

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61571; File No. SR-NYSEAmex-2010-09)

February 23, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending its Trust Unit Rules and Proposing the Listing of the Nuveen Diversified Commodity Fund

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 29, 2010, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NYSE Amex proposes to amend NYSE Amex Rule 1600 *et seq.*, to provide that the issuers of Trust Units listed thereunder may invest directly in commodities and commodity derivatives rather than solely in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds such investments. Other minor changes are also made to conform to changes made to other NYSE Amex rules. Pursuant to these rules, the Exchange proposes to list and trade shares of the Nuveen Diversified Commodity Fund. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

NYSE Amex previously adopted Rule 1600 *et seq.* to permit the listing of Trust Units, which are defined as securities that are issued by a trust or other similar entity that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts and/or commodities.<sup>4</sup> Rule 1600 was adopted in contemplation of the listing of shares of the Nuveen Commodities Income and Growth Fund (the “Fund”), a fund sponsored by Nuveen Investments, Inc. (“Nuveen”) and the investment plan of the Fund was described in detail in the Exchange’s Form 19b-4 and the Commission’s Notice.<sup>5</sup> Nuveen now proposes to go forward with a listing of shares (the “Shares”) of the Fund under a new name, the Nuveen Diversified Commodity Fund, and with a somewhat modified investment plan, which is described below

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<sup>4</sup> See Securities Exchange Act Release No. 56880 (December 3, 2007), 72 FR 69259 (December 3 [sic], 2007).

<sup>5</sup> See Securities Exchange Act Release No. 56465 (September 19, 2007), 72 FR 54489 (September 25, 2007).

under “Nuveen Diversified Commodity Fund.” The Shares will conform to the initial and continued listing criteria under Rule 1602. The initial public offering and sale of the Shares will be registered under the Securities Act of 1933.

In order to use income tax reporting procedures more familiar to investors in investment trusts, it was originally contemplated that the Fund would have a “master/feeder” structure in which the Fund would hold no assets directly except the equity of a separate investment vehicle, which would serve as the conduit through which the Fund would make its investments. However, due to a change in the interpretation of applicable tax law by the Internal Revenue Service, the originally expected trust reporting procedures would no longer be available under a master/feeder structure. In light of this interpretative change, Nuveen proposes to modify its approach and have the listed Fund make its own direct investments. Rule 1600 as currently in effect permits only the listing of Trust Units whose issuers utilize the master/feeder structure originally intended to be used for the Fund. The rule was drafted in this way simply because it accommodated the security proposed to be listed at that time and was not designed to provide any protections to investors, but merely facilitated the now-unavailable trust-based tax reporting procedures. Consequently, the Exchange proposes to amend the definition of Trust Units in Rule 1600 to remove the master/feeder structure requirement and permit the listing of Trust Units where the issuer is constituted as a commodity pool which invests directly in commodities and commodity derivatives. The Exchange believes that this amendment does not in any way increase the risk to investors of investing in the Trust Units or give rise to any new regulatory concerns. Nuveen has represented to the Exchange that there are no material revisions to the Fund’s structure or investment approach other than those described in this filing and the Exchange believes that these revisions do not give rise to any new regulatory issues or raise

significant new investor protection concerns.

### Nuveen Diversified Commodity Fund

The Fund was formed as a Delaware statutory trust on December 7, 2005 pursuant to a Declaration of Trust signed by Wilmington Trust Company, as the Delaware Trustee.<sup>6</sup> The Fund's primary investment objective is to seek total return through broad exposure to the commodities markets. The Fund's secondary objective is to provide investors with monthly income and capital distributions not commonly associated with commodity investments. The Fund will invest in commodity futures and forward contracts, options on commodity futures and forward contracts and over-the-counter ("OTC") commodity options in the following commodity groups: energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers and may in the future include other commodity investments that become the subject of commodity futures trading.<sup>7</sup>

The Fund is a commodity pool. The Fund is managed by Nuveen Commodities Asset Management, LLC (the "Manager"). The Manager is registered as a commodity pool operator (the "CPO") and a commodity trading advisor (the "CTA") with the Commodity Futures Trading

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<sup>6</sup> The Fund, as a commodity pool, will not be subject to registration and regulation under the Investment Company Act of 1940 (the "1940 Act").

