

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53582; File No. SR-Amex-2005-127)

March 31, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Listing and Trading of Units of the United States Oil Fund, LP

I. Introduction

On December 6, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² On January 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ On February 15, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment Nos. 1 and 2, was published for comment in the Federal Register on February 24, 2006.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Partial Amendment dated, January 20, 2006 (“Amendment No. 1”). In Amendment No. 1, the Amex made clarifying changes to the “purpose” section of the proposed rule change.

⁴ See Partial Amendment dated, February 15, 2006 (“Amendment No. 2”), which made technical and clarifying changes to the “purpose” section of the proposed rule change.

⁵ See Securities Exchange Act Release No. 53324 (February 16, 2006), 71 FR 9614 (February 24, 2006) (“USOF Notice”).

II. Description of the Proposal

The Exchange proposes to add new Rules 1500 et seq. to permit the listing and trading of units in a partnership that is a commodity pool under the Commodity Exchange Act (“CEA”)⁶ that are 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”) 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. Pursuant to these proposed rules, the Amex proposes to list and trade units (the “Units”) of the United States Oil Fund, LP (“USOF” or the “Partnership”). The Units represent ownership of a fractional undivided beneficial interest in the net assets of USOF.

USOF, a Delaware limited partnership, is a commodity pool.⁷ It is operated by Victoria Bay Asset Management, LLC, a single member Delaware limited liability company (the “General Partner” or “Victoria Bay”), which is wholly owned by Wainwright Holdings, Inc. The General Partner was formed for the specific purpose of managing and controlling USOF and has registered as a Commodity Pool Operator (“CPO”) with the Commodity Futures Trading Commission (“CFTC”) and become a member of the National Futures Association (“NFA”).⁸

⁶ The offering of the Units of the Partnership is registered with the Commission under the Securities Act of 1933.

⁷ The Exchange states that USOF is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940.

⁸ Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, and Johnna B. Dumler, Attorney, Division,

The investment objective of the USOF is for its net asset value (“NAV”)⁹ 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”),¹⁰ as represented by the performance of the price of the “Benchmark Oil Futures Contract,”¹¹ 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”).¹² The Exchange states that an investment in the Units will allow both retail and institutional investors to easily gain exposure to the crude oil market in a cost-effective manner.

Commission, on February 15, 2006. Additional information about the management and structure of USOF is found in the USOF Notice, supra note 5.

⁹ 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.

¹⁰ 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 from the United States known as “West Texas Intermediate,” a light, sweet crude 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.

¹¹ Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division, Commission, and Cliff Weber, Senior Vice President, Amex, on March 24, 2006.

¹² The Exchange will file a Form 19b-4 to obtain Commission approval for the continued listing and trading of the Units should the General Partner change the Benchmark Oil Futures Contract from this NYMEX WTI light, sweet crude oil futures contract. Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and Johnna B. Dumler, Attorney, Division, Commission, on February 13, 2006.

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 exchanges¹³ (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 (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), 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 out in the USOF Notice.¹⁴

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.

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.¹⁵ Because of

¹³ 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.

¹⁴ See USOF Notice, supra note 5.

¹⁵ See Securities Exchange Act Release No. 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005). The Exchange listed and traded the iShares® COMEX Gold Trust under Amex Rule 1200A as the first Commodity Based Trust Share.

USOF's structure as a partnership and the nature of its investments, the current Commodity-Based Trust Shares rules (Amex Rules 1200A et seq.) do not specifically permit the Exchange to list this product. This proposal seeks to expand the ability of the Exchange to list and/or trade securities based on a portfolio of underlying investments that may not be "securities" in circumstances where the issuer is a partnership, organized as a commodities pool under the CEA.

Under proposed Amex Rule 1501, the Exchange would be able to list and trade 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 will submit a filing pursuant to Section 19(b) of the Act, subject to the review and approval of the Commission. The Exchange submits that the Units will conform to the initial and continued listing criteria under proposed Amex Rule 1502.¹⁶

Information about the liquidity, depth, and pricing mechanisms of the international oil market, operation of the USOF, and descriptions of the Units of USOF follows below.¹⁷

Recently, the Exchange commenced the trading of shares of the streetTRACKS® Gold Trust (GLD) pursuant to Amex Rule 1000B on an unlisted trading privileges ("UTP") basis. See also Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (order approving listing and trading of DB Commodity Index Tracking Fund).

¹⁶ Proposed Amex Rule 1502 for listing the Units is substantially similar to current Amex Rule 1202A relating to Commodity-Based Trust Shares. As set forth in the section "Initial and Continued Listing" of proposed Amex Rule 1502, the minimum number of Units required to be outstanding at the time of trading will be 100,000. This section of the proposed rule specifically details the initial and continued listing standards for the Units.

