

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57042; File No. SR-Amex-2007-70)

December 26, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendments No. 1 and 2, Relating to the Listing and Trading of Units of the United States Heating Oil Fund, LP and the United States Gasoline Fund, LP

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 29, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On August 16, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. On December 20, 2007, the Exchange submitted Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to list and trade units (a “Unit” or collectively, the “Units”) of each of the United States Heating Oil Fund, LP (“USHO”) and the United States Gasoline Fund, LP (“USG”) (each, a “Partnership,” and collectively, the “Partnerships”).

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

<sup>2</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 Amex included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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

The Exchange proposes to list and trade the Units issued by USHO (under the symbol: "UHN") and USG (under symbol: "UGA") pursuant to Amex Rules 1500-AEMI and 1501 through 1505.<sup>3</sup> Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange. The Exchange submits that the Units will conform to the initial and continued listing criteria under Rule 1502,<sup>4</sup> specialist prohibitions under Rule 1503, and the obligations of specialists under Rule 1504.

Ownership of a Unit represents a fractional undivided beneficial interest in each of the net assets of USHO and USG. Each of the net assets of USHO and USG will consist of investments in futures contracts based on heating oil, gasoline, crude oil, and

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<sup>3</sup> Amex Rule 1500-AEMI provides for the listing of Partnership Units, which are defined as securities, that are (a) issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities; and (b) issued and redeemed daily in specified aggregate amounts at net asset value. See Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (approving Amex Rules 1500-AEMI and 1501 through 1505 in conjunction with the listing and trading of Units of the United States Oil Fund, LP).

<sup>4</sup> See section entitled "Listing and Trading Rules," infra.

other petroleum-based fuels, and natural gas that are traded on the New York Mercantile Exchange (“NYMEX”), Intercontinental Exchange (“ICE Futures”), or other U.S. and foreign exchanges (collectively, “Futures Contracts”). In the case of USHO, the predominant investments are expected to be based on, or related to, heating oil. The predominant investments of USG are expected to be based on, or related to, gasoline.

USHO may also invest in other heating-oil-related investments such as cash-settled options on Futures Contracts, forward contracts for heating oil, and over-the-counter (“OTC”) contracts that are based on the price of heating oil, oil and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, “Other Heating Oil Related Investments”). Futures Contracts and Other Heating Oil Related Investments collectively are referred to as “Heating Oil Interests.”

Similarly, USG may also invest in other gasoline-related investments such as cash-settled options on Futures Contracts, forward contracts for gasoline, and OTC transactions based on the price of gasoline, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, “Other Gasoline-Related Investments”). Futures Contracts and Other Gasoline-Related Investments collectively are referred to as “Gasoline Interests.”

Each of USHO and USG will invest in Heating Oil Interests and Gasoline Interests, respectively, 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 USHO’s and USG’s investment manager, Victoria Bay Asset Management, LLC (“Victoria Bay” or “General Partner”), will be the investment in Futures Contracts and the management of its investments in short-term obligations of the

United States of two years or less (“Treasuries”), and cash and cash equivalents (collectively, “Cash”) for margining purposes and as collateral.

#### USHO Investment Objective and Policies

The investment objective of USHO is for the changes in percentage terms of a Unit’s net asset value (“NAV”) to reflect the changes in percentage terms of the price of heating oil (also known as No. 2 fuel) delivered at the New York harbor, as measured by the changes in the price of the heating oil futures contract traded on the NYMEX (the “Heating Oil Benchmark Futures Contract”), less USHO’s expenses. The Heating Oil Benchmark Futures contract employed is the near month expiration contract, except when the near month contract is within two weeks of expiration, in which case it will invest in the next expiration month.<sup>5</sup>

The General Partner will attempt to place USHO’s trades in Heating Oil Interests and otherwise manage USHO’s investments so that “A” will be within plus/minus 10% of “B”, where:

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

The Exchange states that an investment in the Units will allow both retail and institutional investors to easily gain exposure to the heating oil market in a cost-effective manner. The Units are also expected to provide additional means for diversifying an investor’s investments or hedging exposure to changes in heating oil prices.

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<sup>5</sup> The Benchmark Futures Contracts will be changed or “rolled” over a four-day period by selling the near month contract that expires the following month.

