

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53875; File No. SR-NYSEArca-2006-11)

May 25, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of the United States Oil Fund, LP Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 26, 2006, NYSE Arca, Inc. (the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposes to amend its rules governing NYSE Arca, L.L.C. (also referred to as the “NYSE Arca Marketplace”), the equities trading facility of NYSE Arca Equities. The Exchange proposes new NYSE Arca Equities Rule 8.300 in order to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”), units in a partnership that is a commodity pool under the Commodity Exchange Act (“CEA”) that is designed to track a specified commodity or index of commodities by holding any combination of investments (i) comprised of or based on futures contracts, options on futures contracts, forward contracts, swaps, and over-the-counter (“OTC”)

¹ 15 U.S.C 78s(b)(1).

² 17 CFR 240.19b-4.

contracts for commodities or based on price changes in commodities, and (ii) in securities that may be required to satisfy margin or collateral requirements associated with investments in the financial instruments listed in item (i) above (such units are referred to generally herein as “Partnership Units”). Pursuant to these proposed rules, the Exchange initially proposes to trade, pursuant to UTP, units (“Units”) of the United States Oil Fund, LP (“USOF” or the “Partnership”).

The text of the proposed rule change appears below. Additions are underlined.

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Rules of NYSE Arca Equities, Inc.

Rule 8.300

Partnership Units

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Partnership Units that meet the criteria of this Rule.

(b) Definitions. The following terms as used in the Rule shall, unless the context otherwise requires, have the meanings herein specified:

(1) Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(2) Partnership Units. The term "Partnership Units" for purposes of this Rule means a security (a) that is 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 is issued and redeemed daily in specified aggregate amounts at net asset value.

(c) Designation. The Corporation may list and trade Partnership Units based on an underlying asset, commodity or security. Each issue of a Partnership Unit shall be designated as a separate series and shall be identified by a unique symbol.

(d) Initial and Continued Listing. Partnership Units will be listed and/or traded on the Corporation subject to application of the following criteria:

(1) Initial Listing—The Corporation will establish a minimum number of Partnership Units required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Listing—The Corporation will consider removing from listing Partnership Units under any of the following circumstances:

(i) if following the initial twelve month period following the commencement of trading of Partnership Units, (A) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Partnership Units for 30 or more consecutive trading days; (B) if the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (C) if the market value of all Partnership Units issued and outstanding is less than \$1,000,000;

(ii) if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or the Corporation stops providing a hyperlink on its Web site to any such investment, commodity, or asset value;

(iii) if the Indicative Partnership Value is no longer made available on at least a 15-second delayed basis; or

(iv) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a partnership, the Corporation requires that Partnership Units issued in connection with such partnership be removed from Corporation listing. A partnership will terminate in accordance with the provisions of the partnership prospectus.

(3) Term—The stated term of the partnership shall be as stated in the prospectus.

However, such entity may be terminated under such earlier circumstances as may be specified in the Partnership prospectus.

(4) General Partner—The following requirements apply:

(i) The general partner of a partnership must be an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner.

(ii) No change is to be made in the general partner of a listed issue without prior notice to and approval of the Corporation.

(5) Voting—Voting rights shall be as set forth in the applicable partnership prospectus.

(e) Market Maker Accounts.

(1) An ETP Holder acting as a registered Market Maker in Partnership Units is obligated to comply with Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Partnership Units, Other Business Activities shall include acting as a Market Maker or functioning in any capacity involving market-making responsibilities in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. However, an

approved person of an ETP Holder acting as a registered Market Maker in Partnership Units that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a Market Maker in the Partnership Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

(2) The ETP Holder acting as a registered Market Maker in Partnership Units must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Partnership Units shall trade in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Corporation as required by this Rule.

(3) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Partnership Units shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(4) In connection with trading the underlying asset or commodity, related futures or options on futures or any other related derivative (including Partnership Units), the ETP Holder acting as a registered Market Maker in Partnership Units shall not use any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the physical asset or commodity, futures or options on futures, or any other related derivatives.

