

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61807; File No. SR-NYSEAmex-2010-09)

March 31, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Amending its Trust Unit Rules and Proposing the Listing of the Nuveen Diversified Commodity Fund

On January 29, 2010, NYSE Amex LLC (“NYSE 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Amex Rule 1600 et seq. to permit the listing and trading of shares (“Shares”) of the Nuveen Diversified Commodity Fund (the “Fund”). The proposed rule change was published in the Federal Register on March 1, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Description of the Proposal

NYSE Amex previously adopted Rule 1600 et seq. to permit the listing of Trust Units, which are defined as securities that are issued by a trust or other similar entity that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts and/or commodities.⁴ Rule 1600 was adopted in contemplation of the listing of shares of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61571 (February 23, 2010), 75 FR 9265 (“Notice”).

⁴ See Securities Exchange Act Release No. 56880 (December 3, 2007), 72 FR 69259 (December 7, 2007) (SR-Amex-2006-96) (order approving NYSE Amex Rule 1600 et seq.).

Nuveen Commodities Income and Growth Fund (the “Fund”), a fund sponsored by Nuveen Investments, Inc. (“Nuveen”). Nuveen now proposes to go forward with a listing of shares (the “Shares”) of the Fund under a new name, the Nuveen Diversified Commodity Fund, and with a modified investment plan, which is described in detail in the Notice.⁵ NYSE Amex Rule 1600 as currently in effect permits only the listing of Trust Units whose issuers utilize the master/feeder structure originally intended to be used for the Fund. According to the Exchange, due to a change in the interpretation of applicable tax law by the Internal Revenue Service, the originally expected trust reporting procedures would no longer be available under a master/feeder structure. Nuveen therefore proposes to modify its approach and have the listed Fund make its own direct investments. Consequently, the Exchange proposes to amend the definition of Trust Units in Rule 1600 to remove the master/feeder structure requirement and permit the listing of Trust Units where the issuer is constituted as a commodity pool which invests directly in commodities and commodity derivatives. Nuveen has represented to the Exchange that there are no material revisions to the Fund’s structure or investment approach other than those described in this current filing.

The Fund was formed as a Delaware statutory trust on December 7, 2005 pursuant to a Declaration of Trust signed by Wilmington Trust Company, as the Delaware Trustee.⁶ The Fund’s primary investment objective is to seek total return through broad exposure to the commodities markets. The Fund’s secondary objective is to provide investors with monthly income and capital distributions not commonly associated with commodity investments. The Fund intends to pursue its investment objective by utilizing: (a) an actively managed rules-based

⁵ See Securities Exchange Act Release No. 56465 (September 19, 2007), 72 FR 54489 (September 25, 2007) (SR-Amex-2006-96) (notice providing a description of the Fund).

⁶ The Fund, as a commodity pool, will not be subject to registration and regulation under the Investment Company Act of 1940 (the “1940 Act”).

commodity investment strategy, whereby the Fund will invest in a diversified basket of commodity futures and forward contracts with an aggregate notional value substantially equal to the net assets of the Fund; and (b) a risk management program designed to moderate the overall risk and return characteristics of the Fund's commodity investments. The Fund will invest in commodity futures and forward contracts, options on commodity futures and forward contracts and over-the-counter ("OTC") commodity options in the following commodity groups: energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers and may in the future include other commodity investments that become the subject of commodity futures trading.

The Fund is a commodity pool and is managed by Nuveen Commodities Asset Management, LLC (the "Manager"). The Manager is registered as a commodity pool operator (the "CPO") and a commodity trading advisor (the "CTA") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA"). The Manager will serve as the CPO and a CTA of the Fund and will determine the Fund's overall investment strategy, including: (i) the selection and ongoing monitoring of the Fund's sub-advisors; (ii) the management of the Fund's business affairs; and (iii) the provision of certain clerical, bookkeeping and other administrative services. Gresham Investment Management LLC (the "Commodity Sub-Advisor") will invest on a notional basis substantially all of the Fund's assets in commodity futures and forward contracts pursuant to the commodity investment

strategy and a risk management program.⁷ The Commodity Sub-Advisor is a Delaware limited liability company and is registered with the CFTC as a CTA and a CPO and is a member of the NFA. The Commodity Sub-Advisor is also registered with the Commission as an investment adviser. Nuveen Asset Management (the “Collateral Sub-Advisor”), an affiliate of the Manager, will invest the Fund’s collateral in short-term, investment-grade quality debt instruments. The Collateral Sub-Advisor is registered with the Commission as an investment adviser.