The General Partner believes that market arbitrage opportunities should cause USHO's Unit price to closely track USHO's per-Unit NAV, which is targeted at the current Heating Oil Benchmark Futures Contract.<sup>6</sup> USHO will not be operated in a manner such that the per-Unit NAV will equal, in dollar terms, the dollar price of spot heating oil or any particular futures contract based on heating oil.

#### USG Investment Objective and Policies

The investment objective of USG is for changes in percentage terms of a Unit's NAV to reflect the changes in percentage terms of the price of unleaded gasoline (also known as reformulated gasoline blendstock for oxygen blending or "RBOB"), for delivery to New York harbor, as measured by the changes in the price of the unleaded gasoline futures contract traded on the NYMEX (the "Gasoline Benchmark Futures Contract"), less USG's expenses. The Gasoline Benchmark Futures Contract employed is the near month expiration contract, except when the near month contract is within two weeks, in which case it will invest in the next expiration month.<sup>7</sup>

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

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

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<sup>6</sup> See section entitled "Arbitrage," infra.

<sup>7</sup> The Benchmark Futures Contracts will be changed or "rolled" over a four-day period by selling the near month contract that expires the following month.

The Exchange states that an investment in the Units will allow both retail and institutional investors to easily gain exposure to the gasoline market in a cost-effective manner. The Units are also expected to provide additional means for diversifying an investor's investments or hedging exposure to changes in gasoline prices.

The General Partner believes that market arbitrage opportunities should cause USG's Unit price to closely track USG's per-Unit NAV which is targeted at the current Gasoline Benchmark Futures Contract. USG will not be operated in a manner such that the per-Unit NAV will equal, in dollar terms, the dollar price of spot gasoline or any particular futures contract based on gasoline.

#### Description of the Petroleum-Based Fuels Market

With respect to each of the following petroleum-based fuel markets, the Exchange states as follows:

Heating Oil. Heating oil, also known as No. 2 fuel oil, accounts for 25% of the yield of a barrel of crude oil, the second largest "cut" from oil after gasoline. The heating oil futures contract, listed and traded on NYMEX, trades in units of 42,000 gallons (1,000 barrels) and is based on delivery in New York harbor, the principal cash market center. The price of heating oil fluctuates on a seasonal basis. Cold weather increases demand and price follows.

Crude Oil. Crude oil is the world's most actively traded commodity. The NYMEX is the world's most liquid forum for crude oil trading and has the most liquid futures contracts on a physical commodity. Due to the liquidity and price transparency of oil Futures Contracts, they are used as a principal international pricing benchmark. The oil futures contracts for WTI light, sweet crude oil trade on the NYMEX in units of 1,000

U.S. barrels (42,000 gallons) and, if not closed out before maturity, will result in delivery of oil to Cushing, Oklahoma, which is also accessible to the world market by two major interstate petroleum pipeline systems.

The price of crude oil is established by the supply and demand conditions in the global market overall, and more particularly, in the main refining centers of Singapore, Northwest Europe, and the U.S. Gulf Coast. Demand for petroleum products by consumers, as well as agricultural, manufacturing, and transportation industries, determines demand for crude oil by refiners. Since the precursors of product demand are linked to economic activity, crude oil demand will tend to reflect economic conditions. However, other factors such as weather also influence product and crude oil demand. The price of WTI light, sweet crude oil has historically exhibited periods of significant volatility.

Gasoline. Gasoline is by volume the largest single refined product sold in the United States and accounts for almost half of national oil consumption. The gasoline Futures Contract, listed and traded on the NYMEX, trades in units of 42,000 gallons (1,000 barrels) and is based on delivery at petroleum products terminals in the New York harbor, the major East Coast trading center for imports and domestic shipments from refineries in the New York harbor area or from the Gulf Coast refining centers. The price of gasoline is volatile.

Natural Gas. Natural gas accounts for almost a quarter of U.S. energy consumption. The price of natural gas is established by the supply and demand conditions in the North American market, and more particularly, in the main refining center of the U.S. Gulf Coast. The natural gas market essentially constitutes an auction,

where the highest bidder wins the supply. When markets are “strong” (i.e., when demand is high and/or supply is low), the bidder must be willing to pay a higher premium to capture the supply. When markets are “weak” (i.e., when demand is low and/or supply is high), a bidder may choose not to outbid competitors, waiting instead for later, possibly lower-priced, supplies. Demand for natural gas by consumers, and the agricultural, manufacturing, and transportation industries, determines overall demand for natural gas. Since the precursors of product demand are linked to economic activity, natural gas demand will tend to reflect economic conditions. However, other factors such as weather significantly influence natural gas demand. NYMEX is the world’s largest physical commodity futures exchange and the dominant market for the trading of energy and precious metals. The NYMEX’s natural gas futures contracts trade in units of 10,000 million British thermal units (“mmBtu”) and are based on delivery at the Henry Hub in Louisiana.