¹⁷ Further information about the USOF is provided in the USOF Notice, supra note 5.

Description of the Oil Market

The Exchange states that crude oil is the world's most actively traded commodity. The investment objective of USOF is to track the spot month futures contracts for WTI light, sweet crude traded on the NYMEX, and thus USOF will primarily purchase WTI light, sweet crude Oil Futures Contracts traded on the NYMEX. The Oil Futures Contracts for light, sweet crude oil that are traded on the NYMEX are the world's most liquid forum for crude oil trading, as well as the most liquid futures contracts on a physical commodity. Due to the liquidity and price transparency of Oil Futures Contracts, they are used as a principal international pricing benchmark. Oil Futures Contracts for WTI light, sweet crude oil trade on the NYMEX in units of 1,000 U.S. barrels (42,000 gallons) and, if not closed out before maturity, will result in delivery of the oil to Cushing, Oklahoma, which is also accessible to the world market by two major interstate petroleum pipeline systems.¹⁸

Futures Regulation

The CEA¹⁹ governs the regulation of commodity interest transactions, markets, and intermediaries. The CFTC administers the CEA. Among other things, the CEA provides that the trading of commodity interest contracts generally must be upon exchanges designated as contract markets or derivatives transaction execution facilities and that all trading on those exchanges must be done by or through exchange members. Commodity interest trading between sophisticated persons may be traded on a trading facility not regulated by the CFTC. As a general matter, the Exchange states that trading in spot contracts, forward contracts, options on forward contracts or options on

¹⁸ In practice, few Oil Futures Contracts result in delivery of the underlying oil.

¹⁹ 7 U.S.C. 1 et seq.

commodities, or swap contracts between eligible contract participants is not within the jurisdiction of the CFTC and may therefore be effectively unregulated.

The Exchange states that non-U.S. futures exchanges differ in certain respects from their U.S. counterparts. Importantly, non-U.S. futures exchanges are not subject to regulation by the CFTC, but rather are regulated by their home country regulator. In contrast to U.S. designated contract markets, some non-U.S. exchanges are principals' markets, where trades remain the liability of the traders involved, and the exchange or an affiliated clearing organization, if any, does not become substituted for any party. Due to the absence of a clearing system, the Exchange states that such exchanges are significantly more susceptible to disruptions. Further, participants in such markets must often satisfy themselves as to the individual creditworthiness of each entity with which they enter into a trade. Trading on non-U.S. exchanges is often in the currency of the exchange's home jurisdiction. Consequently, USOF may be subject to the additional risk of fluctuations in the exchange rate between such currencies and U.S. dollars and the possibility that exchange controls could be imposed in the future.

Investment Strategy

In connection with tracking the price of the Benchmark Oil Futures Contract, the General Partner will endeavor to place USOF's trades in Oil Futures Contracts and Other Oil Interests and otherwise manage USOF's investments so that "A" will be within +/- 10 percent of "B", where:

- A is the average daily change in USOF's NAV for any period of 30 successive valuation days, i.e., any day as of which USOF calculates its NAV; and

- B is the average daily change in the price of the Benchmark Oil Futures Contract over the same period.

Therefore, USOF's investment objective is to manage its assets so that the average daily change in the NAV for any period of 30 successive valuation days will be within 10% of the average daily change in the price of the Benchmark Oil Futures Contract over the same period.²⁰

The Exchange believes that market arbitrage opportunities should cause USOF's Unit price to closely track USOF's per Unit NAV, which is targeted at the current Benchmark Oil Futures Contract. The price of the Benchmark Oil Futures Contract has closely tracked the spot price of WTI light, sweet crude oil over time.²¹ Accordingly, the General Partner expects that the price of USOF's Units on the Exchange will closely track the spot price of a barrel of WTI light, sweet crude oil, less USOF's expenses.

Investments

USOF believes that it will be able to use a combination of Oil Futures Contracts and Other Oil Interests to manage the portfolio to achieve its investment objective of tracking the price of the Benchmark Oil Futures Contract. USOF further anticipates that the exact mix of Oil Futures Contracts and Other Oil Interests held by the portfolio will vary over time depending on, among other things, the amount of invested assets in the portfolio, price movements of oil, the rules and regulations of the various futures and

²⁰ Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and Johnna B. Dumler, Attorney, Division, Commission, on February 13, 2006.

