

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61881; File No. SR-NYSEArca-2010-14)

April 9, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing of the United States Brent Oil Fund, LP

I. Introduction

On March 3, 2010, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade units of the United States Brent Oil Fund, LP. The proposed rule change was published for comment in the Federal Register on March 24, 2010.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade units (“Units”) of the United States Brent Oil Fund, LP (“USBO”) pursuant to NYSE Arca Equities Rule 8.300, which governs the listing and trading of partnership units on the Exchange.<sup>4</sup> USBO, a Delaware limited partnership, is a commodity pool that is managed and controlled by its general partner, United States Commodity Funds LLC (“General Partner”). The General Partner is a single member limited liability company that was formed in Delaware on May 10, 2005 and is registered as a commodity pool

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61721 (March 16, 2010), 75 FR 14237 (“Notice”).

<sup>4</sup> USBO has filed with the Commission Amendment No. 2 to Form S-1, dated January 22, 2010 (File No. 333-162015) (“Registration Statement”).

operator with the Commodity Futures Trading Commission (“CFTC”), and is a member of the National Futures Association. The General Partner is not affiliated with a broker-dealer. The Exchange represents that USBO will comply with the requirements NYSE Arca Equities Rule 8.300<sup>5</sup> and with the requirements of Rule 10A-3 under the Act<sup>6</sup> as it applies to limited partnerships.

The net assets of USBO will consist primarily of investments in futures contracts for crude oil, heating oil, gasoline, natural gas and other petroleum-based fuels that are traded on the ICE Futures Exchange, New York Mercantile Exchange (“NYMEX”), or other U.S. and foreign exchanges (collectively, “Futures Contracts”). USBO may also invest in other crude oil-related investments, such as cash-settled options on Futures Contracts, forward contracts for crude oil, cleared swap contracts and over-the-counter transactions that are based on the price of crude oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (“Other Crude Oil-Related Investments” and, together with Futures Contracts, “Crude Oil Interests”).

USBO will invest in Crude Oil Interests to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations with respect to its investments in Futures Contracts and Other Crude Oil-Related Investments. The primary focus of the General Partner will be investing in Futures Contracts and the management of investments in short-term obligations of the United States of two years or less (“Treasuries”), cash and/or cash equivalents for margining purposes and as collateral.

The investment objective of USBO is intended to have the daily changes in percentage

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<sup>5</sup> The Exchange represents that a minimum of 100,000 Units will be outstanding at the commencement of trading on the Exchange, the net asset value (“NAV”) per Unit will be calculated daily, and the NAV and the portfolio composition will be made available to all market participants at the same time.

<sup>6</sup> 17 CFR 240.10A-3.

terms of its Units' NAV reflect the daily changes in percentage terms of the spot price of Brent crude oil as measured by the changes in the price of the futures contract on Brent crude oil, as traded on ICE Futures Exchange that is the near-month contract to expire, except when the near-month contract is within two weeks of expiration, in which case the futures contract will be the next-month contract to expire ("Benchmark Futures Contract"), less USBO's expenses. The General Partner will employ a "neutral" investment strategy intended to track the changes in the price of the Benchmark Futures Contract regardless of whether the price goes up or goes down. USBO may invest in Crude Oil Interests other than the Benchmark Futures Contract to comply with accountability levels and position limits. On each day during a four-day period, the General Partner anticipates it will "roll" USBO's positions in oil investments by closing, or selling, a percentage of USBO's positions in Crude Oil Interests and reinvesting the proceeds from closing those positions in new Crude Oil Interests that reflect the change in the Benchmark Futures Contract.

The Exchange represents that USBO will create and redeem Units only in blocks of 100,000 Units called Creation Baskets and Redemption Baskets, respectively. Only Authorized Purchasers may purchase or redeem Creation Baskets or Redemption Baskets.

