

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57188; File No. SR-Amex-2007-70)

January 23, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Listing and Trading of Units of the United States Heating Oil Fund and the United States Gasoline Fund, LP

I. Introduction

On June 29, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² to list and trade units (a “Unit,” and 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”) pursuant to Amex Rules 1500-AEMI and 1501 through 1505. 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 proposed rule change, as amended, was published for comment in the Federal Register on January 3, 2008 for a 15-day comment period.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57042 (December 26, 2007), 73 FR 514 (“Notice”).

II. Description of Proposal

The Exchange proposes to list and trade Units issued by USHO and USG pursuant to Amex Rules 1500-AEMI and 1501 through 1505.⁴ The Exchange has represented that the Units will conform to the initial and continued listing criteria under Rule 1502,⁵ specialist prohibitions under Rule 1503, and the obligations of specialists under Rule 1504.

Each Unit represents ownership of a fractional undivided beneficial interest in the net assets of USHO and USG.⁶ The net assets of each Partnership will consist primarily of investments in futures contracts for heating oil, gasoline, crude oil, and other petroleum-based fuels 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

⁴ 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) that are issued and redeemed daily in specified aggregate amounts at net asset value. See Securities 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).

⁵ 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.

⁶ Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

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 investment in Futures Contracts and the management of Partnership 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. Each Partnership seeks to track price changes in percentage terms of an underlying commodity as measured by a benchmark defined to be the price of a specified futures contract. Each Partnership seeks to track price changes in percentage terms of an underlying commodity as measured by a benchmark defined to be the price of a specified futures contract.⁷

⁷ A detailed discussion of the underlying benchmark for each Partnership, dissemination of the values thereof, investment objective of the Partnership, portfolio investment methodology, investment techniques, availability of information and key values, creation and redemption of Units, arbitrage, dividends and distributions, Amex’s initial and continued listing standards, Amex trading rules and trading halts, information circular to Exchange members, and other related information regarding the Partnership can be found in the Notice. See supra note 3.

Accordingly, 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 a specified 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. Similarly, 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 a specified unleaded gasoline futures contract traded on the NYMEX (the "Gasoline Benchmark Futures Contract"), less USG's expenses. The Heating Oil Benchmark Futures Contract and Gasoline Benchmark Futures Contract employed are, in each case, 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.⁸

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.

⁸ The Heating Oil Benchmark Futures Contract and Gasoline Benchmark Futures Contract will be changed or "rolled" over a four-day period by selling the near month contract that expires the following month.

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.

The General Partner believes that market arbitrage opportunities should cause USHO's and USG's Unit prices to closely track each Partnership's per-Unit NAV, which are targeted at the current Heating Oil Benchmark Futures Contract and Gasoline Benchmark Futures Contract, respectively.

III. Commission Findings and Accelerated Approval

After careful review, 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.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires that an exchange have rules designed, among other things, 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, and, in general to protect investors and the public interest; and is not designed to permit unfair discrimination

⁹ In approving this proposed 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).

¹⁰ 15 U.S.C. 78f(b)(5).

between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange. The Commission notes that it previously approved the original listing and trading of certain partnership units similar to the Units.¹¹

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹² 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 Amex will disseminate for each Partnership every 15 seconds throughout Amex's trading day by means of the Consolidated Tape Association/Consolidated Quote High Speed Lines information with respect to the indicative partnership value ("IPV"). The Exchange will also make available on its Web site daily trading volume, the closing prices, and the NAV. Web site disclosure of portfolio holdings for both Partnerships will be made daily and will include, as applicable, the specific types, the name and value of each Heating Oil or Gasoline Interest, the specific types of Heating Oil or Gasoline Interests and characteristics of such interests, Treasuries, and amount of Cash held in the portfolio of the Partnerships. In addition, Amex represented that quotations and last-sale information regarding the Futures Contracts are widely disseminated through a variety of market

¹¹ See Securities Exchange Act Release Nos. 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR-Amex-2007-98) (approving listing and trading of units of the United States 12 Month Oil Fund, LP and the United States 12 Month Natural Gas Fund, LP); 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) ("Amex 2005-127 Order"); and 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR-Amex-2006-112) (approving the listing and trading of shares of the United States Natural Gas Fund, LP) ("Amex 2006-112 Order").

¹² 15 U.S.C. 78k-1(a)(1)(C)(iii).

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.

Furthermore, the Commission 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 also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Units when transparency is impaired. Trading in the Units will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. If the IPV or the underlying benchmark futures contract of a Partnership is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination occurs. If the interruption to the dissemination of the IPV or the underlying benchmark futures contract 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.¹³ In addition, the Exchange has represented that, if it learns or becomes aware that a Partnership fails to disseminate its NAV to all market participants at the same time, trading of such Partnership Units will be halted.¹⁴

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 will be traded on the Exchange similar to other equity securities.

¹³ E-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Exchange, to Michou Nguyen, Special Counsel, Division of Trading and Markets, Commission, on January 22, 2008; see also Amex Rule 1502(b)(ii)-(iii).

¹⁴ E-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Exchange, to Brian Trackman, Special Counsel, Division of Trading and Markets, Commission, on January 17, 2008.

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

- (1) The Exchange will obtain a representation from each Partnership, prior to listing, that the NAV per Unit for USHO and USG will be calculated daily and made available to all market participants at the same time. In addition, the Exchange represents that disclosure of the portfolio composition for each Partnership will be made to all market participants at the same time.
- (2) The Exchange's surveillance procedures are adequate to deter and detect violations of Exchange rules relating to trading of the Units. Specifically, the surveillance procedures will be similar to those used for units of the United States Oil Fund, LP and the United States Natural Gas Fund, LP¹⁵ 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. The Exchange currently has in place a comprehensive surveillance sharing agreement with each of NYMEX and ICE Futures for the purpose of providing information in connection with trading in, or related to, futures contracts traded on NYMEX and ICE Futures, respectively. To the extent that a Partnership invests in Heating Oil Interests or Gasoline Interests traded on other exchanges, the Amex will enter into comprehensive surveillance sharing agreements with those particular exchanges. The Exchange has represented that each of the Partnerships will only invest in futures contracts on markets where the Exchange has entered into the appropriate comprehensive surveillance sharing agreements.

¹⁵ See Amex 2005-127 Order and Amex 2006-112 Order, supra note 11.

(3) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular. The Information Circular will discuss the special characteristics, and risks, of trading in the Units. Specifically, the Information Circular, among other things, will discuss what the Units are, how a basket of Units is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Units prior to, or concurrently with, the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per-Unit IPV, trading information, and applicable suitability rules. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and describe the regulatory framework relating to the trading of heating oil and gasoline based futures contracts and related options. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

(4) The Trust is required to comply with Rule 10A-3 under the Act¹⁶ for the initial and continued listing of the Units.

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

IV. Acceleration

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁷ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes that the present proposal is

¹⁶ 17 CFR 240.10A-3.

¹⁷ 15 U.S.C. 78s(b)(2).

similar to prior proposals that the Commission has approved,¹⁸ is consistent with current Amex listing requirements, and received no comments following publication in the Federal Register. The Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from these additional investment choices without delay.

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,¹⁹ to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-Amex-2007-70), as amended, be, and is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon
Deputy Secretary

¹⁸ See supra, note 11.

¹⁹ 15 U.S.C. 78s(b)(5).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).