<sup>7</sup> Following is a list of futures contracts and other commodity interests in which the Fund intends to invest, and the exchanges on which they trade, based on systematic calculations of global commodity production and U.S. dollar volume traded: Lumber, Milk, Feeder Cattle, Lean Hogs, Live Cattle, Pork Bellies--Chicago Mercantile Exchange ("CME"); Cocoa, Arabica Coffee, Cotton, Orange Juice, Sugar--New York Board of Trade ("NYBOT"); Gold, Silver, Copper --Commodity Exchange ("COMEX") which is a division of the New York Mercantile Exchange ("NYMEX"); Palladium, Platinum, WTI Crude Oil, Heating Oil, Natural Gas, Gasoline--NYMEX; Aluminum, Copper, Lead, Nickel, Tin, Zinc--London Metals Exchange ("LME"); Bean Oil, Corn, Oats, Soy Meal, Soybeans, Wheat--Chicago Board of Trade ("CBOT"); Brent Crude Oil, Gas Oil--InterContinental Exchange ("ICE"); Robustta Coffee-- London International Financial Futures Exchange ("LIFFE"); Wheat-- Kansas City Board of Trade ("KCBOT").

Commission (“CFTC”) and is a member of the National Futures Association (“NFA”).

The Manager will serve as the CPO and a CTA of the Fund. The Manager will determine the Fund’s overall investment strategy, including: (i) the selection and ongoing monitoring of the Fund’s sub-advisors; (ii) the management of the Fund’s business affairs; and (iii) the provision of certain clerical, bookkeeping and other administrative services. Gresham Investment Management LLC (the “Commodity Sub-Advisor”) will invest on a notional basis substantially all of the Fund’s assets in commodity futures and forward contracts pursuant to the commodity investment strategy (its proprietary Tangible Asset Program® (“TAP®”)<sup>8</sup> and a risk management program. The Commodity Sub-Advisor is a Delaware limited liability company and is registered with the CFTC as a CTA and a CPO and is a member of the NFA. The Commodity Sub-Advisor is also registered with the Commission as an investment adviser. Nuveen Asset Management (the “Collateral Sub-Advisor”), an affiliate of the Manager, will invest the Fund’s collateral in short-term, investment grade quality debt instruments. The Collateral Sub-Advisor is registered with the Commission as an investment adviser.

#### Investment Description

The Fund’s investment objective is to generate attractive risk-adjusted total returns as compared to investments in commodity indexes.

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<sup>8</sup> The Fund does not intend to utilize leverage. However, the Fund may borrow for temporary or emergency purposes in an amount up to 5% of the value of the Fund’s net assets should the need arise. Such short term borrowings would mature in less than 60 days from the date of borrowing. In order to facilitate any such borrowing, the Fund intends to establish a standby credit facility with State Street Bank and Trust Company that will be entered into as of the closing of the offering of its common shares. Any temporary or emergency borrowings would be used to provide the Fund with added potential flexibility in managing short-term portfolio liquidity needs and managing the payment of distributions.

The Fund intends to pursue its investment objective by utilizing: (a) an actively managed rules-based commodity investment strategy, whereby the Fund will invest in a diversified basket of commodity futures and forward contracts with an aggregate notional value substantially equal to the net assets of the Fund; and (b) a risk management program designed to moderate the overall risk and return characteristics of the Fund's commodity investments. In pursuing the risk management program, the Fund will write (sell) "out-of-the-money" commodity call options to obtain option premium cash flow, on individual futures and forward contracts, on baskets of commodities or on broad based commodity indices. The Fund may also purchase "out-of-the-money" commodity put options for protection against significant asset value declines on an opportunistic basis. Initially, the Fund does not expect to purchase commodity put options.