Because of the volatility of natural gas prices, a vigorous basis market has developed in the pricing relationships between the Henry Hub and other important natural gas market centers in the continental United States and Canada.

#### Structure and Regulation of USHO and USG

Each of USHO and USG is a Delaware limited partnership formed in April 2007. USHO is a commodity pool that will invest in Heating Oil Interests, while USG is a commodity pool that will invest in Gasoline Interests. Neither USHO nor USG is an investment company as defined in Section 3(a) of the Investment Company Act of 1940. Both are managed by Victoria Bay, a single-member Delaware limited liability company, which is wholly owned by Wainwright Holdings, Inc. The General Partner of the

Partnerships is registered as a commodity pool operator (“CPO”) with the Commodity Futures Trading Commission (the “CFTC”) and is a member of the National Futures Association.

Information regarding the Partnerships and the General Partner, as well as detailed descriptions of the manner in which the Units will be offered and sold, and the investment strategy of USHO and USG, are included in their respective registration statements regarding the offering of the Units filed with the Commission under the Securities Act of 1933.<sup>8</sup>

Clearing Broker. UBS Securities, LLC (the “Clearing Broker”), a CFTC-registered futures commission merchant (“FCM”), will execute and clear each Partnership’s futures contract transactions and hold the margin related to its Futures Contracts investments. The clearing arrangements between the Clearing Broker and each Partnership are terminable by the Clearing Broker, upon notice. In such an instance, the General Partner may be required to renegotiate with the current Clearing Broker, or make arrangements with other FCMs, if the Partnership(s) intend(s) to continue trading in Futures Contracts or Heating Oil Interests and Gasoline Interests, as appropriate, at the present level of capacity.

Administrator and Custodian. Under separate agreements with each Partnership, Brown Brothers Harriman & Co. will serve as each Partnership’s administrator, registrar, transfer agent, and custodian (the “Administrator” or “Custodian”). The Administrator will perform or supervise the performance of services necessary for the operation and

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<sup>8</sup> See USHO’s Form S-1 filed with the Commission on April 19, 2007 (File No. 333-142211); USG’s S-1 filed with the Commission on April 18, 2007 (File No. 333-142206).

administration of each Partnership. These services include, but are not limited to, investment accounting, financial reporting, broker and trader reconciliation, calculation of the NAV, and valuation of Treasuries and cash equivalents used to purchase or redeem Units and other Partnership assets or liabilities. As Custodian, it will: (1) receive payments from purchasers of Creation Baskets; (2) make payments to Sellers for Redemption Baskets, as described below; and (3) hold the cash, cash equivalents and Treasuries, as well as collateral posted by each Partnership's derivatives counterparties, and will make transfers of margin and collateral with respect to each Partnership's investments to and from its FCMs or counterparties.

Marketing Agent. ALPS Distributors, Inc., a registered broker-dealer, will be the marketing agent for the Partnerships ("Marketing Agent"). The Marketing Agent will continuously offer and redeem Creation and Redemption Baskets, respectively, and will receive and process creation and redemption orders from Authorized Purchasers (as defined below) and coordinate the processing of orders for the creation or redemption of Units with the General Partner and the Depository Trust Company ("DTC").

#### Investment Strategy of USHO

Investments. The General Partner of USHO believes that it will be able to use a combination of Futures Contracts and Other Heating Oil Related Investments to manage the portfolio to achieve its investment objective. The General Partner further anticipates that the exact mix of Futures Contracts and Other Heating Oil Related Investments held by the portfolio will vary over time depending on, among other things, the amount of invested assets in the portfolio, price movements of Heating Oil, the rules and regulations of the various futures and commodities exchanges and trading platforms that deal in

Heating Oil Interests, and innovations in the Heating Oil Interests' marketplace, including both the creation of new Heating Oil Interest investment vehicles and the creation of new trading venues that trade in Heating Oil Interests.