²¹ See Exhibit A attached to the Form 19b-4 filed by the Exchange, showing the tracking of the Benchmark Oil Futures Contract and the WTI spot price.

commodities exchanges and trading platforms that deal in Oil Interests, and innovations in the Oil Interests marketplace including both the creation of new Oil Interest investment vehicles and the creation of new trading venues that trade in Oil Interests.

USOF's total portfolio composition will be disclosed each business day that the Amex is open for trading on its Web site at <http://www.unitedstatesoilfund.com> and/or the Exchange's Web site at <http://www.amex.com>. USOF states that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name and value of each Oil Interest, the specific types of Other Oil Interests and characteristics of such Other Oil Interests, Treasuries and amount of cash held in the portfolio of USOF.²²

Oil Futures Contracts

The principal Oil Interests to be invested in by USOF are Oil Futures Contracts. In particular, USOF expects to purchase futures on the WTI light, sweet crude oil traded on the NYMEX. USOF may also purchase futures on Brent crude oil traded on NYMEX.²³ Brent crude oil futures contracts are also listed on the ICE Futures. In addition to the commodities and futures exchanges in New York and London, several other established futures exchanges currently offer, or have announced plans to offer,

²² See Amendment No. 1. The public Web site disclosure of the portfolio composition of USOF will coincide with the disclosure by the Administrator on each business day of the NAV for the Units and the Basket Amount (for orders placed during the day). Therefore, the same portfolio information will be provided on the public Web site, as well as in the facsimile or electronic mail message to Authorized Purchasers containing the NAV and Basket Amount ("Daily Dissemination"). The format of the public Web site disclosure and the Daily Dissemination will differ because the public Web site will list all portfolio holdings, while the Daily Dissemination will provide the portfolio holdings in a format appropriate for Authorized Purchasers, *i.e.*, the exact components of a Creation Unit.

²³ Brent crude oil is the price reference for two-thirds of the world's traded oil.

trading in futures contracts on light, medium, or heavy crude oils, including exchanges in Singapore, Tokyo, Shanghai and Dubai.²⁴

As noted above, the NYMEX futures contracts on WTI light, sweet crude oil have historically closely tracked the investment objective of USOF over both the short-term, medium-term, and the long-term.²⁵ For that reason, USOF anticipates making significant investments in the current Benchmark Oil Futures Contract. The General Partner submits that Other Oil Futures Contracts, such as the Brent crude oil futures contract traded on the NYMEX and ICE Futures, the Dubai crude oil futures contract traded in Singapore and elsewhere, and other NYMEX petroleum-based futures contracts such as heating oil and gasoline, have also tended to track the investment objective of USOF, though not as closely as the NYMEX light, sweet crude (WTI) oil futures contract.²⁶

Other Oil Interests

In addition to Oil Futures Contracts, there are also a number of listed options on Oil Futures Contracts on the principal commodities and futures exchanges. These option contracts offer investors and hedgers another vehicle for managing exposure to the crude oil market. USOF may purchase oil-related listed options on these exchanges in pursuing its investment objective.

In addition to the Oil Futures Contracts and related listed options, there also exists

²⁴ The Exchange has represented that the USOF will only purchase Oil Futures Contracts on markets where the Exchange has entered into the appropriate comprehensive surveillance sharing arrangements. See infra, note 53.

²⁵ See supra note 21 and text accompanying note 12.

²⁶ See Exhibit B attached to the Form 19b-4 filed by the Exchange, tracking the NYMEX futures contracts on light, sweet crude oil, heating oil, natural gas and gasoline from November 17, 1995 to November 11, 2005.

an active OTC market in derivatives linked to crude oil. These OTC derivative transactions are privately-negotiated agreements between two parties. Unlike most of the exchange-traded Oil Futures Contracts or related options, each party to an OTC contract bears the credit risk that the counterparty may not be able to perform its obligations.

Some oil-based derivatives transactions contain fairly generic terms and conditions and are available from a wide range of participants. Other oil-based derivatives have highly customized terms and conditions and are not as widely available. Many of these OTC contracts are cash-settled forwards for the future delivery of oil- or petroleum-based fuels that have terms similar to the Oil Futures Contracts. Others take the form of “swaps” in which the two parties exchange cash flows based on pre-determined formulas tied to the price of oil as determined by the spot, forward, or futures markets. USOF may enter into OTC derivative contracts whose value will be tied to changes in the difference between the WTI spot price, the price of Oil Futures Contracts traded on NYMEX, and the prices of non-NYMEX Oil Futures Contracts that may be invested in by USOF.