The Fund will typically: (i) invest in commodity futures and forward contracts that are traded either on U.S. or non-U.S. commodity futures exchanges; and (ii) sell call options on commodity futures and forward contracts that are traded either on U.S. or non-U.S. exchanges. The Fund may also purchase put options on commodity futures and forward contracts that are traded either on U.S. or non-U.S. exchanges or may purchase OTC commodity put options through dealers pursuant to negotiated, bi-lateral arrangements. The Fund also may invest in other commodity contracts that are presently, or may hereafter become, the subject of commodity futures trading. Except for certain limitations described below, there are no restrictions or limitations on the specific commodity investments in which the Fund may invest.

Commodity Investment Strategy (TAP<sup>®</sup>). The Commodity Sub-Advisor will invest on a notional basis substantially all of the Fund's assets in commodity futures and forward contracts

pursuant to the commodity investment strategy TAP<sup>®</sup>, an actively managed, rules-based<sup>9</sup> commodity investment strategy. TAP<sup>®</sup> is fundamental in nature and is designed to maintain consistent, fully collateralized exposure to commodities as an asset class. TAP<sup>®</sup> does not require the existence of price trends in order to be successful.

Risk Management Program. Pursuant to the risk management program, the Fund will write (or sell) commodity call options that may be up to 20% “out-of-the-money”<sup>10</sup> on a continual basis on up to approximately 50% of the notional value of each of its commodity futures and forward contract positions that have sufficient option trading volume and liquidity. The Commodity Sub-Advisor will write call options on individual futures and forward contracts held by the Fund, on baskets of commodities or on broad based commodity indices. As the writer of call options for which a premium is received, the Fund will forego the right to any appreciation in the value of each commodity futures or forward contract in its portfolio that effectively underlies a call option to the extent the value of the commodity futures or forward contract exceeds the exercise price of such option on or before the expiration date.

Initially, the Fund does not expect to purchase commodity put options. In order to seek

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<sup>9</sup> TAP<sup>®</sup> currently requires investment in futures or forward contracts for commodities in each of the energy, industrial metals, livestock, agriculturals, tropical foods and fibers and precious metal commodity groups. Commodity group weightings and individual commodity weightings are chosen by a process that blends two-thirds of five year global production value and one-third of five year value of commodity futures contracts traded in dollars. The process constrains the weightings of each commodity group such that no group may constitute more than 35% of TAP<sup>®</sup> and no single commodity interest can constitute more than 70% of its group. In addition, each commodity is rebalanced periodically to its target weighting if its actual weighting deviates from its target substantially (currently, by more than 10%).

<sup>10</sup> A call option is “out-of-the-money” when the strike price is above the current trading price of the underlying commodity. A put option is “out-of-the-money” when the strike price is below the current trading price of the underlying commodity.

protection against significant asset value declines, the Fund may from time to time purchase “out-of-the-money” put options on broad-based commodity indices such as the DJ-UBS Commodity Index® (“DJ-UBS”), the S&P GSCI Commodity Index (“GSCI”), or on certain custom indices, whose prices are expected to closely correspond to a substantial portion of the long commodity futures and forward contracts held by the Fund. The Fund also may purchase put options on baskets of commodities and on individual futures and forward contracts held by it. On an absolute basis, the Fund does not expect that the cost to purchase put options at any one time will exceed 5% of the value of the Fund’s net assets.

Debt Instruments Used as Collateral. The Fund’s investments in commodity futures and forward contracts, and options on commodity futures and forward contracts, generally will not require significant outlays of principal. To support its commodity investments, the Fund anticipates that it will maintain significant collateral that will be invested in short-term debt instruments with maturities of up to two years that, at the time of investment, are investment grade quality, including obligations issued or guaranteed by the U.S. government or its agencies and instrumentalities, as well as corporate obligations and asset-backed securities. Although earning interest income, the collateral is subject on a continual basis to additional margin calls by the commodity broker and to additional deposits in the commodity account if the levels of notional trading change.