The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Amex Rule 1602 and that the Fund has represented to the Exchange that, for initial and continued listing of the Shares, it will be in compliance with Section 803 of the NYSE Amex Company Guide (Independent Directors and Audit Committee) and Rule 10A-3 under the Act.⁸ Additional information regarding the Fund, the Shares, the Fund’s investment objectives, strategies, policies, and restrictions, fees and expenses, availability of information, trading rules, and surveillance procedures, among other things, can be found in the Notice.⁹

⁷ The Fund does not intend to utilize leverage. However, the Fund may borrow for temporary or emergency purposes in an amount up to 5% of the value of the Fund’s net assets should the need arise. Such short term borrowings would mature in less than 60 days from the date of borrowing. In order to facilitate any such borrowing, the Fund intends to establish a standby credit facility with State Street Bank and Trust Company that will be entered into as of the closing of the offering of its common shares. Any temporary or emergency borrowings would be used to provide the Fund with added potential flexibility in managing short-term portfolio liquidity needs and managing the payment of distributions.

⁸ 17 CFR 240.10A-3.

⁹ See supra note 3.

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 Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² 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 notes that the Shares must comply with the requirements of NYSE Amex Rule 1600 et seq. to be listed and traded on the Exchange.

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,¹³ 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 daily settlement prices for the commodity futures and forward contracts held by the Fund are publicly available on the Web sites of the futures and forward exchanges trading the particular contracts. Various data vendors and news publications publish futures prices and data. The Exchange represents that futures, forwards and related exchange traded options quotes and last sale information for the commodity contracts are widely disseminated through a variety of market data vendors worldwide, including

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 17 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures, forwards and exchange traded options is available by subscription from Reuters and Bloomberg. The relevant futures and forward exchanges also provide delayed futures and forward contract information on current and past trading sessions and market news free of charge on their respective Web sites. The contract specifications for the futures and forward contracts are also available from the futures and forward exchanges on their Web sites as well as other financial informational sources.

The Fund's total portfolio holdings will also be disclosed and updated on its Web site on each business day that the Exchange is open for trading.¹⁴ This Web site disclosure of portfolio holdings (as of the previous day's close) will be made daily and will include, as applicable: (a) the name and value of each commodity investment; (b) the value of over-the-counter commodity put options, if any, and the value of the collateral as represented by cash; (c) cash equivalents; and (d) debt securities held in the Fund's portfolio. The values of the Fund's portfolio holdings will, in each case, be determined in accordance with the Fund's valuation policies.

The Commission further believes that the proposal 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 that the NAV per Share will be calculated daily and made available to all market participants at the same time.¹⁵ The Manager has represented to the Exchange that the NAV will be disseminated to all market participants at the

¹⁴ The total portfolio holdings will be disseminated to all market participants at the same time.

¹⁵ See NYSE Amex Rule 1602 (a)(ii).

same time.¹⁶ Additionally, if the Exchange becomes aware that the portfolio holdings and net asset value per share are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹⁷

In addition, each of the Manager, the Commodity Broker, and the Commodity Sub-Advisor have represented to the Exchange that they have erected and maintain firewalls within their respective institutions to prevent the flow of non-public information regarding the portfolio of underlying securities from the personnel involved in the development and implementation of the investment strategy to others such as sales and trading personnel.

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. 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 Amex Rule 1602.
- (2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (3) The Exchange will distribute an Information Circular to its members in connection with the trading of the Shares. The Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other

¹⁶ See Notice, *supra*, note 3.

¹⁷ See NYSE Amex Rule 1602(b)(ii).

things, will discuss what the Shares are, the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction during the initial public offering, applicable NYSE Amex rules, and trading information and applicable suitability rules. The Circular will also explain that the Fund is subject to various fees and expenses described in the Registration Statement. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and note the respective jurisdictions of the Commission and CFTC. The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Shares.

- (4) The Fund will be in compliance with Rule 10A-3 under the Act.

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

In addition, the Commission finds that the proposed changes to NYSE Amex Rule 1600 et seq. to amend the definition of Trust Units to remove the master/feeder structure requirement and to modify and update the rules to make them consistent with the Exchange's recent rule book changes are consistent with the Act.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEAmex-2010-09), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).