To protect itself from the credit risk that arises in connection with such contracts, USOF will enter into agreements with each counterparty that provide for the netting of its overall exposure to its counterparty and/or provide collateral or other credit support to address USOF’s exposure.²⁷ The counterparties to an OTC contract will generally be major broker-dealers and banks or their affiliates, though certain institutions, such as

²⁷ The agreements published by the International Swap and Derivatives Association (“ISDA”) and used extensively in the OTC derivatives market provides “netting” provisions. As discussed above, USOF’s total portfolio composition will be disclosed, each business day that the Amex is open for trading, on its Web site at <http://www.unitedstatesoilfund.com> and/or the Exchange’s Web site at <http://www.amex.com>, with a valuation assigned to these instruments.

large energy companies or other institutions active in oil commodities markets, may also be counterparties. The creditworthiness of each potential counterparty will be assessed by the General Partner. The General Partner will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an OTC contract pursuant to guidelines approved by the General Partner's Board of Directors. Furthermore, the General Partner on behalf of USOF will only enter into OTC contracts with (a) members of the Federal Reserve System or foreign banks with branches regulated by the Federal Reserve Board; (b) primary dealers in U.S. government securities; (c) broker-dealers; (d) commodities futures merchants; or (e) affiliates of the foregoing. Existing counterparties will also be reviewed periodically by the General Partner.

USOF anticipates that the use of Other Oil Interests, together with its investments in Oil Futures Contracts, will produce price and total return results that closely track the investment objective of USOF.

Treasuries and Cash

USOF will invest virtually all of its assets not invested in Oil Interests in Treasuries, currently anticipated to be those securities with a remaining maturity of two years or less. The Treasuries and any cash will be available to be used to meet USOF's current or potential margin and collateral requirements with respect to its investments in Oil Interests. USOF will not use Treasuries as margin for new investments unless it has a sufficient amount of Treasuries and cash to meet the margin or collateral requirements that may arise due to changes in the value of its currently held Oil Interests. Other than in connection with a redemption of Units, USOF does not intend to distribute cash or property to its Unit holders. Interest earned on Treasuries and cash held by USOF will be

retained by it to pay its expenses, to make investments to satisfy its investment objectives, or to satisfy its margin or collateral requirements.

Impact of Speculative Position Limits

The CFTC and U.S. designated contract markets, such as the NYMEX, have speculative position limits or position limits on the maximum net long or net short speculative position that any person or group of persons under common trading control (other than a hedger) may hold, own, or control in commodity interests. Among the purposes of speculative position limits is to prevent a corner or squeeze on a market or undue influence on prices by any single trader or group of traders.²⁸

The foregoing speculative position limits will impact the mix of investments in Oil Interests by USOF, with such mix varying depending on the level of assets held by USOF. The following example illustrates how the mix will vary as assets increase, assuming the spot price of WTI light, sweet crude oil remains the same: Assuming the spot price for WTI light, sweet crude oil and the Unit price were each \$60, USOF anticipates that it would invest the first \$300 million of its daily net assets only in Oil Futures Contracts. The majority of those contracts will consist of the current Benchmark Oil Futures Contract. At this level, USOF could purchase 5,000 of such contracts or 25% of the NYMEX's speculative position limit for such contracts. When daily net assets

²⁸ Most U.S. futures exchanges limit the amount of fluctuation in some futures contracts or options on futures contract prices during a single trading session. These regulations specify what are referred to as daily price fluctuation limits (i.e., daily limits). The daily limits establish the maximum amount that the price of a futures contract or options on a futures contract may vary either up or down from the previous day's settlement price. Once the daily limit has been reached in a particular futures contract or options on a futures contract, no trades may be made at a price beyond the limit.

exceed \$300 million, USOF anticipates that it will invest the majority of its assets above that amount in the current Benchmark Oil Futures Contract with the balance of its net assets being invested in a mix of other Oil Futures Contracts, such as the Brent crude oil futures contract traded on NYMEX or the ICE Futures, and Other Oil Interests. At this level, USOF anticipates that it would also invest in various OTC derivative contracts to hedge the short-term price movements of Oil Futures Contracts against the current Benchmark Oil Futures Contract.

Once the daily net assets of the portfolio exceed approximately \$1.2 billion, USOF anticipates that a majority of all further investments will be made in Oil Futures Contracts, other than the current Benchmark Oil Futures Contract, and in Other Oil Interests.

USOF anticipates that once the daily net assets of the portfolio exceed approximately \$2.4 billion, the ability of the portfolio to invest in additional current Benchmark Oil Futures Contracts may be sharply limited due to speculative position limit rules in effect on the NYMEX. Assuming the current Benchmark Oil Futures Contract is at the same price level and half of the USOF's assets were then fully invested in such contracts (\$1.2 billion), the current NYMEX position limits for such contracts (20,000 contracts) would be met. Under that scenario, all additional investments above the \$2.4 billion level would be required to be invested in other Oil Future Contracts and Other Oil Interests. USOF anticipates that at or above the \$2.4 billion daily net asset level, the majority of the total portfolio holdings would be in other Oil Futures Contracts or Other Oil Interests.