#### Commodity Futures and Forward Contracts and Related Options

The prices of the commodity futures and forward contracts, options on commodity futures and forward contracts, and OTC commodity options are volatile with fluctuations expected to affect the value of the Shares. Commodity futures and forward contracts and options on commodity futures and forward contracts to be held by the Fund will be traded on U.S. and/or

non-U.S. exchanges. The commodity futures and forward contracts to be entered into by the Fund are listed and traded on organized and regulated exchanges based on the various commodities in the groups described above.<sup>11</sup> Forward contracts are contracts for the purchase and sale of a commodity for delivery on or before a future date or during a specified period at a specified price. Futures contracts are essentially forward contracts that are traded on exchanges. Options on commodity futures and forward contracts are contracts giving the purchaser the right, as opposed to the obligation, to acquire or to dispose of the commodity futures or forward contract underlying the option on or before a future date at a specified price. The Fund may purchase OTC commodity put options through dealers pursuant to negotiated, bi-lateral arrangements.

The potential futures contracts are traded on U.S. and non-U.S. exchanges, including the CBOT, the CME, the ICE, the LIFFE, the LME, the NYMEX, the COMEX, the NYBOT and the KCBOT.

The Manager will assess or review, as appropriate, the creditworthiness of each potential or existing, as appropriate, counterparty to an OTC contract pursuant to guidelines approved by the Manager's board of directors. Furthermore, the Manager, on behalf of the Fund, 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) futures commission merchants; or (e) affiliates of the foregoing.

#### Structure of the Fund

Fund. The Fund is a statutory trust formed pursuant to the Delaware Statutory Trust Act

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<sup>11</sup> See supra note 7.

and will issue shares that represent units of fractional undivided beneficial interest in and ownership of the Fund.

Trustee. Wilmington Trust Company is the Delaware Trustee of the Fund. The Delaware Trustee is unaffiliated with the Manager.

Individual Trustees. The individual trustees of the Fund, all of whom will be unaffiliated with the Manager, will fulfill those functions required under the NYSE Amex listing standards and certain other functions as set forth in the Fund's Trust Agreement.

Manager. The Manager is a Delaware limited liability company that is registered with the CFTC as a CPO and a CTA and is a wholly-owned subsidiary of Nuveen Investments, Inc. The Manager will serve as the CPO and a CTA of the Fund and through the Commodity Sub-Advisor will be responsible for determining the Fund's overall investment strategy and its implementation. It is anticipated that the individual trustees, pursuant to the Fund's Trust Agreement, will delegate all authority (other than the individual trustees' limited requirements to serve on the Fund's Audit Committee and Nominating Committee) to the Manager to operate the business of the Fund and to be responsible for the conduct of the Fund's commodity affairs. As a registered CPO and CTA, the Manager is required to comply with various regulatory requirements under the CEA and the rules and regulations of the CFTC and the NFA.

Commodity Sub-Advisor. The Commodity Sub-Advisor is a Delaware limited liability company that is registered with the CFTC as a CTA and a CPO and is a member of the NFA. As a registered CPO and CTA, the Commodity Sub-Advisor is required to comply with various regulatory requirements under the CEA and the rules and regulations of the CFTC and the NFA. The Commodity Sub-Advisor is also registered with the SEC as an investment adviser.

Collateral Sub-Advisor. The Collateral Sub-Advisor is an affiliate of the Manager and a

wholly owned subsidiary of Nuveen Investments, Inc. The Collateral Sub-Advisor is registered with the Commission as an investment adviser.

Custodian, Transfer Agent and Registrar. State Street Bank and Trust Company (“State Street”) will be the Custodian and Accounting Agent for the assets of the Fund and its affiliate, Computershare Shareholder Services, Inc. will be the Transfer Agent and Registrar for the Shares of the Fund.

Commodity Broker. Newedge USA, LLC (“Newedge”) will act as the commodity broker for the Fund and will clear transactions that may be executed by it or other brokerage firms on a “give-up” basis. Newedge is registered as a futures commission merchant and a CPO and is a member of the NFA. Newedge also is registered with the Commission as a broker-dealer.