Futures Contracts. The principal Heating Oil Interests to be invested in by USHO are Futures Contracts. USHO initially expects to purchase the Benchmark Futures Contract. USHO may also invest in Futures Contracts in Heating Oil, crude oil, gasoline, and other petroleum-based fuels that are traded on the NYMEX, ICE Futures, or other U.S. and foreign exchanges.

The Heating Oil Benchmark Futures Contract has historically closely tracked the investment objective of USHO over the short term, medium term and the long term. For that reason, USHO anticipates making significant investments in the Heating Oil Benchmark Futures Contract. The General Partner submits that other Futures Contracts have also tended to track the investment objective of USHO, though not as closely as the Heating Oil Benchmark Futures Contract.

Other Heating Oil Related Investments. USHO may also purchase Other Heating Oil Related Investments such as cash-settled options on Futures Contracts and forward contracts for Heating Oil, and participate in OTC transactions that are based on the price of Heating Oil, crude oil, natural gas, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing. Option contracts offer investors and hedgers another vehicle for managing exposure to the heating oil market. USHO may purchase options on Heating Oil Futures Contracts on the principal commodities and futures exchanges in pursuing its investment objective.

In addition to these listed options, there also exists an active OTC market in derivatives linked to Heating Oil. These OTC derivative contracts are privately negotiated agreements between two parties. Unlike Futures Contracts or related options, each party to an OTC contract bears the credit risk that the counterparty may not be able to perform its obligations. Some OTC contracts contain fairly generic terms and conditions and are available from a wide range of participants, while other OTC contracts have highly customized terms and conditions and are not as widely available. Many OTC contracts are cash-settled forwards for the future delivery of Heating Oil or petroleum-based fuels that have terms similar to the Futures Contracts. Others take the form of “swaps” in which the two parties exchange cash flows based on pre-determined formulas tied to the price of Heating Oil as determined by the spot, forward, or futures markets. USHO may enter into OTC derivative contracts whose value may be tied to changes in the difference between the Heating Oil spot price, the price of Futures Contracts traded on NYMEX, and the prices of non-NYMEX Futures Contracts that may be invested in by USHO.

#### Investment Strategy of USG

Investments. USG believes that it will be able to use a combination of Futures Contracts and Other Gasoline Related Investments to manage the portfolio to achieve its investment objective. USG further anticipates that the exact mix of Futures Contracts and Other Gasoline Related Investments held by the portfolio will vary over time depending on, among other things, the amount of invested assets in the portfolio, price movements of Gasoline, the rules and regulations of the various futures and commodities exchanges and trading platforms that deal in Gasoline Interests, and innovations in the

Gasoline Interests' marketplace including both the creation of new Gasoline Interest investment vehicles and the creation of new trading venues that trade in Gasoline Interests.

Futures Contracts. The principal Gasoline Interests to be invested in by USG are Futures Contracts. USG initially expects to purchase the Gasoline Benchmark Futures Contract. USG may also invest in Futures Contracts in crude oil, natural gas, heating oil, and other petroleum-based fuels that are traded on the NYMEX, ICE Futures, or other U.S. and foreign exchanges.

The Gasoline Benchmark Futures Contract has historically closely tracked the investment objective of USG over the short term, medium term and the long term. For that reason, USG anticipates making significant investments in the Gasoline Benchmark Futures Contract. The General Partner submits that other Futures Contracts have also tended to track the investment objective of USG, though not as closely as the Gasoline Benchmark Futures Contract.

Other Gasoline Related Investments. USG may also purchase Other Gasoline Related Investments such as cash-settled options on Futures Contracts, forward contracts for gasoline, and OTC contracts that are based on the price of gasoline, heating oil, crude oil, natural gas, and other petroleum-based fuels, as well as Futures Contracts and indices based on the foregoing. Option contracts offer investors and hedgers another vehicle for managing exposure to the gasoline market. USG may purchase options on gasoline Futures Contracts on the principal commodities and futures exchanges in pursuing its investment objective.

