

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55632; File No. SR-Amex-2006-112)

April 13, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Units of the United States Natural Gas Fund, LP

I. Introduction

On December 1, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) 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 proposal to list and trade units (a “Unit” or collectively, the “Units”) of the United States Natural Gas Fund, LP (“USNG”) pursuant to Amex Rules 1500 et seq. On February 14, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on March 7, 2007 for a 15-day comment period.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to list and trade the Units issued by USNG pursuant to Amex Rules 1500 et seq. The Units represent ownership of a fractional undivided beneficial interest in the net assets of USNG.<sup>4</sup> The net assets of USNG will consist of investments in futures contracts

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<sup>1</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. 55372 (February 28, 2007), 72 FR 10267.

<sup>4</sup> USNG is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

based on natural gas, crude oil, heating oil, gasoline, and other petroleum-based fuels traded on the New York Mercantile Exchange (“NYMEX”), Intercontinental Exchange (“ICE Futures”) or other U.S. and foreign exchanges (collectively, “Futures Contracts”). USNG may also invest in other natural gas-related investments such as cash-settled options on Futures Contracts, forward contracts for natural gas, and over-the-counter transactions that are based on the price of natural gas, oil and other petroleum-based fuels, Futures Contracts and indices based on the foregoing (collectively, “Other Natural Gas Related Investments”). Futures Contracts and Other Natural Gas Related Investments collectively are referred to as “Natural Gas Interests.”

USNG will invest in Natural Gas Interests to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations. In pursuing this objective, the primary focus of USNG’s investment manager, Victoria Bay Asset Management, LLC (“General Partner”), will be the investment in Futures Contracts and the management of its investments in short-term obligations of the United States, cash equivalents, and cash for margining purposes and as collateral.

The investment objective of USNG is for changes in percentage terms of a Unit’s net asset value (“NAV”) to reflect the changes in percentage terms of the price of natural gas delivered at the Henry Hub, Louisiana as measured by the natural gas futures contract traded on the NYMEX (the “Benchmark Futures Contract”). The Benchmark Futures Contract employed is the near month expiration contract, except when the near month contract is within two (2) weeks of expiration, in which case the Benchmark Futures Contract is the next expiration month.<sup>5</sup>

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<sup>5</sup> The Benchmark Futures Contracts will be changed or “rolled” from the near month contract to expire over to the next month to expire over a four (4) day period.

The General Partner will attempt to place USNG's trades in Natural Gas Interests and otherwise manage USNG's investments so that "A" will be within plus/minus 10 percent of "B," where:

- A is the average daily change in USNG's NAV for any period of 30 successive valuation days, i.e., any day as of which USNG calculates its NAV; and
- B is the average daily change in the price of the Benchmark Futures Contract over the same period.

USNG will be subject to the criteria in Amex Rule 1502 for initial and continued listing of the Units. The Amex stated that it will require a minimum of 100,000 Units to be outstanding at the start of trading and expects that the initial price of a Unit will be \$50.00.<sup>6</sup> The Exchange represented that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.<sup>7</sup> Further, the Exchange stated that it will file a proposed rule change with the Commission pursuant to Rule 19b-4 under the Act seeking approval to continue trading the Units and, unless approved, the Exchange will commence delisting the Units if more than a temporary disruption exists in connection with the pricing of the Benchmark Futures Contract or the calculation or dissemination of the NAV is more than temporarily disrupted, or the NAV is not disseminated to all market participants at the same time.

Amex Rule 1503 relating to certain specialist prohibitions will address potential conflicts of interest in connection with acting as a specialist in the Units. Specifically, Rule 1503 provides

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<sup>6</sup> USNG expects that the initial Authorized Purchaser will purchase the initial Basket of 100,000 Units at the initial offering price per Unit of \$50.00. On the date of the public offering and thereafter, USNG will continuously issue Units in Baskets of 100,000 Units to Authorized Purchasers at NAV.

<sup>7</sup> See 17 CFR 240.10A-3.

that the prohibitions in Amex Rule 175(c) apply to a specialist in the Units so that the specialist or affiliated person may not act or function as a market-maker in an underlying asset, related futures contract or option or any other related derivative. An affiliated person of the specialist consistent with Amex Rule 193 may be afforded an exemption to act in a market making capacity, other than as a specialist in the Units on another market center, in the underlying asset, related futures or options or any other related derivative. In particular, Amex Rule 1503 provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

Amex Rule 1504 will also ensure that specialists handling the Units provide the Exchange with all the necessary information relating to their trading in physical assets or commodities, related futures contracts and options thereon or any other derivative. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

### III. Discussion and Commission Findings

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>8</sup> and, in particular, the requirements of Section 6 of the Act.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>11</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 transaction in securities. Amex represented that quotation for and last-sale information regarding the futures contracts held by USNG, including the future contracts underlying the Benchmark Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represented that real-time futures data is available by subscription from Reuters and Bloomberg. The NAV of the Units is available at the Web site of the Exchange. The Commission believes that Amex's proposal is

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<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f.

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

<sup>11</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

reasonable designed to promote transparency in the pricing of the Units, and to prevent trading when a reasonable degree of transparency cannot be assured. The proposal also appears reasonably designed to prevent the misuse of information by specialists.

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

- (1) The Exchange represented that it currently has in place an Information Sharing Agreement with the NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX and ICE Futures, respectively. To the extent that USNG invests in Natural Gas Interests traded on other exchanges, the Amex represented that it will seek to enter into Information Sharing arrangements with those particular exchanges.
- (2) Amex would distribute an information circular to Exchange members and member organizations, prior to the commencement of trading providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transaction in the Units. In addition, investors purchasing Units directly from USNG (by delivery of the Deposit Amount) would receive a prospectus from USNG. Amex members purchasing Units from USNG for resale to investors would deliver a prospectus to such investors.
- (3) Amex submits that its surveillance procedures are adequate to deter and detect violations of Exchange rules relating to the trading of the Units. The surveillance procedures for the Units will be similar to those used for units of the United States Oil Fund, LP as well as other commodity-based trusts, trust

issued receipts and exchange-traded funds. In addition, the surveillance procedures will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

- (4) Amex represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.<sup>12</sup>

This order is conditioned on Amex's adherence to these representations.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-2006-112), as modified by Amendment No. 1, be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>12</sup> See 17 CFR 240.10A-3.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).