The Exchange notes that each of the Manager, the Commodity Broker, and the Commodity Sub-Advisor have represented to the Exchange that they each have erected and maintain firewalls within their respective institutions to prevent the flow of non-public information regarding the portfolio of underlying securities from the personnel involved in the development and implementation of the investment strategy to others such as sales and trading personnel.

#### Product Description

The Shares represent units of fractional undivided beneficial interest in and ownership of the Fund. Following the original issuance, the Shares will be traded on the Exchange similar to other equity securities.

Commencing with the Fund’s first distribution, the Fund intends to make regular monthly distributions to its shareholders (stated in terms of a fixed cents per share distribution rate) based

on past and projected performance of the Fund.<sup>12</sup> The Fund's monthly distributions are sometimes referred to as "managed distributions." The Fund will seek to establish a distribution rate that roughly corresponds to the Manager's projections of the total return that could reasonably be expected to be generated by the Fund over an extended period of time, although the distribution rate will not be solely dependent on the amount of income earned or capital gains realized by the Fund. The Fund's ability to make regular monthly distributions will depend on a number of factors, including, most importantly, the long-term total returns generated by the Fund's portfolio investments and the risk management program.

As portfolio and market conditions change, the Fund's rate of distributions and the Fund's distribution policies could change.<sup>13</sup>

State Street will calculate the net asset value ("NAV") of the Fund's Shares shortly after 4:00 p.m. Eastern Time ("ET") on each trading day.<sup>14</sup>

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<sup>12</sup> The Fund's actual financial performance will vary so that the distribution rate may exceed the Fund's actual total returns. The Fund does not anticipate borrowing to obtain the cash necessary to make its distributions; however, in the event that the Fund's distribution rate exceeds its actual returns, the Fund may be required to liquidate investments in order to make such a distribution. To the extent that the Fund's total return exceeds the distribution rate for an extended period of time, the Fund may increase the distribution rate or distribute supplemental amounts to shareholders. Conversely, if the Fund's total return is less than the distribution rate for an extended period of time, the Fund will be drawing upon its net assets to meet the distribution payments.

<sup>13</sup> In connection with any change in distribution policies, the Fund will provide written advance notice to investors.

<sup>14</sup> NAV per Share will be computed by dividing the value of all assets of the Fund (including any accrued interest and dividends), less all liabilities (including accrued expenses and distributions declared but unpaid), by the total number of Shares outstanding. Under the Fund's current operational procedures, the Fund's net asset value will be calculated after close of the Exchange each day. The values of the Fund's exchange-traded futures and forward contracts and options on futures and forward contracts will be valued at the settlement price determined by the principal exchange through which they are traded. Market quotes for the Fund's exchange-traded futures and forward contracts and options on futures and forward contracts may not be readily

The normal trading hours for those investments of the Fund traded on the various commodity exchanges may differ from the normal trading hours of the Exchange, which are from 9:30 a.m. to 4:00 p.m. ET. Therefore, there may be time periods during the trading day where the Shares will be trading on the Exchange, but the futures contracts on various commodity exchanges will not be trading. The value of the Shares may accordingly be influenced by the non-concurrent trading hours between the Exchange and the various futures exchanges on which the futures contracts based on the underlying commodities are traded.

The trading prices of the Fund's Shares listed on the Exchange may differ from the NAV and can be affected not only by movements in the NAV, but by market forces of supply and demand, economic conditions and other factors as well. Accordingly, the trading prices of the Shares should not be viewed as a real-time update of the NAV.

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available if a contract cannot be liquidated due to the operation of daily limits or, due to extraordinary circumstances, the exchanges or markets on which the investments are traded do not open for trading the entire day and no other market prices are available. In addition, events may occur after the close of the relevant market, but prior to the determination of the Fund's net asset value, that materially affect the values of the Fund's investments. In such circumstances, the Fund will use an independent pricing service to value such investments. The Commodity Sub-Advisor will review the values as determined by the independent pricing service and discuss those valuations with the pricing service if appropriate based on guidelines established by the Manager that it believes are consistent with industry standards. The values of the Fund's OTC derivatives will be valued by the Commodity Sub-Advisor by taking either the arithmetic mean of prices obtained by several dealers, the prices as determined by the average of two (2) or more independent means or the prices as reported by an independent pricing service. In the event the Commodity Sub-Advisor uses an independent pricing service to value any of its commodity futures and forward contracts, options on futures and forward contracts and OTC derivatives, the pricing service typically will value such commodity futures and forward contracts, options on futures and forward contracts and OTC derivatives using a wide range of market data and other information and analysis, including reference to transactions in other comparable investments if available. The procedures of any independent pricing service provider will be reviewed by the Manager on a periodic basis.

