

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55761; File No. SR-NASDAQ-2007-045)

May 15, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto to Trade 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 30, 2007, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On May 1, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

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

Nasdaq proposes to trade, pursuant to unlisted trading privileged (“UTP”), units (“Units”) of the United States Oil Fund, LP (“USOF” or “Partnership”). The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and <http://nasdaq.complinet.com>.

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 and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to trade pursuant to UTP the Units, which represent ownership of a fractional undivided interest in the net assets of USOF.³ The Units are currently trading on Nasdaq on a three-month pilot basis.⁴ Approval of this filing will allow the Units to continue to trade after the expiration of the pilot. The investment objective of 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"), 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) futures contract for delivery of WTI light, sweet crude oil traded on the New York Mercantile Exchange ("NYMEX").⁶ The Commission previously approved the original listing and trading of

³ USOF, a Delaware limited partnership, is a commodity pool. 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 No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR-NASDAQ-2007-016).

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 USOF will primarily purchase WTI light, sweet crude Oil Futures Contracts traded on the NYMEX, but may also purchase Oil Futures Contracts on other

the Units by the American Stock Exchange LLC (“Amex”).⁷

Issuances of the Units of USOF are made only in baskets of 100,000 Units or multiples thereof (“Basket”). A basket would be issued in exchange for Treasuries and/or cash in an amount equal to the NAV per Unit times 100,000 Units (“Basket Amount”).

An Authorized Purchaser⁸ that wishes to purchase a Basket must transfer the Basket Amount to the Administrator (“Deposit Amount”). An Authorized Purchaser that wishes to redeem a Basket would receive an amount of Treasuries and cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (“Redemption Amount”).

On each business day, the administrator for USOF makes 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. According to the Amex Order, Amex disseminates at least every 15 seconds from 9:30 a.m. to 4:15 p.m., 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 (“Indicative Partnership Value”).⁹ Shortly after 4:00 p.m. ET, the administrator determines the NAV for USOF as described below. At or about 4:00 p.m. ET on each business day, the administrator determines the Actual

exchanges, including the Intercontinental Exchange, which operates its futures business through ICE Futures (“ICE Futures”) and the Singapore Oil Exchange.

⁷ See Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (“Amex Order”).

⁸ An “Authorized Purchaser” is a person who, at the time of submitting to the general partner of USOF 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.

⁹ The Indicative Partnership Value is calculated based on the Treasuries and cash required for creations and redemptions (i.e., NAV per Unit x 100,000) adjusted to reflect the price changes of the current Benchmark Oil Futures Contract.

Basket Amount for orders placed by Authorized Purchasers received before 12:00 p.m. ET that day.

Quotations for and last-sale information regarding USOF is disseminated through the Consolidated Quotation System. 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>. Nasdaq's Web site at <http://www.nasdaq.com> will include a hyperlink to the NYMEX Web site for the purpose of disclosing futures contract pricing. According to the Amex Order, last-sale information for the Benchmark Oil Futures Contract is 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 is not updated.

The Web site for USOF (www.unitedstatesoilfund.com), which is publicly accessible at no charge and to which Nasdaq will provide a hyperlink on its Web site (<http://www.nasdaq.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 price in relation to the NAV as of the time the NAV is calculated ("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 Commodity Futures Trading Commission; (6) USOF's daily portfolio holdings; and (7) other applicable quantitative information. In addition,

according to the Amex Order, Amex disseminates 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 Deposit Amount.

Nasdaq would halt trading in the Units under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Units will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the Indicative Partnership Value (which is comparable to the IIV or IOPV of an ETF) or the value of the underlying Benchmark Oil Futures Contract. Additionally, Nasdaq may cease trading the Units if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq would stop trading the Units if the listing market delists them.

Nasdaq deems the Units to be equity securities, thus rendering trading in the Units subject to its existing rules governing the trading of equity securities, including Rule 4630, which governs trading of Commodity-Related Securities. The trading hours for the Units will be 9:30 a.m. to 4:15 p.m. ET.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Units on Nasdaq. Trading of the Units through Nasdaq

facilities is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.¹⁰

Nasdaq is able to obtain information regarding trading in the Units and the underlying Oil Futures Contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including the Chicago Board of Trade. Finally, Nasdaq is party to Information Sharing Agreements with NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to oil futures contracts traded on those markets. To the extent that USOF invests in oil interests traded on other exchanges, Nasdaq would enter into information sharing agreements, acceptable to the Commission staff, with those particular exchanges.¹¹

Nasdaq has issued an Information Circular to inform its members of the special characteristics and risks associated with trading the Units.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system,

¹⁰ NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

¹¹ In such event, Nasdaq would file a proposed rule change pursuant to Rule 19b-4 of the Act, indicating such surveillance arrangements.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹⁴ because it deems the Units to be equity securities, thus rendering trading in the Units subject to Nasdaq's existing rules governing the trading of equity securities.

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

Nasdaq 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-NASDAQ-2007-045 on the subject line.

¹⁴ 17 CFR 240.12f-5.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2007-045. 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-NASDAQ-2007-045 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 the 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.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁶ 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 believes that this proposal should benefit investors by increasing competition among markets that trade the Units.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁷ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁸ The Commission notes that it previously approved the listing and trading of the Units on Amex.¹⁹ The Commission also finds that

¹⁵ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78l(f).

¹⁸ 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.

¹⁹ See Amex Order, supra note 7.

the proposal is consistent with Rule 12f-5 under the Act,²⁰ 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. The Exchange has represented that it meets this requirement because it deems the Units to be equity securities, thus rendering trading in the Units 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,²¹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of this proposal, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units on the Exchange. In addition, the Exchange represents that it is party to Information Sharing Agreements with NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to oil futures contracts traded on those markets, and that, to the extent that USOF invests in oil interests traded on other exchanges, the Exchange would enter into information sharing agreements, acceptable to the Commission staff, with those particular exchanges. This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously,

²⁰ 17 CFR 240.12f-5.

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

the Commission previously found that the listing and trading of the Units by Amex is consistent with the Act. In addition, the Commission previously found that the trading of the Units by Nasdaq pursuant to UTP on a three-month pilot basis was consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit these earlier findings or would preclude the trading of the Units 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 the Units. For these reasons, the Commission finds good cause to approve the amended proposal on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NASDAQ-2007-045), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Florence E. Harmon
Deputy Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).