

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58994; File No. SR-NYSEArca-2008-125)

November 21, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change  
Relating to the Listing of Units of the United States Short Oil Fund

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 18, 2008, NYSE Arca, Inc. (“NYSE Arca” 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 prepared by NYSE Arca. 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 Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to list and trade pursuant to NYSE Arca Equities Rule 8.300 units (“Units”) of the United States Short Oil Fund, LP (“USSO” or “Partnership”). The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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

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

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

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

Under NYSE Arca Equities Rule 8.300, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (“UTP”) Partnership Units.<sup>3</sup> The Exchange proposes to list and trade the Units pursuant to NYSE Arca Equities Rule 8.300.<sup>4</sup> The Commission has previously approved listing of similar limited partnerships on the American Stock Exchange LLC (“Amex”) (now known as NYSE Alternext US LLC)<sup>5</sup> and trading on the Exchange pursuant to UTP.<sup>6</sup> In addition, the Commission has approved for listing on the Exchange and,

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<sup>3</sup> On May 25, 2006, the Commission approved NYSE Arca Equities Rule 8.300, which sets forth the rules related to listing and trading criteria for Partnership Units. See Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11) (approving trading pursuant to UTP of Partnership Units of the United States Oil Fund, LP). On July 11, 2007, the Commission approved the Exchange’s proposal to trade pursuant to UTP Partnership Units of the United States Natural Gas Fund, LP. See Securities Exchange Act Release No. 56042 (July 11, 2007), 72 FR 39118 (July 17, 2007) (SR-NYSEArca-2007-45).

<sup>4</sup> USSO has filed with the Commission Amendment No. 1 to Form S-1, dated September 29, 2008 (File No. 333-152386) (the “Registration Statement”). Unless otherwise noted, descriptions herein relating to USSO are based on the Registration Statement.

<sup>5</sup> See Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (order approving Amex listing of United States Oil Fund, LP); 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR-Amex-2007-98) (order approving Amex listing of United States 12 Month Oil Fund, LP and United States 12 Month Natural Gas Fund, LP); 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR-Amex-2006-112) (order approving Amex listing of United States Natural Gas Fund, LP); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR-Amex-2007-70) (order approving Amex listing of United States Heating Oil Fund, LP and United States Gasoline Fund, LP) (collectively, the “Amex Filings”).

<sup>6</sup> See Securities Exchange Act Release No. 56832 (November 21, 2007), 72 FR 67328 (November 28, 2007) (SR-NYSEArca-2007-102) (order approving UTP trading of United States 12 Month Oil Fund, LP and United States 12 Month Natural Gas Fund,

previously, on the Amex fourteen funds of the ProShares Trust II based on underlying commodity or currency benchmarks that seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the underlying benchmark or twice the inverse (-200%) of the daily performance of the underlying benchmark.<sup>7</sup>

The net assets of USSO will consist primarily of short positions in futures contracts for crude oil, heating oil, gasoline, natural gas and other petroleum-based fuels that are traded on the New York Mercantile Exchange (“NYMEX”), ICE Futures or other U.S. and foreign exchanges (collectively, “Futures Contracts”). USSO may also take short positions in other crude oil-related investments such as cash-settled options on Futures Contracts, forward contracts for crude oil, and over-the-counter transactions that are based on the price of crude oil and other petroleum-based fuels, Futures Contracts and indices based on the foregoing (“Other Crude Oil-Related Investments”). A short position is one in which USSO will have sold the Futures Contract or Other Crude-Oil Related Investment (together with futures contracts, “Crude Oil

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LP); Securities Exchange Act Release No. 56042 (July 11, 2007), 72 FR 39118 (July 17, 2007) (SR-NYSEArca-2007-45) (order approving UTP trading of United States Natural Gas Fund, LP); Securities Exchange Act Release No. 57294 (February 8, 2008), 73 FR 8917 (February 15, 2008) (SR-NYSEArca-2007-78) (order approving UTP trading of United States Heating Oil Fund, LP and United States Gasoline Fund, LP) (collectively, with the orders cited in note 3, *supra*, the “UTP Filings”).