Shares will be registered in book entry form through DTC. Trading in the Shares on the Exchange will be effected until 4:00 p.m. ET each business day. The minimum trading increment for such shares will be \$.01.

#### Underlying Commodity Interests Information

The daily settlement prices for the commodity futures and forward contracts held by the Fund are publicly available on the Web sites of the futures and forward exchanges trading the particular contracts. Various data vendors and news publications publish futures prices and data. The Exchange represents that futures, forwards and related exchange traded options quotes and last sale information for the commodity contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures, forwards and exchange traded options is available by subscription from Reuters and Bloomberg. The relevant futures and forward exchanges also provide delayed futures and forward contract information on current and past trading sessions and market news free of charge on their respective Web sites. The contract specifications for the futures and forward contracts are also available from the futures and forward exchanges on their Web sites as well as other financial informational sources. Information related to OTC commodity options is disclosed by the Fund on a monthly basis as discussed below.

#### Availability of Information Regarding the Shares

The Web site for the Fund and the Manager, <http://www.nuveen.com>, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV and the reported closing price; (b) calculation of the premium or discount of such price against such NAV; and (c) other applicable quantitative information. The Fund's

prospectus also will be available on the Fund's Web site.

The Fund's total portfolio holdings will also be disclosed and updated on its Web site on each business day that the Exchange is open for trading.<sup>15</sup> This Web site disclosure of portfolio holdings (as of the previous day's close) will be made daily and will include, as applicable: (a) the name and value of each commodity investment; (b) the value of over-the-counter commodity put options, if any, and the value of the collateral as represented by cash; (c) cash equivalents; and (d) debt securities held in the Fund's portfolio. The values of the Fund's portfolio holdings will, in each case, be determined in accordance with the Fund's valuation policies.

As described above, the NAV for the Fund will be calculated and disseminated daily. The Manager has represented to the Exchange that the NAV will be disseminated to all market participants at the same time. 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 futures contracts held by the Fund are also readily available from the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.nyse.com> to the Manager's Web site.

As noted above, State Street will calculate the NAV of the Fund once each trading day shortly after 4:00 p.m. ET. The NAV will be disclosed on the Fund's Web site and the Exchange's Web site.

#### Termination Events

The Fund will dissolve in certain prescribed circumstances. Upon termination of the

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<sup>15</sup> The total portfolio holdings will be disseminated to all market participants at the same time.

Fund, shareholders will surrender their shares and receive in cash their portion of the value of the Fund.

#### Criteria for Initial and Continued Listing

The Fund will be subject to the criteria in Rule 1602 for initial and continued listing of the Shares. A minimum of 2,000,000 shares will be required to be publicly distributed at the start of trading. It is anticipated that the initial price of a share will be approximately \$25. The Fund will accept subscriptions for a minimum of 100 shares during the initial offering which is expected to last no more than 60 days. After the completion of the initial offering, shares can be bought and sold throughout the trading day like any other publicly-traded security. The Exchange believes that the anticipated minimum number of shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Fund's objectives.

The Fund has represented to the Exchange that, for initial and continued listing of the Shares, it will be in compliance with Section 803 of the NYSE Amex Company Guide (Independent Directors and Audit Committee) and Rule 10A-3 under the Act.