Issuance and Redemption of USOF Units

There will be two markets for investors to purchase and sell Units. New issuances of the Units will be made only in baskets of 100,000 Units or multiples thereof (a “Basket”). USOF will issue and redeem Baskets of the Units on a continuous basis by or through participants who have entered into authorized purchaser agreements (“Authorized Purchaser Agreement” and each such participant, an “Authorized Purchaser”)²⁹ with the General Partner, at the NAV per Unit next determined after an order to purchase the Units in a Basket is received in proper form. 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 the Marketing Agent in exchange for cash and/or Treasuries, which the Custodian 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 listed and traded on the Exchange as equity securities.³⁰

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

²⁹ 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 participants, such as banks and other financial institutions, that are exempt from broker-dealer registration; (ii) is a DTC Participant; and (iii) has in effect a valid Authorized Participant Agreement. Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and Johnna B. Dumler, Attorney, Division, Commission, on February 13, 2006 (clarifying that the reference to “trustee” in this sentence should be changed to “General Partner”).

³⁰ The Exchange expects that the number of outstanding Units will increase and decrease as a result of creations and redemptions of Baskets.

“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 the opening of trading on the Exchange, the estimated Basket Amount for the creation of a Basket based on the prior day’s NAV.³¹ The Exchange 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. Eastern Time (“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 orders placed by Authorized Purchasers received before 12:00 p.m. ET that day.³² 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.

³¹ Amex clarified that it intended for this sentence to indicate that the Administrator will make available an “estimated” Basket Amount prior to the opening of trading on the Exchange, rather than the Actual Basket Amount (as described below), which will not be available until shortly after the close of trading on each business day. Additionally, such information (NAV, Actual Basket Amount, Estimated Basket Amount, daily disclosure of portfolio holdings) will be available to all market participants at the same time to avoid any informational advantage. Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and Johnna B. Dumler, Attorney, Division, Commission, on February 8, 2006.

³² See Amendment No. 2, supra note 4. See also “Calculation and Payment of Deposit Amount” and “Calculation and Payment of Redemption Amount,” infra.

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. The Amex will also disclose the NAV and the Actual Basket Amount on its Web site at <http://www.amex.com>.³³ 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.

Calculation of USOF's NAV

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 value³⁴ 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,³⁵ 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

³³ See *supra*, note 32.

³⁴ See Rule 6.52 of the NYMEX Rulebook.

³⁵ Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission, and Johnna B. Dumler, Attorney, Division, Commission, on February 8, 2006.

Partnership assets. The Administrator will calculate the NAV per unit by dividing the NAV by the number of Units outstanding.

When calculating NAV for USOF, the Administrator will value Oil Futures Contracts based on the closing settlement prices quoted on the relevant commodities and futures exchange and obtained from various market data vendors such as Bloomberg or Reuters.³⁶ The value of the Other Oil Interests for purposes of determining the NAV will be valued based upon the determination of the Administrator as to their fair market value. Certain types of Other Oil Interests, such as listed options on futures contracts, have closing prices that are available from the exchange upon which they are traded or from various market data vendors. If available from an exchange, Other Oil Interests will be valued based on the last sale price on the exchange or market where traded. If a contract fails to trade, the value shall be the most recent bid quotation from the third-party source.

Other types of Other Oil Interests, such as crude oil forward contracts do not trade on established exchanges, but typically have prices that are widely available from third-party sources. The Administrator may make use of such third-party sources in calculating a fair market value of these Other Oil Interests.

Certain types of Other Oil Interests, such as “swaps,” also do not have established exchanges upon which they trade and may not have readily available price quotes from third parties. Swaps and other similar derivative or contractual-type instruments will be first valued at a price provided by a single broker or dealer, typically the counterparty. If no such price is available, the contract will be valued at the price at which the

³⁶ The Amex confirmed that the pricing for the NAV also will be derived from the NYMEX futures contract nearest to settlement (spot month) for WTI light, sweet crude.

counterparty to such contract would repurchase the instrument or terminate the contract. In determining the fair market value of such derivative contracts, the Administrator may make use of quotes from other providers of similar derivatives. If these are not available, the Administrator may calculate a fair market value of the derivative contract based on the terms of the contract and the movement of the underlying price factors of the contract.