In addition to these listed options, there also exists an active OTC market in derivatives linked to gasoline. These OTC derivative transactions are privately negotiated agreements between two parties. Unlike Futures Contracts or related options, each party to an OTC contract bears the credit risk that the counterparty may not be able to perform its obligations. Some OTC contracts contain fairly generic terms and conditions and are available from a wide range of participants, while other OTC contracts have highly customized terms and conditions and are not as widely available. Many OTC contracts are cash-settled forwards for the future delivery of gasoline or petroleum-based fuels that have terms similar to the Futures Contracts. Others take the form of “swaps” in which the two parties exchange cash flows based on pre-determined formulas tied to the price of gasoline as determined by the spot, forward, or futures markets. USG may enter into OTC derivative contracts whose value will be tied to changes in the difference between the gasoline spot price, the price of Futures Contracts traded on NYMEX, and the prices of non-NYMEX Futures Contracts that may be invested in by USG.

Impact of Accountability Levels and Position Limits.

The CFTC and U.S. designated contract markets such as NYMEX have established accountability levels and position limits on the maximum net long or net short Futures Contracts in commodity interests that any person or group of persons under common trading control and that these limits are applicable to each of the Partnerships. Accountability levels and position limits are intended, among other things, to prevent a corner or squeeze on a market or undue influence on prices by any single trader or group

of traders. The net position is the difference between an individual or firm's open long contracts and open short contracts in any one commodity.

Most U.S. futures exchanges, such as NYMEX, also limit the daily price fluctuation (i.e., daily price limits) for Futures Contracts. The daily price limits establish the maximum amount that the price of a futures contract or an option on a futures contract may vary either up or down from the previous day's settlement price during a particular trading session. Once the daily limit has been reached in a particular futures contract or option on a futures contract, no trades may be made at a price beyond the limit.

The accountability levels for the Heating Oil Benchmark Futures Contract, the Gasoline Benchmark Futures Contract, and other Futures Contracts traded on NYMEX are not a fixed ceiling, but rather a threshold above which the NYMEX may exercise greater scrutiny and control over an investor's positions. The current accountability level for each of the Heating Oil Benchmark Futures Contract and Gasoline Benchmark Futures Contract is 7,000 contracts. If a Partnership exceeds this accountability level for its Benchmark Futures Contract, NYMEX will monitor the Partnership's exposure and ask for further information on its activities, including the total size of all positions, the investment and trading strategy, and the extent of liquidity resources. If deemed necessary by NYMEX, it could also order the Partnership to reduce its position back to the accountability level.

If NYMEX orders a Partnership to reduce its position back to the accountability level, or to an accountability level that NYMEX deems appropriate for the Partnership, such an accountability level may impact the mix of investments by such Partnership. To

illustrate, assume that the Heating Oil Benchmark Futures Contract and the unit price of USHO are each \$10, and that NYMEX has determined that USHO may not own more than 7,000 contracts. In such a case, USHO could invest up to \$2.940 billion of its daily net assets in the Benchmark Futures Contract (i.e., \$10 per unit multiplied by 42,000 (a Benchmark Futures Contract is a contract for 42,000 gallons (1,000 barrels)) multiplied by 7,000 contracts) before reaching the accountability level imposed by NYMEX. Once the daily net assets of the portfolio exceed \$2.940 billion in the Heating Oil Benchmark Futures Contract, the portfolio may not be able to make any further investments in the Heating Oil Benchmark Futures Contract, depending on whether the NYMEX imposes limits. If NYMEX does impose limits at the \$2.940 billion level (or another level), USHO anticipates that it will invest the majority of its assets above that level in a mix of other Futures Contracts or Other Heating Oil Related Investments. The above example applies equally to USG and the Gasoline Benchmark Futures Contract.

In addition to accountability levels, NYMEX imposes position limits on contracts held in the last few days of trading in the near month contract. The Exchange states that it is unlikely that a Partnership will run up against such position limits because each Partnership's investment strategy is to exit from the near month contract over a four day period beginning two weeks from expiration of the contract.

## Investment Procedures

The General Partner of each of USHO and USG anticipate that the use of Other Heating Oil Related Investments and Other Gasoline Related Investments, respectively, together with investments in Futures Contracts, will produce price and total return results that closely track each Partnership's investment objective.