(f) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the partnership in connection with issuance of Partnership Units; net asset value; or other information relating to the purchase, redemption or trading of Partnership Units, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying asset or commodity.

(g) The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets.

Commentary

.01 The Exchange requires that Equity Trading Permit holders provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

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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 Exchange 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 III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new NYSE Arca Equities Rule 8.300 in order to permit trading, either by listing or pursuant to UTP, units in a partnership that holds commodity-based or linked investments. Pursuant to this proposed rule, the Exchange initially proposes to trade pursuant to UTP the Units, which represent ownership of a fractional undivided interest in the net assets of USOF.³ The Commission previously approved the original listing and trading of the Units by the American Stock Exchange LLC (“Amex”).⁴

³ USOF, a Delaware limited partnership, is a commodity pool. The Exchange states that USOF is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940. The offering of the Units of the Partnership is registered with the Commission under the Securities Act of 1933.

⁴ See Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (order granting approval to SR-Amex-2005-127) (“Amex Order”); 53324 (February 16, 2006), 71 FR 9614 (February 24, 2006) (“USOF Notice”).

The investment objective of the USOF is for its net asset value (“NAV”)⁵ to reflect the performance of the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma (the “WTI light, sweet crude oil”),⁶ as represented by the performance of the price of the “Benchmark Oil Futures Contract,” less the expense of operation of USOF. The “Benchmark Oil Futures Contract” is the near-month (i.e., spot month) future contract for delivery of WTI light, sweet crude oil traded on the New York Mercantile Exchange (“NYMEX”).⁷

The assets of USOF will consist of futures contracts for light, sweet crude oil and other petroleum based fuels that are traded on the NYMEX or other U.S. and foreign exchanges⁸ (collectively, “Oil Futures Contracts”). USOF will also purchase other oil interests, such as cash-settled options on Oil Futures Contracts, forward contracts for oil, and OTC transactions that are based on the price of oil, other petroleum-based fuels, and indices based on the foregoing

⁵ NAV is the total assets, less total liabilities of USOF, determined on the basis of generally accepted accounting principles. NAV per Unit is the NAV of USOF divided by the number of outstanding Units.

⁶ The types of crude oil are typically described by a combination of their physical attributes and their place of origin. A few of these types of crude oil are widely traded and their prices serve as benchmarks in determining the spot and forward prices of the other types of crude oil. The three most important types of crude oil that are used as benchmarks are the light, sweet crude oil from the United States known as “West Texas Intermediate,” a light, sweet crude oil from Europe’s North Sea known as “Brent Crude,” and a medium crude oil from the Middle East known as “Dubai Crude.” These three types of crude oil are the ones used most frequently in the trading of listed futures contracts, listed options, and non-exchange listed derivative contracts based on crude oil.

⁷ The Exchange will file a Form 19b-4 to obtain Commission approval for the continued trading of the Units should the General Partner change the Benchmark Oil Futures Contract from this NYMEX WTI light, sweet crude oil futures contract.

⁸ USOF will primarily purchase WTI light, sweet crude Oil Futures Contracts traded on the NYMEX, but may also purchase Oil Futures Contracts on other exchanges, including the Intercontinental Exchange, formerly known as the International Petroleum Exchange, which operates its futures business through ICE Futures (“ICE Futures”) and the Singapore Oil Exchange.

(collectively, “Other Oil Interests”). (Oil Futures Contracts and Other Oil Interests are collectively referred to as “Oil Interests.”) The Oil Interests for light, sweet crude oil and other petroleum based fuels in which USOF will invest are based on domestic oil, (WTI light, sweet crude oil), international oil (Brent Crude Oil), heating oil, natural gas, and gasoline. A description of these commodities and the primary trading market for futures contracts based on such commodities is set forth in the USOF Notice.⁹

USOF will also invest in short term obligations of the United States Government (“Treasuries”) to be used to satisfy its current or future margin and collateral requirements and to otherwise satisfy its obligations with respect to its investments in Oil Interests.