Additional information regarding the Units, USBO, the investment objective, policies, investment strategies, accountability levels, position limits, calculation of NAV, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.<sup>7</sup>

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<sup>7</sup> See supra notes 3 and 4.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Units is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> 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. The Commission notes that it has previously approved the listing and trading of other petroleum-based funds that are substantially similar to USBO.<sup>10</sup>

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<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See, e.g., Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (order approving listing and trading on the American Stock Exchange LLC ("Amex") of United States Oil Fund, LP); 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR-Amex-2007-98) (order approving listing and trading on the Amex of United States 12 Month Oil Fund, LP and United States 12 Month Natural Gas Fund, LP); 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR-Amex-2006-112) (order approving listing and trading on the Amex of United States Natural Gas Fund, LP); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR-Amex-2007-70) (order approving listing and trading on the Amex of United States Heating Oil Fund, LP and United States Gasoline Fund, LP); 58965 (November 17, 2008), 73 FR 71078 (November 24, 2008) (SR-NYSEArca-2008-127) (order approving listing and trading on the Exchange of United States Oil Fund, LP, United States 12 Month Oil Fund, LP, United States Heating Oil Fund, LP, United States Gasoline Fund, LP, United States 12 Month Natural Gas Fund, LP and United States Natural Gas Fund, LP); and 59173 (December 29, 2008), 74 FR 490 (January 6, 2009) (SR-NYSEArca-2008-125) (order approving listing and trading on the Exchange of United States Short Oil Fund, LP).

The Commission finds that the proposal to list and trade the Units on the Exchange is also consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>11</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and 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. Quotation and last-sale information for the Units will be disseminated through the facilities of the Consolidated Tape Association, and the Indicative Partnership Value ("IPV") will be calculated, updated and disseminated on a per-Unit basis every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors. In addition, USBO will make available on its Web site on each business day its total portfolio composition that will include, as applicable, the name and value of each Crude Oil Interest, the specific types of Other Crude Oil-Related Investments, Treasuries, and the amount of cash and cash equivalents held in USBO's portfolio. With respect to information regarding the underlying Futures Contracts, ICE Futures Exchange disseminates price information on the Futures Contracts traded on the ICE Futures Exchange on a real-time basis during normal trading hours on the ICE Futures Exchange from 8:00 p.m. to 6:00 p.m. Eastern Time. With respect to any Futures Contracts that are traded on NYMEX, NYMEX disseminates price information on a real-time basis during normal trading hours on NYMEX from 10:00 a.m. to 2:30 p.m. E.T.

The Commission further believes that the proposal 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 notes that if the Exchange becomes aware that the NAV or the portfolio composition applicable to the

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

Units is not disseminated to all market participants at the same time, the Exchange will halt trading in the Units. Further, if the indicative partnership value or the underlying benchmark investment, commodity or asset applicable to the Units is not being disseminated as required, the Exchange may halt trading during the day in which the interruption first occurs; if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>12</sup>

The Exchange has represented that the Units 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. USBO will comply with the requirements of NYSE Arca Equities Rule 8.300, which includes initial and continued listing criteria.
2. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.
3. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
4. 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: (a) the risks involved in trading the Units during the Opening and Late

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<sup>12</sup> Trading in the Units may also 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: the extent to which trading is not occurring in the underlying Futures Contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or (3) pursuant to the Exchange's "circuit breaker" rule (see NYSE Arca Equities Rule 7.12).

Trading Sessions (for Futures Contracts traded on ICE Futures), or, in addition, part of the Core Trading Session (for Futures Contracts traded on NYMEX) when an updated IPV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Units (and that Units are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), 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; (d) how information regarding the IPV is disseminated; (e) 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 (f) trading information..

5. USBO will be in compliance with Rule 10A-3 under the Act.<sup>13</sup>
6. To the extent that USBO invests in Futures Contracts traded on exchanges other than ICE Futures Exchange and NYMEX, not more than 10% of USBO's assets in the aggregate shall consist of Crude Oil Interests whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

This approval order is based on the Exchange's representations.<sup>14</sup>

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<sup>13</sup> 17 CFR 240.10A-3.

<sup>14</sup> The Commission notes that it does not regulate the market for the futures in which USBO plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures on commodities. These limits may be directly set by the CFTC, or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures in commodities, even though such limits could impact a commodity-based exchange-traded product that is under the jurisdiction of the Commission.

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.

IV. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> for approving the proposal prior to the thirtieth day after the publication of the Notice in the Federal Register. The Commission notes that it has approved the listing and trading of other limited partnerships, the characteristics of which are substantially similar to USBO.<sup>16</sup> The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposal to list and trade the Units does not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for limited partnership units.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the

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

<sup>16</sup> See supra note 10 and accompanying text.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2010-14) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).