#### Original and Annual Listing Fees

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

#### Trading Rules

The Shares are equity securities subject to NYSE Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, DMM responsibilities and account opening and customer suitability (Rule 405—NYSE

Amex Equities). Initial equity margin requirements of 50% will apply to transactions in the Shares. Shares will trade on the Exchange until 4 p.m. ET each business day and will trade in the minimum price variants established under Rule 62—NYSE Amex Equities. Trading rules pertaining to odd-lot trading in NYSE Amex equities (Rule 124—NYSE Amex Equities) will also apply.

The Exchange states that Rule 15A—NYSE Amex Equities complies with Rule 611 of Regulation NMS, which requires among other things, that the Exchange adopt and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. The trading of the Shares will be subject to certain conflict of interest provisions set forth in NYSE Amex Equities Rules 1603 and 1604.

NYSE Amex Equities Rule 1603 provides that, if a DMM unit is operating under Rule 98 (Former) - NYSE Amex Equities, Rule 105(b) (Former) - NYSE Amex Equities and section (m) of the Guidelines thereunder shall be deemed to prohibit a DMM, his or her member organization, other member, or approved person of such member organization or employee or officer thereof from acting as a market maker or functioning in any capacity involving market-marking responsibilities in an underlying asset or commodity, related futures or options on futures, or any related derivative. If an approved person of a DMM unit is entitled to an exemption from Rule 105(b) (Former) under Rule 98 (Former), such approved person may act in a market making capacity, other than as a specialist in Trust Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. NYSE Amex Equities Rule 1603 provides that, if a DMM unit is operating under Rule 98 - NYSE Amex Equities, Rule 105(b) - NYSE Amex Equities and section (m) of the Guidelines thereunder shall be deemed to prohibit the DMM unit or officer or employee thereof

from acting as a market maker or functioning in any capacity involving market-marking responsibilities in an underlying asset or commodity, related futures or options on futures, or any other related derivatives.

Under the proposed amendments, NYSE Amex Rule 1604 will provide that DMMshandling [sic] the Shares must maintain in a readily accessible place and provide to the Exchange upon request, and keep current a list identifying all accounts for trading the underlying physical assets or commodities, related futures or options on futures, or any other related derivatives, which the DMM may have or over which it may exercise investment discretion.

#### Suitability

The Information Circular (described below) will inform members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of Rule 405 – NYSE Amex Equities (Diligence as to Accounts).

The Exchange notes that, pursuant to Rule 405 – NYSE Amex Equities, member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

#### Information Circular

The Exchange will distribute an Information Circular to its members in connection with the trading of the Shares. The Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other things, will discuss what the Shares are, the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction during the

initial public offering, applicable NYSE Amex rules, and trading information and applicable suitability rules. The Circular will also explain that the Fund is subject to various fees and expenses described in the Registration Statement. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and note the respective jurisdictions of the SEC and CFTC. The Circular will also note that the forward contracts are traded on the LME, which is subject to regulation by the Securities and Investment Board in the United Kingdom and the Financial Services Authority. In addition, the Circular will indicate that OTC instruments or products may effectively be unregulated.

The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Circular will disclose that the NAV for shares will be calculated shortly after 4:00 p.m. ET each trading day.

### Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws.<sup>16</sup> NYSE Amex will rely on its existing surveillance procedures. The Exchange currently has in place Information Sharing Agreements with ICE FUTURES, LME, NYMEX, and KCBOT for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges. The Exchange also notes that the CBOT, CME, LIFFE and NYBOT are members of the Intermarket

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<sup>16</sup> See e-mail from John Carey, Chief Counsel – U.S. Equities, Exchange, to Geoffrey Pemble and Michou Nguyen, Special Counsels, Commission, dated February 23, 2010.

Surveillance Group (“ISG”). As a result, the Exchange asserts that market surveillance information is available from the CBOT, CME, NYBOT and LIFFE through ISG, if necessary, due to regulatory concerns that may arise in connection with the futures contracts.

#### Conforming Changes and Updating Amendments

Since the original adoption of Rule 1600 et seq., the Exchange has adopted a completely new set of rules governing both equity and options trading on the Exchange. Consequently, a number of references to Exchange rules in Rule 1600 et seq. are no longer correct and have been appropriately modified. References to equity specialists have been modified to refer to “designated market makers” (“DMMs”), which is the designation used throughout the amended NYSE Amex equity trading rules. A typographical error in Rule 1602 is also corrected in this filing.