(a) The Units

In January 2005, the Commission approved an Exchange rule (NYSE Arca Equities Rule 8.201) for the listing and trading of Commodity-Based Trust Shares.¹⁰ Commodity-Based Trust Shares are trust issued receipts (“TIRs”) based on the value of an underlying commodity or index of commodities held by a trust. Because of USOF’s structure as a partnership and the nature of its investments, the current Commodity-Based Trust Shares rule (NYSE Arca Equities Rule 8.201) does not specifically permit the Exchange to trade this product. This proposal seeks to expand the ability of the Exchange to list and/or trade securities based on a portfolio of underlying

⁹ See USOF Notice, supra note 4.

¹⁰ See Securities Exchange Act Release Nos. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (approving general standards for the listing and trading of Commodity-Based Trust Shares and trading pursuant to UTP of shares of the iShares® COMEX Gold Trust); 51245 (February 23, 2005), 70 FR 10731-01 (March 4, 2005) (approving the trading pursuant to UTP of shares of the streetTRACKS® Gold Trust); 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (approving the trading pursuant to UTP of shares of the iShares Silver Trust). See also Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (proposal to trade pursuant to UTP shares of the DB Commodity Index Tracking Fund).

investments that may not be “securities” in circumstances where the issuer is a partnership, organized as a commodities pool under the CEA.

Under proposed NYSE Arca Equities Rule 8.300, the Exchange would be able to trade pursuant to UTP the Units issued by USOF. For units issued by other commodity-based partnerships or other types of units issued by USOF, if any, the Exchange would submit a filing pursuant to Section 19(b) of the Act, subject to the review and approval of the Commission.

A description of the liquidity, depth, and pricing mechanisms of the international oil market, the regulation of futures, operation of the USOF, and a description of the Units is set forth in the Amex Order and the USOF Notice.¹¹ To summarize, issuances of Units will be made only in baskets of 100,000 Units or multiples thereof (a “Basket”). The Partnership will issue and redeem Baskets of the Units on a continuous basis by or through participants who have entered into authorized purchaser agreements (each, an “Authorized Purchaser”)¹² with the General Partner,¹³ at the net asset value (“NAV”) per Unit next determined after an order to purchase the Units in a Basket is received in proper form. Baskets may be issued and redeemed on any Business day (defined as any day other than a day on which the Amex, the NYMEX, or the New York Stock Exchange is closed for regular trading) through ALPS Distributors, Inc. (the

¹¹ See supra note 4.

¹² An “Authorized Purchaser” is a person, who at the time of submitting to the General Partner an order to create or redeem one or more Baskets, (i) is a registered broker-dealer or other market participant, such as a bank or other financial institution that is exempt from broker-dealer registration, (ii) is a Depository Trust Company Participant, and (iii) has in effect a valid Authorized Purchaser Agreement.

¹³ The General Partner is Victoria Bay Asset Management, LLC, a single member Delaware limited liability company wholly owned by Wainwright Holdings, Inc. The General Partner, which was formed for the specific purpose of managing and controlling USOF, has registered as a Commodity Pool Operator (“CPO”) with the Commodity Futures Trading Commission (“CFTC”) and has become a member of the National Futures Association (“NFA”).

