.600

On March 2, 2010, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of One Fund (the “Fund”), a series of the U.S. One Trust (the “Trust”) under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”). The proposed rule change was published in the Federal Register on March 18, 2010.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under the Investment Company Act of 1940 (“1940 Act”) (“Underlying ETFs”).⁴ U.S. One, Inc. (the “Adviser”) is the adviser for the Fund. The Adviser is not affiliated with a broker-dealer. If the Adviser becomes affiliated with a broker-dealer, the Adviser would be required to comply with the “fire wall” provisions

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61689 (March 11, 2010), 75 FR 13181 (“Notice”).

⁴ The Trust is registered under the 1940 Act. On February 5, 2010, the Trust filed with the Commission Amendment No. 2 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-160877 and 811-22320) (“Registration Statement”).

contained in Commentary .07 to NYSE Arca Equities Rule 8.600.⁵ PNC Global Investment Servicing, Inc. serves as the custodian, transfer agent and administrator for the Fund.

The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A-3 under the Act,⁶ as provided by NYSE Arca Equities Rule 5.3. The Fund's investment objective is to seek long-term capital appreciation. In pursuing its investment objective, the Adviser will normally invest at least 80% of its total assets in Underlying ETFs. The Adviser invests in Underlying ETFs that track various securities indices comprised of large, mid and small capitalization companies in the United States, Europe and Asia, as well as other developed and emerging markets.

Additional information regarding the Fund, the Shares, the Fund's investment objective, investment strategies, policies, restrictions, risks, fees and expenses, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.⁷

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder

⁵ Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. In addition, Commentary .07 requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer, Commentary .07 reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.

applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the Exchange’s rules 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 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, 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. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line, and the Exchange will disseminate the Portfolio Indicative Value (“PIV”) at least every 15 seconds during the Core Trading Session through the facilities of the CTA. In addition, the Fund will make available on its Web site on each business day before commencement of trading of the Core Trading Session the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2)¹¹ that will form the basis for its calculation of the net asset value (“NAV”), which will be determined as

⁶ 17 CFR 240.10A-3.

⁷ See supra notes 3 and 4.

⁸ 15 U.S.C. 78f.

⁹ In approving this proposed rule change the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 U.S.C. 78f(b)(5).

¹¹ The Exchange represents that the Fund will disclose on the Fund’s Web site for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern Time) on each business day. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to trading volume, prices, and NAV. Information regarding the market price and trading volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

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. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.¹² Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day

¹² See NYSE Arca Equities Rule 8.600(d)(1)(B).

following the interruption.¹³ Finally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.¹⁴

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities and will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange's surveillance 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.
- (3) 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 procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which

¹³ See NYSE Arca Equities Rule 8.600(d)(2)(D). The Exchange states that trading in the Shares may also 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 securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

¹⁴ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV 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.

- (4) The Fund will be in compliance with Rule 10A-3 under the Act.¹⁵
- (5) Underlying ETFs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETFs may hold non-U.S. equity securities, the Fund will not invest in non-U.S. equity securities.

This approval order is based on the Exchange's representations. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁶ and the rules and regulations thereunder applicable to a national securities exchange.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁷ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the Federal Register. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the

¹⁵ See supra note 6.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(2).

characteristics of which are similar to those to be invested by the Fund.¹⁸ The Commission also notes that it has received no comments regarding the proposed rule change. Further, the Commission believes that proposed rule change does not raise any novel regulatory concerns. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

¹⁸ See, e.g., Securities Exchange Act Release No. 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (approving the listing and trading of shares of the Dent Tactical ETF).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSEArca-2010-12) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).