Calculation and Payment of the Deposit Amount

The Deposit Amount of Treasuries and cash will be in the same proportion to the total net assets of USOF as the number of Units to be created is in proportion to the total number of Units outstanding. The General Partner will determine the requirements for the Treasuries that may be included in the Deposit Amount and will disseminate these requirements prior to the start of each business day. The amount of cash that is required is the difference between the aggregate market value of the Treasuries required to be included in the Deposit Amount as of 4:00 p.m. ET on the date of purchase and the total required deposit.

All purchase orders must be received by the Marketing Agent by 12:00 p.m. ET. Delivery of the Deposit Amount, i.e., Treasuries and cash, to the Administrator must occur by the third Business day following the purchase order date.³⁷ Thus, the General Partner will disseminate shortly after 4:00 p.m. ET the amount of Treasuries and cash to be deposited with the Custodian for each Basket (100,000 Units) order properly submitted by Authorized Purchasers by 12:00 p.m. ET that business day, (e.g., the Actual Basket Amount).

³⁷ Authorized Purchasers are required to pay a transaction fee of \$1,000 for each order to create one or more Baskets.

Calculation and Payment of the Redemption Amount

The Units will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Purchaser will be required to accumulate enough Units to constitute a Basket (i.e., 100,000 Units). An Authorized Purchaser redeeming a Basket will receive the Redemption Amount.

Upon the surrender of the Units and payment of applicable redemption transaction fee,³⁸ taxes or charges, the Custodian will deliver to the redeeming Authorized Purchaser the Redemption Amount. The Redemption Amount of Treasuries and cash will be in the same proportion to the total net assets of USOF as the number of Units to be redeemed is in proportion to the total number of Units outstanding. The General Partner will determine the Treasuries to be included in the Redemption Amount. The amount of cash that is required is the difference between the aggregate market value of the Treasuries required to be included in the Redemption Amount calculated as of 4:00 p.m. ET on the date of redemption and the total Redemption Amount. All redemption orders must be received by the Marketing Agent by 12:00 p.m. ET on the date redemption is requested. Delivery of the Basket to be redeemed to the Custodian and payment of Redemption Amount will occur by the third business day (T+3) following the redemption order date.

The Exchange believes that the Units will not trade at a material discount or premium to a Unit's NAV based on potential arbitrage opportunities. Due to the fact that the Units can be created and redeemed only in Baskets at the NAV, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time.

³⁸ Authorized Purchasers are required to pay a transaction fee of \$1,000 for each order to redeem one or more Baskets.

Dissemination and Availability of Information

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.amex.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. Thus, last sale information for the Benchmark Oil Futures Contract will be updated and disseminated at least every 15 seconds in accordance with the continued listing standards by one or more major market data vendors during the time the Units trade on Amex.³⁹ 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 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>.

³⁹ Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division, Commission, and Cliff Weber, Senior Vice President, Amex, on March 24, 2006.

USOF Units

The Web site for USOF, which will be publicly accessible at no charge, 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 price⁴⁰ 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 (4) 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.⁴¹

As described above, the NAV for USOF will be calculated and disseminated daily. 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 also make available on its Web site daily trading volume, closing prices and the NAV. The closing price 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

⁴⁰ The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

⁴¹ See Amendment No. 1, supra note 3.

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.amex.com> to USOF's Web site.

Indicative Partnership Value

The Exchange 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 during the regular Amex trading hours of 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.⁴² 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 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 9:30 a.m. ET.

⁴² 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 9:30 a.m. ET, and from 7:00 p.m. Sunday night until Monday morning 9:30 a.m. ET.

The Exchange represents that 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. However, during Amex 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 the Exchange or the creation or redemption of the Units.

Criteria for Initial and Continued Exchange Listing

USOF will be subject to the criteria in proposed Amex Rule 1502 for initial and continued listing of the Units. These continued listing criteria provide for the delisting or removal from listing of the Units under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Units: (i) if USOF has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (ii) if USOF has fewer than 50,000 Units issued and outstanding; or (iii) if the market value of all Units issued and outstanding is less than \$1,000,000.
- If the value of the underlying spot commodity or Oil Futures Contract 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.
- The Indicative Partnership Value is no longer made available on at least a 15-second delayed basis.