“Marketing Agent”) in exchange for cash and/or Treasuries, which Brown Brothers Harriman & Co. (the “Custodian” and the “Administrator”) receives from Authorized Purchasers or transfers to Authorized Purchasers, in each case on behalf of USOF. Baskets are then separable upon issuance into identical Units that will be traded on the NYSE Arca Marketplace as equity securities.¹⁴

Baskets 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”). Authorized Purchasers that wish to purchase a Basket must transfer the Basket Amount to the Administrator (the “Deposit Amount”). Authorized Purchasers that wish to redeem a Basket will receive an amount of Treasuries and 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, prior to 9:30 a.m. Eastern Time (“ET”), the estimated Basket Amount for the creation of a Basket based on the prior day’s NAV.¹⁵ According to the Amex Order, the Amex will disseminate at least every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape Association (“CTA”), an amount representing, on a per Unit basis, the current indicative value of the Basket Amount (See “Indicative Partnership Value” below). Shortly after 4:00 p.m. ET, the Administrator will determine the NAV for USOF as described below. At or about 4:00 p.m. ET on each business day, the Administrator will determine the Actual Basket Amount (“Actual Basket Amount”) for

¹⁴ The Exchange expects that the number of outstanding Units will increase and decrease as a result of creations and redemptions of Baskets.

¹⁵ The Administrator will make available an “estimated” Basket Amount prior to the opening of trading on the Exchange, rather than the Actual Basket Amount, which will not be available until shortly after 4:00 p.m. ET each business day, as described below. All such information (NAV, Actual Basket Amount, Estimated Basket Amount, and daily disclosure of portfolio holdings) will be available to all market participants at the same time to avoid any informational disadvantage.

orders placed by Authorized Purchasers received before 12:00 p.m. ET that day. Thus, although Authorized Purchasers place orders to purchase Units during the trading day until 12:00 p.m. ET, the Actual Basket Amount is determined as of 4:00 p.m. ET.

Shortly after 4:00 p.m. ET on each business day, the Administrator, Amex, and the General Partner will disseminate the NAV for the Units and the Actual Basket Amount (for orders placed during the day). The Basket Amount and the NAV are communicated by the Administrator to all Authorized Purchasers via facsimile or electronic mail message. According to the Amex Order, the Amex will also disclose the NAV and the Actual Basket Amount on its Web site at <http://www.amex.com>.¹⁶ On each day that the Amex is open for regular trading, the Administrator will adjust the Deposit Amount as appropriate to reflect the prior day's Partnership NAV and accrued expenses. The Administrator will then determine the Deposit Amount for a given business day.

The Administrator will calculate NAV as follows: (1) determine the current value of USOF assets and (2) subtract the liabilities of USOF. The NAV will be calculated at 4:00 p.m. ET using the settlement value¹⁷ of Oil 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 Oil Futures Interests and Treasuries, the value of such investments as of the 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 Oil Futures Contracts and other Oil Interests and any other credit or debit accruing to USOF but unpaid or not received by USOF. 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

¹⁶ See supra note 15.

¹⁷ See NYMEX Rule 6.52.

the number of Units outstanding. The calculation methodology for the NAV is described in more detail in the Amex Order.

The Units will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Units to constitute a Basket (i.e., 100,000 Units). Authorized Participants that wish to redeem a Basket will receive the Redemption Amount in exchange for each Basket surrendered.¹⁸ The operation of the Partnership and creation and redemption process is described in more detail in the Amex Order.

(b) **Dissemination and Availability of Information**

(i) **Oil Futures Contracts**

The daily settlement prices for the NYMEX traded Oil Futures Contracts held by USOF are publicly available on the NYMEX Web site at <http://www.nymex.com>. The Exchange's Web site at <http://www.nysearca.com> will also include a hyperlink to the NYMEX Web site for the purpose of disclosing futures contract pricing. In addition, various market data vendors and news publications publish futures prices and related data. The Exchange represents that quote and last sale information for the Oil Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. According to the Amex Order, last sale information for the Benchmark Oil Futures Contract will be updated and disseminated at least every 15 seconds by one or more major market data vendors during the time the Units trade. However, from 2:30 p.m. ET to the opening of NYMEX ACCESS at 3:15 p.m. ET, the pricing for the Benchmark Oil Futures Contract will not be updated. The Exchange further represents that real-time futures data is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures information on

¹⁸ Authorized Purchasers are required to pay a transaction fee of \$1,000 for each order to create or redeem one or more Baskets.

current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the Oil Futures Contracts are also available on the NYMEX Web site and the ICE Futures Web site at <https://www.theice.com>.