Counterparty Procedures. To protect itself from the credit risk that arises in connection with OTC contracts, each Partnership will enter into agreements with each counterparty that provide for the netting of its overall exposure to its counterparty, and/or provide collateral or other credit support to address the Partnership's exposure. The counterparties to an OTC contract will generally be major broker-dealers and banks or their affiliates, though certain institutions, such as large energy companies, or other institutions active in the gasoline commodities markets, may also be counterparties. The General Partner will assess or review, as appropriate, the creditworthiness of each potential or existing, as appropriate, counterparty to an OTC contract pursuant to guidelines approved by the General Partner's board of directors. Furthermore, the General Partner, on behalf of each Partnership, will only enter into OTC contracts with (a) members of the Federal Reserve System or foreign banks with branches regulated by the Federal Reserve Board, (b) primary dealers in U.S. government securities, (c) broker-dealers, (d) commodities futures merchants, or (e) affiliates of the foregoing.

Cash, Cash Equivalents, and Treasuries. USHO and USG will invest virtually all of their assets not invested in Heating Oil Interests or Gasoline Interests, respectively, in cash, cash equivalents, and Treasuries with a remaining maturity of two years or less. The cash, cash equivalents, and Treasuries will be available to be used to meet each

Partnership's current or potential margin and collateral requirements with respect to investments in Heating Oil Interests or Gasoline Interests, as appropriate. Neither Partnership will use cash, cash equivalents, or Treasuries as margin for new investments unless it has a sufficient amount of cash, cash equivalents or Treasuries to meet the margin or collateral requirements that may arise due to changes in the value of its currently held Heating Oil Interests or Gasoline Interests. Other than in connection with a redemption of Units, each Partnership does not intend to distribute cash or property to its Unit holders. Interest earned on cash, cash equivalents, and Treasuries held by a Partnership will be retained by it to pay its expenses, to make investments to satisfy its investment objectives, or to satisfy its margin or collateral requirements.

#### The Markets for Partnership Units

There will be two markets for investors to purchase and sell Units. A new issuance of the Units will be made only in a "Basket" of 100,000 Units or multiples thereof. Each Partnership will issue and redeem Baskets on a continuous basis, by or through participants who have each entered into an authorized purchaser agreement ("Authorized Purchaser Agreement" and each such participant, an "Authorized Purchaser")<sup>9</sup> with the General Partner, at the NAV per Unit next determined after an order to purchase the Units in a Basket is received in proper form. A Basket may be issued and redeemed on any "business day" (defined as any day other than a day on which the Amex, NYMEX, or the New York Stock Exchange is closed for regular trading) through the Marketing Agent in exchange for cash and/or Treasuries, which the

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<sup>9</sup> An "Authorized Purchaser" must be (1) a registered broker-dealer or other market participant, such as a bank or other financial institution, that is exempt from broker-dealer registration; and (2) a DTC Participant.

Custodian receives from an Authorized Purchaser or transfers to an Authorized Purchaser, in each case on behalf of a Partnership. A Basket is then separable upon issuance into identical Units that will be listed and traded on the Exchange. The Exchange expects that the number of outstanding Units will increase and decrease as a result of creations and redemptions of Baskets.

The Units will thereafter be traded on the Exchange similar to other equity securities. Units will be registered in book-entry form through DTC. Trading in the Units on the Exchange will be effected until 4:15 p.m. Eastern time (“ET”) each business day. The minimum trading increment for such Units will be \$0.01.

Each Authorized Purchaser, and each distributor offering and selling newly issued Units as part of the distribution of such Units, is required to comply with the prospectus delivery and disclosure requirements of the Securities Act of 1933, as well as the requirements of the Commodities Exchange Act, including the requirement that prospective investors provide an acknowledgement of receipt of such disclosure materials prior to the payment for any newly issued Units.

Calculation of Partnership NAV. The Administrator will calculate NAV as follows: (1) determine the current value of each Partnership’s assets; and (2) subtract the liabilities of each Partnership. The NAV will be calculated shortly after the close of trading on the Exchange using the settlement value<sup>10</sup> of Futures Contracts traded on the NYMEX as of the close of open-outcry trading on the NYMEX at 2:30 p.m. ET, and for the value of other Heating Oil Interests or Gasoline Interests, depending on the Partnership, and Treasuries and cash equivalents, the value of such investments as of the

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<sup>10</sup> See Rules 6.52 and 6.52A of the NYMEX Rulebook.

earlier of 4:00 p.m. ET or the close of trading on the New York Stock Exchange. The NAV is calculated by including any unrealized profit or loss on Futures Contracts and Other Heating Oil Related Investments and Other Gasoline Related Investments, as the case may be, and any other credit or debit accruing to a Partnership but unpaid or not received by such Partnership. The NAV is then used to compute all fees (including the management and administrative fees) that are calculated from the value of Partnership assets. The Administrator will calculate the NAV per Unit by dividing the NAV by the number of Units outstanding.