Commentary .03 to Rule 1600 provides that member organizations shall not enter limit orders into the Exchange’s order routing system as agent (i.e. for customer agency orders) in the same trust, for the account or accounts of the same or related beneficial owner, in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Trust Units on a regular or continuous basis. The Amex adopted provisions of this kind because the ability of non-members to function effectively as market makers gave those non-members an advantage over the specialist who was required to yield priority to their orders. That advantage no longer exists under current NYSE Amex rules, as all market participants (including the DMM) trade on parity unless they establish priority under Exchange rules, which can be done by all market participants including the DMM. As such Commentary .03 to rule 1600 no longer serves any purpose and the Exchange proposes to delete it.

As originally adopted, Rule 1603 provided that NYSE Amex Rule 175(c) was deemed to prohibit an equity specialist, his member organization, or any other member, limited partner, officer, or approved person thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in an underlying asset or commodity, related futures or options on futures, or any other related derivatives, unless the Exchange granted an exemption under Rule 193. Rule 1603 as amended provides that, if a DMM unit is operating under Rule 98 (Former) - NYSE Amex Equities, Rule 105(b) (Former) - NYSE Amex Equities and section (m) of the Guidelines thereunder shall be deemed to prohibit a DMM, his or her member organization, other member, or approved person of such member organization or employee or officer thereof from acting as a market maker or functioning in any capacity involving market-marking responsibilities in an underlying asset or commodity, related futures or options on futures, or any related derivative. If an approved person of a DMM unit is entitled to an exemption from Rule 105(b) (former) under Rule 98 (former), such approved person may act in a market making capacity, other than as a specialist in Trust Units on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

As originally adopted, Commentary .01 to Rule 1603 provided that trading in the Shares was generally subject to the Exchange's Stabilization rule, except that specialists would be permitted to buy on "plus ticks" and sell on "minus ticks," in order to bring the Shares into parity with the underlying commodity or commodities and/or futures contract price. The Exchange's new stabilization rule (Rule 104 – NYSE Amex Equities) does not contain the same prohibitions on buying on "plus ticks" and selling on "minus ticks" as was formerly the case under Rule 170 – AIMI. Consequently, the Exchange proposes to delete Commentary .01 to Rule 1603, as it is

no longer relevant.

Rule 1604(a) as originally adopted, provided that the member organization acting as specialist in Trust Units was obligated to conduct all trading in the Trust Units in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (See Rule 170—AEMI). The Exchange proposes to delete this requirement, as DMMs are now governed by Rule 104 – NYSE Amex Equities, which does not limit the DMM’s use of investment accounts to trade its assigned securities or require the DMM to report activity in such accounts to the Exchange.<sup>17</sup> Rule 1604(a) also provides that the member organization acting as DMM in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the member organization acting as DMM may have or over which it may exercise investment discretion. The Exchange proposes to amend this requirement to provide that, rather than filing the list with the Exchange, the DMM must maintain it in a readily accessible place and provide it to the Exchange upon request. The Exchange believes that this is sufficient for its regulatory needs, as it will only review the list when a specific regulatory need arises, so it is sufficient to have the list readily available upon request.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>18</sup> of

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<sup>17</sup> The Exchange notes that Rule 104 – NYSE Amex Equities in its current form has been approved by the SEC on a pilot program basis. In the event that the pilot program is not made permanent or is amended, DMMs may at that time become subject to limitations on their ability to trade Trust Units in investment accounts.

<sup>18</sup> 15 U.S.C. 78f(b).

the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change is designed to protect investors and the public interest because it will impose appropriate restrictions on the listing and trading of Trust Units.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

#### IV. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-09 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NYSEAmex-2010-09. 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,<sup>20</sup> 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and

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<sup>20</sup> The text of the proposed rule change is available on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

3 p.m. Copies of the 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-NYSEAmex-2010-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).