(ii) USOF Units

The Web site for USOF, which will be publicly accessible at no charge and to which the Exchange will provide a hyperlink on its Web site (<http://www.nysearca.com>), will include the following information: (1) the prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price¹⁹ in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (3) calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the Commission or required by the CFTC; and (6) other applicable quantitative information. In addition, information on USOF's daily portfolio holdings will be available on its Web site at <http://www.unitedstatesoilfund.com> and will be equally accessible to investors and Authorized Purchasers.

As described above, the NAV for USOF will be calculated and disseminated daily. According to the Amex Order, the Amex also intends to disseminate for USOF on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Partnership Value (as discussed below), recent NAV, Units outstanding, the estimated Basket Amount and the Deposit Amount (e.g., the Actual Basket Amount). The Exchange will make available on its Web site daily trading volume, closing prices and the NAV. The closing price

¹⁹ The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

and settlement prices of the Oil Futures Contracts held by USOF are also readily available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.nysearca.com> to USOF's Web site.

(iii) Indicative Partnership Value

According to the Amex Order, the Amex will disseminate through the facilities of the CTA an updated Indicative Partnership Value (the "Indicative Partnership Value") per Unit basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The Indicative Partnership Value will be calculated based on the Treasuries and cash required for creations and redemptions (*i.e.*, NAV per limit x 100,000) adjusted to reflect the price changes of the current Benchmark Oil Futures Contract.

The Indicative Partnership Value will not reflect price changes to the price of the current Benchmark Oil Futures Contract between the close of open-outcry trading of these oil futures contract on the NYMEX at 2:30 p.m. ET and the open of trading on the NYMEX ACCESS market at 3:15 p.m. ET.²⁰ The Indicative Partnership Value after 3:15 p.m. ET will reflect changes to the current Benchmark Oil Futures Contract as provided for through NYMEX ACCESS. The value of a Unit may accordingly be influenced by the non-concurrent trading hours of the Amex and NYMEX. While the Units will trade on the Amex from 9:30 a.m. to 4:15 p.m. ET, the current Benchmark Oil Futures

²⁰ NYMEX ACCESS®, an electronic trading system, is open for price discovery on the NYMEX light, sweet crude oil futures contract each Monday through Thursday at 3:15 p.m. ET through the following morning at 9:50 a.m. ET, from 3:15-5:00 p.m. Friday, and from 7:00 p.m. Sunday night until Monday morning 9:50 a.m. ET. Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Angela Muehr, Attorney, Division of Market Regulation ("Division"), Commission, on May 25, 2006.

Contract will trade, in open-outcry, on the NYMEX from 10:00 a.m. ET to 2:30 p.m. ET and NYMEX ACCESS from 3:15 p.m. ET through the following morning 9:50 a.m. ET.

While the NYMEX (open outcry) is open for trading, the Indicative Partnership Value can be expected to closely approximate the value per unit of the Basket Amount.²¹ However, during Exchange trading hours when the Oil Futures Contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Units and the NAV of the Units. The Exchange believes that dissemination of the Indicative Partnership Value based on the cash amount required for a Basket provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Units trading on NYSE Arca Marketplace or the creation or redemption of the Units.

(c) **Continued Listing and UTP Trading Criteria**

While the Exchange immediately seeks to trade the Units pursuant to UTP, the Exchange is also adopting general initial and continued listing standards applicable to all Partnership Units in the event the Exchange were to list such Partnership Units. In such an event, the Exchange would still file a Form 19b-4 to list such Partnership Units. Nevertheless, such continued listing standards are included below.