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

A minimum of 100,000 Units will be required to be outstanding at the start of trading.⁴³ It is anticipated that the initial price of a Unit will be approximately \$67.00 based upon the WTI light, sweet crude oil spot price on March 30, 2006.⁴⁴ USOF expects that the initial Authorized Purchaser will purchase the initial Basket of 100,000 Units at the initial offering price per Unit equal to the closing price of the expiration month light, sweet crude (WTI) oil futures contract listed on the NYMEX on the first Business day prior to the launch date. On the date of the public offering and thereafter, USOF will continuously issue Units in Baskets of 100,000 Units to Authorized Purchasers at NAV. The Exchange believes that the anticipated minimum number of Units outstanding at the start of trading is sufficient to provide adequate market liquidity and to further USOF's objective to seek to provide a simple and cost effective means of accessing the commodity futures markets.

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 Act.⁴⁵

⁴³ Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division, Commission, and Cliff Weber, Senior Vice President, Amex, on March 29, 2006.

⁴⁴ Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on March 31, 2006. As of March 30, 2006, the settlement spot price was \$67.15 for a barrel of oil. The exact price of a Unit will be determined on the date of launch. Id.

⁴⁵ The Exchange represents that the listed issuer of the USOF Units qualifies for the exemption in Rule 10A-3(c)(7) of the Act.

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of USOF is \$5,000. In addition, the annual listing fee applicable under Section 141 of the Amex Company Guide will be based on the year-end aggregate number of Units in all series of USOF outstanding at the end of each calendar year.

Trading Rules

The Units are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in the Units. Units will trade on the Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated the Units as eligible for this treatment.⁴⁶

The Units will be deemed “Eligible Securities”, as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the

⁴⁶ See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 8, regarding the Exchange’s designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

trade-through provisions of Amex Rule 236 which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of the Units made in connection with the creation and redemption of Units will not be subject to the prohibitions of Amex Rule 190, which generally prohibits business transactions between a specialist (or its member organization) and a company (or its officers, directors, or 10% stockholder) in which the specialist is registered.⁴⁷ Unless exemptive or no-action relief is available, the Units will be subject to the short sale rule, Rule 10a-1 under the Act and Regulation SHO.⁴⁸ If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief. The Units will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on "plus ticks" and sell on "minus ticks," in order to bring the Units into parity with the underlying commodity or commodities and/or futures contract price. Commentary .01 to Amex Rule 1503 sets forth this limited exception to Amex Rule 170.

The Amex proposes Rule 1503 to address potential conflicts of interest in connection with acting as a specialist in the Units. Specifically, Amex Rule 1503 provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Units so that the specialist or affiliated person may not act or function as a market-maker in an underlying asset, related futures contract or option or any other related derivative. An affiliated person of the specialist, consistent with Amex Rule 193, may be afforded an

⁴⁷ See Commentary .05 to Amex Rule 190.

⁴⁸ USOF expects to seek relief, in the near future, from the Commission in connection with the trading of the Units from the operation of the short sale rule, Rule 10a-1 under the Act, no-action relief from Regulation SHO, and other no-action or exemptive relief from the Act.

exemption to act in a market making capacity, other than as a specialist in the Units on another market center, in the underlying asset, related futures or options or any other related derivative.

Amex Rule 1504(a) provides that the member organization acting as specialist in the Units is obligated to conduct all trading in the Units in its specialist account, subject to only the ability to have one or more investment accounts, all of which must be reported to the Exchange (See Rule 170).

Moreover, Amex Rule 1504(b) requires that the specialist in the Units make available to the Exchange information relating to its transactions or the transactions of any member, member organization, 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 physical asset or commodity, related futures or options on futures, or any other related derivatives.⁴⁹ Finally, Amex Rule 1504(c) prohibits the specialist registered as such in the Units from using any material nonpublic information received from any person associated with a member, member organization 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.

⁴⁹ As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization, as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization 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.

Trading Halts

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in the Units. First, the Information Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the Information Circular will advise that, in addition to the parameters set forth in Amex Rule 117, the Exchange will halt trading in the Units if trading in the current Benchmark Oil Futures Contract is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. Additionally, the Exchange represents that it will cease trading the Units if the conditions in Amex Rule 1202(d)(2)(ii) or (iii) exist (i.e., if there is a halt or disruption in the dissemination of the Indicative Partnership Value and/or underlying Benchmark Futures Contract (spot commodity) value).⁵⁰

Information Circular

The Amex will distribute an Information Circular to its members in connection with the trading of the Units. The Information Circular, will discuss the special characteristics of and risks of trading in the Units. Specifically, the Information Circular,

⁵⁰ In the event the Benchmark Oil Futures Contract value or 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. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, Florence Harmon, Senior Special Counsel, Division, Commission and Johnna B. Dumler, Attorney, Division, Commission on February 8, 2006.

among other things, will discuss what the Units are, how a basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination information regarding the per unit Indicative Partnership Value, trading information and applicable suitability rules. The Information Circular will also explain that USOF is subject to various fees and expenses described in the Registration Statement. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities, 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.⁵¹

The Information Circular will inform members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to USOF. The Exchange notes that investors purchasing Units directly from USOF (by delivery of the Deposit Amount) will receive a prospectus. Amex members purchasing Units from USOF for resale to investors will deliver a prospectus to such investors.