When calculating NAV, the Administrator will value Futures Contracts based on the closing settlement prices quoted on the relevant commodities and futures exchange and obtained from various major market data vendors such as Bloomberg or Reuters. The value of the Other Heating Oil Related Investments or Other Gasoline Related Investments for purposes of determining the NAV will be based upon the determination of the Administrator as to the fair market value. Certain types of Other Heating Oil Related Investments and Other Gasoline Related Investments, such as listed options on Futures Contracts, have closing prices that are available from the exchange upon which they are traded or from various market data vendors. Other Heating Oil Related Investments and Other Gasoline Related Investments will be valued based on the last sale price on the exchange or market where traded. If a contract fails to trade, the value shall be the most recent bid quotation from the third-party source. Some types of Other Heating Oil Related Investments and Other Gasoline Related Investments, such as forward contracts, do not trade on established exchanges, but typically have prices that are widely available from third-party sources. The Administrator may make use of such

third-party sources in calculating a fair market value of these Other Heating Oil Related Investments and Other Gasoline Related Investments.

Certain types of Other Heating Oil Related Investments and Other Gasoline Related Investments, such as OTC derivative “swaps,” also do not have established exchanges upon which they trade and may not have readily available price quotes from third parties. Swaps and other similar derivative or contractual-type instruments will be first valued at a price provided by a single broker or dealer, typically the counterparty. If no such price is available, the contract will be valued at a price at which the counterparty to such contract could repurchase the instrument or terminate the contract. In determining the fair market value of such derivative contracts, the Administrator may make use of quotes from other providers of similar derivatives. If these are not available, the Administrator may calculate a fair market value of the derivative contract based on the terms of the contract and the movement of the underlying price factors of the contract.

Calculation of the Basket Amount. A Basket will be issued in exchange for Treasuries and/or cash in an amount equal to the NAV per Unit times 100,000 Units (the “Basket Amount”). A Basket will be delivered by the Marketing Agent to an Authorized Purchaser only after execution of the Authorized Purchaser Agreement.

Units in a Basket are issued and redeemed in accordance with the Authorized Purchaser Agreement. An Authorized Purchaser that wishes to purchase a Basket must transfer the Basket Amount, for each Basket purchased, to the Custodian (the “Deposit Amount”). An Authorized Purchaser that wishes to redeem a Basket will receive an amount of Treasuries and/or cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the “Redemption Amount”).

On each business day, the Administrator will make available, immediately prior to the opening of trading on the Exchange, the Basket Amount for the creation of a Basket based on the prior day's NAV. At or about 4:00 p.m. ET on each business day, the Administrator will determine the Basket Amount for orders placed by Authorized Purchasers received before 12:00 p.m. ET that day. Because orders to purchase and/or redeem Baskets must be placed by 12:00 p.m. ET, but the Basket Amount will not be determined until shortly after 4:00 p.m. ET on the date the order to purchase or redeem is received, an Authorized Purchaser will not know the total payment required to create or redeem a Basket at the time it submits such irrevocable purchase and/or redemption order. This is similar to exchange-traded funds and mutual funds. USHO's and USG's registration statements disclose that the NAV and the Basket Amount could rise and fall substantially between the time an irrevocable purchase order and/or redemption order is submitted and the time the Basket Amount is determined.<sup>11</sup>

Shortly after 4:00 p.m. ET on each business day, the Administrator, Amex, and the General Partner will disseminate the Basket Amount (for orders placed during the day) together with NAV for the Units. The Exchange will obtain a representation from each Partnership that its NAV and other relevant pricing information will be disclosed to all market participants at the same time. The Basket Amount and the NAV are communicated by the Administrator to all Authorized Purchasers via facsimile or e-mail. Concurrently, the Amex will also disclose the NAV and Basket Amount on its Web site

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<sup>11</sup> The General Partner states that the price of crude oil, heating oil, gasoline, and other petroleum-based fuels futures may fluctuate 5% or more between 12:00 noon, the cutoff for creation and redemption orders, and 2:30 p.m., the close of trading on NYMEX. As explained further below (see section entitled "Arbitrage," infra), the Exchange does not anticipate such price movements to impact the arbitrage process.

