When the Exchange is the listing market for Partnership Units, the Partnership will be subject to the continued listing and trading criteria under proposed new NYSE Arca Equities Rule 8.300. In particular, the proposed continued listing criteria provides that the Exchange will consider removal from listing of such Partnership Units under any of the following circumstances:

- If, following the initial twelve month period from the date of commencement of

²¹ Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Angela Muehr, Attorney, Division, Commission, on May 25, 2006.

trading of the Partnership Units, (i) the Partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Partnership Units for 30 or more consecutive trading days; (ii) the Partnership has fewer than 50,000 Partnership Units issued and outstanding; or (iii) the market value of all Partnership Units issued and outstanding is less than \$1,000,000;

- If the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or the Exchange stops providing a hyperlink on its Web site to any such investment, commodity or asset value;

- If the Indicative Partnership Value is no longer made available on at least a 15-second delayed basis; or

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove Partnership Units from listing and trading upon termination of the Partnership.

If the Exchange is trading Partnership Units pursuant to UTP, such as the Units, then the Exchange will cease trading in the Units if (i) the listing market stops trading the Units because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the Indicative Partnership Value or the value of the underlying spot commodity or Oil Futures Contract is no longer available; or (ii) the listing market delists the Units. Additionally, the Exchange may cease trading the Units if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Exchange Act.²²

(d) Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Partnership subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Units on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a), except that the Units will not be eligible to trade during the Opening Session (4:00 a.m. to 9:30 a.m. ET) or the Late Trading Session (4:15 p.m. to 8:00 p.m. ET) unless the Indicative Partnership Value is disseminated during that time.²³ The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. The minimum trading increment for Units on the Exchange will be \$0.01.

Further, the Exchange has proposed new NYSE Arca Equities Rule 8.300(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Units to facilitate surveillance. NYSE Arca Equities Rule 8.300(e)(2)-(3) will require that the ETP Holder acting as a registered Market Maker in the Units provide the Exchange with necessary information relating to its trading in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.300(e)(4) will prohibit the ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such

²² See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

²³ If the Indicative Partnership Value is disseminated during the Opening and/or Late Trading Sessions, NYSE Arca will file a proposal under Section 19(b) of the Act before permitting trading during those Sessions.

person regarding trading by such person or employee in the underlying asset or commodity, related futures or options on futures or any other related derivative (including the Units). In addition, NYSE Arca Equities Rule 8.300(e)(1) will prohibit the ETP Holder acting as a registered Market Maker in the Units from being affiliated with a market maker in the underlying asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which includes any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder 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.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading in the Units may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include (i) the extent to which trading is not occurring in the current Benchmark Oil Futures Contract, or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule²⁴ or by the halt or suspension of the trading of the current Benchmark Oil Futures Contract.

²⁴ See NYSE Arca Equities Rule 7.12.

If the Exchange is the listing market for Partnership Units, the Exchange will halt trading in the Partnership Units if: (i) the value of the underlying benchmark investment, commodity or asset updated at least every 15 seconds from a source not affiliated with the sponsor, partnership, or the Exchange is no longer available; (ii) the Indicative Partnership Value per Unit updated at least every 15 seconds is no longer available, or (iii) the Exchange stops providing on the Exchange's Web site, via a hyperlink to the partnership's Web site, such value of the underlying investment, commodity or asset and Indicative Partnership Value per Unit.²⁵

If the Exchange is trading Partnership Units pursuant to UTP, such as the Units, the Exchange will cease trading the Units if (i) the listing market stops trading the Units because of a regulatory halt similar to NYSE Arca Equities Rule 7.12 or a halt because the Indicative Partnership Value or the value of the underlying spot commodity or Oil Futures Contract is no longer available, or (ii) the listing market delists the Units. Additionally, the Exchange may cease trading the Units if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Units will be deemed "Eligible Listed Securities," as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