⁵¹ Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 31, 2006.

The Information Circular will also notify members and member organizations about the procedures for purchases and redemptions of Units in Baskets, and that Units are not individually redeemable but are redeemable only in Baskets or multiples thereof.

The Information Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Units pursuant to Amex Rule 411. The Information Circular will also discuss any exemptive or no-action relief, if granted, by the Commission or the staff from any rules under the Act. The Information Circular will disclose that the NAV for Units will be calculated shortly after 4:00 p.m. ET each trading day.

Surveillance

The Exchange submits that its surveillance procedures are adequate to deter and detect violations of Exchange rules relating to the trading of the units. The surveillance procedures for the Units will be similar to those used for the iShares® COMEX Gold Trust and the streetTRACKS® Gold Trust Shares, as well as other TIRs and exchange-traded funds. In addition, the surveillance procedures will incorporate and rely on existing Amex surveillance procedures governing options and equities.⁵²

The Exchange currently has in place a comprehensive surveillance sharing agreement with the NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX. In addition, the Exchange has entered into a comprehensive surveillance sharing arrangement with ICE Futures for the purpose of providing information in connection with the trading in or related to futures contracts traded on the ICE Futures. To the extent that USOF invests in

⁵² Proposed Rule 1504 will aid the Exchange in conducting appropriate surveillance.

Oil Interests traded on other exchanges, the Amex will enter into comprehensive surveillance sharing arrangements, acceptable to the Commission staff, with those particular exchanges.⁵³

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵⁴ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,⁵⁵ 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.

A. Surveillance

Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing agreements with the NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX and the ICE Futures create the

⁵³ In such event, the Exchange will file a proposed rule change pursuant to Rule 19b-4 of the Act, indicating such surveillance arrangements. Telephone conversation between Jeffrey Burns, Senior Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 29, 2006. See also USOF Notice, supra note 5, at n.14.

⁵⁴ 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).

⁵⁵ 15 U.S.C. 78f(b)(5).

basis for the Amex to monitor for fraudulent and manipulative practices in the trading of the Units. Should the USOF invest in oil derivatives traded on markets such as the Singapore Oil Market, the Exchange represents that it will file a proposed rule change pursuant to Section 19(b) of the Act, seeking Commission approval of the Exchange's surveillance arrangement with such market.

Moreover, Amex Rule 1504(b) requires that specialists handling the Units provide the Exchange with necessary information relating to its transactions and the trading activities of any member, member organization, limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity in the underlying physical assets or commodities, related futures contracts and options thereon or any other derivative. Furthermore, Amex Rule 1504(c) prohibits the specialist registered as such in the Units from using any material nonpublic information received from any person associated with a member, member organization 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. The Commission believes that these rules provide the Amex with the tools necessary to adequately surveil trading in the Units.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Units can monitor the underlying Benchmark Oil Futures Contract market relative to the NAV of their Units. There is a considerable amount of oil futures contract price and information available through public Web sites and professional subscription services, including Bloomberg and Reuters. Other than from 2:30 p.m. to 3:15 p.m. ET, quote and last sale information for the Benchmark Oil Futures Contract will be updated and disseminated at

least every 15 seconds, in accordance with the continued listing standards, by one or more major market data vendors during the time the Units trade on Amex. In addition, 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>) and various market data vendors, and news publications publish futures prices and related data. The NYMEX also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site.

The Commission further notes that the Web site for USOF, which will publicly accessible at no charge, will contain the following information: (1) the prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price⁵⁶ 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 (4) 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.

In addition, the NAV for the USOF will be calculated and disseminated on a daily basis. The Exchange represents that it 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, recent NAV, Units outstanding, the estimated Basket Amount and the Actual Basket Amount. The

⁵⁶ The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

Exchange will also make available on its Web site (<http://www.amex.com>) daily trading volume, closing prices and the NAV. The Commission believes that the wide availability of information about the Units the Oil Futures Contracts held by the USOF and NAV will facilitate transparency with respect to the proposed Units and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Units are consistent with the Act. The Units will trade as equity securities subject to Amex rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Units should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Units. Finally, the Commission notes that the Information Circular the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Units, including their prospectus delivery obligations.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-127), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁷

Nancy M. Morris
Secretary

⁵⁷ 17 CFR 200.30-3(a)(12).