²⁵ In the event the value of the underlying benchmark investment, commodity or asset or the Indicative Partnership Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

USOF sought and received certain exemptive relief for the Units, including relief from the short sale rule, Rule 10a-1, and Regulation SHO under the Act.²⁶

(e) **Surveillance**

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products and shares of the streetTRACKS Gold Trust²⁷ to monitor trading in the Units. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Units.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Units and the underlying Oil Futures Contracts through ETP Holders in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including the CBOT. In addition, the Exchange has an Information Sharing Agreement in place with NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX. To the extent that USOF invests in Oil Interests traded on other exchanges, the Exchange will enter into information sharing agreements, acceptable to the Commission staff, with those particular exchanges.²⁸

²⁶ See letter from James A. Brigagliano, Acting Associate Director, Division, Commission, to Mr. James M. Cain, Esq., Sutherland, Asbill & Brennan LLP, dated April 7, 2006.

²⁷ See supra note 10.

²⁸ In such event, the Exchange will file a proposed rule change pursuant to Rule 19b-4 of the Act, indicating such surveillance arrangements.

(f) Information Bulletin

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 Units. Specifically, the Information Bulletin will discuss the following: (i) the procedures for purchases and redemptions of Units in Baskets (and that Units are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a),²⁹ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (iii) how information regarding the Indicative Partnership Value is disseminated; (iv) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (v) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Partnership. The Exchange notes that investors purchasing Units directly from the Partnership (by delivery of the Deposit Amount) will receive a prospectus. ETP Holders purchasing Units from the Partnership for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Partnership is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical

²⁹ The Exchange has proposed to amend NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. See Amendment No. 1 to SR-PCX-2005-115 (November 21, 2005).

commodities, and that the Commission has no jurisdiction over the trading of WTI light, sweet crude oil, Brent crude oil, heating oil, gasoline, natural gas or other petroleum-based fuels, that the CFTC has regulatory jurisdiction over the trading of oil-based futures contracts and related options, and that trading in certain OTC commodity based derivatives is not within the jurisdiction of the CFTC and may therefore be effectively unregulated. Further, the Information Bulletin will disclose that the NAV for the Units will be calculated shortly after 4:00 p.m. ET each trading day.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act³⁰ in general and furthers the objectives of Section 6(b)(5),³¹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act³² because it deems the Units to be equity securities, thus rendering the Units subject to the Exchange's existing rules governing the trading of equity securities.

³⁰ 15 U.S.C. 78s(b).

³¹ 15 U.S.C. 78s(b)(5).

³² 17 CFR 240.12f-5.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2006-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2006-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2006-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.³³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³⁴ which requires that an exchange have rules designed, among other things, 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.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,³⁵ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered

³³ In approving this 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).

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ 15 U.S.C. 78l(f).

on another exchange.³⁶ The Commission notes that it previously approved the listing and trading of the Units on the Amex.³⁷ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,³⁸ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSEArca rules deem the Units to be equity securities, thus trading in the Units will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁹ which sets forth Congress's 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.

In support of the portion of the proposed rule change regarding UTP of the Units, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Units on the Exchange.

³⁶ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

³⁷ See Amex Order, *supra* note 4.

³⁸ 17 CFR 240.12f-5.

³⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

3. The Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Units on the Exchange that explains the special characteristics and risks of trading the Units.

4. The Exchange will require a member with a customer who purchases newly issued Units on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Units if (i) the listing market stops trading the Units because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the Indicative Partnership Value or the value of the underlying Oil Futures Contract for WTI light, sweet crude oil is no longer available, or (ii) the listing market delists the Units. Additionally, the Exchange may cease trading the Units if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of these Units on the Amex is consistent with the Act.⁴⁰ The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Units.

⁴⁰ See Amex Order, supra note 4.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2006-11), is hereby approved on an accelerated basis.⁴¹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴²

Nancy M. Morris
Secretary

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 17 CFR 200.30-3(a)(12).