<sup>7</sup> See Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39) (approving listing of (1) ProShares Ultra DJ-AIG Commodity, (2) ProShares UltraShort DJ-AIG Commodity, (3) ProShares Ultra DJ-AIG Agriculture, (4) ProShares UltraShort DJ-AIG Agriculture, (5) ProShares Ultra DJ-AIG Crude Oil, (6) ProShares UltraShort DJ-AIG Crude Oil, (7) ProShares Ultra Gold, (8) ProShares UltraShort Gold, (9) ProShares Ultra Silver, (10) ProShares UltraShort Silver, (11) ProShares Ultra Euro, (12) ProShares UltraShort Euro, (13) ProShares Ultra Yen, and (14) ProShares UltraShort Yen (“Funds”)); Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91) (approving listing of the Funds on the Exchange).

Interests”) and must buy it back or otherwise close out the position in the future.<sup>8</sup> As a result, a drop in the market value of the investment would lead to a potential gain for USSO, while an increase in the market value of the investment would lead to a potential loss for USSO.

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

USSO will comply with the requirements of Rule 10A-3<sup>9</sup> under the Securities Exchange Act of 1934 (“Act”)<sup>10</sup> as it applies to limited partnerships.

#### USSO Investment Objective and Policies

The investment objective of USSO is to have the changes in percentage terms of the Units’ net asset value (“NAV”) inversely reflect the changes in percentage terms of the spot price of light, sweet crude oil delivered to Cushing, Oklahoma, as measured by the changes in the price of the futures contract on light, sweet crude oil as traded on the NYMEX. The futures contract employed is the near month expiration contract, except when the near month contract is

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<sup>8</sup> Terms relating to USSO referred to, but not defined, herein are defined in the Registration Statement.

<sup>9</sup> 17 CFR 240.10A-3.

<sup>10</sup> 15 U.S.C. 78a.

within two weeks of expiration, in which case the futures contract will be the next month contract to expire (the “Benchmark Futures Contract”), less USSO’s expenses.<sup>11</sup>

As a specific benchmark, the General Partner will endeavor to place USSO’s trades in Futures Contracts and Other Crude Oil-Related Investments and otherwise manage USSO’s investments so that “A” will be within plus/minus 10 percent of “B”, where:

- A is the average daily change in USSO’s NAV for any period of 30 successive valuation days, i.e., any day as of which USSO calculates its NAV, and
- B is the inverse of the average daily change in the price of the Benchmark Futures contract over the same period.

According to the Registration Statement, an investment in the Units is intended to allow both retail and institutional investors to easily gain inverse or negative exposure to the crude oil market in a cost-effective manner. The Units are also expected to provide additional means for diversifying an investor’s investments or hedging exposure to changes in crude oil prices.

According to the Registration Statement, the General Partner believes that market arbitrage opportunities will cause changes in USSO’s Unit price on the NYSE Arca to closely track changes in USSO’s NAV.<sup>12</sup> The General Partner believes that changes in USSO’s NAV in percentage terms will closely track the changes in percentage terms in the Benchmark Futures Contract. It is not the intent of USSO to be operated in a fashion such that its NAV will equal, in dollar terms, the dollar price of spot crude oil or any particular futures contract based on crude oil.

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<sup>11</sup> The Benchmark Futures Contract will be changed or “rolled” from the near month contract to expire to the next month contract to expire during one day.

<sup>12</sup> See section entitled “Arbitrage,” infra.

A description of the petroleum-based fuels market for light, sweet crude oil, heating oil, natural gas and gasoline is contained in the Registration Statement.

Structure and Regulation of USSO

USSO is a Delaware limited partnership formed on June 30, 2008. It is managed and controlled by the General Partner, a single member limited liability company formed in Delaware on May 10, 2005, registered as a commodity pool operator (“CPO”) with the Commodity Futures Trading Commission (“CFTC”) and a member of the National Futures Association (“NFA”). Prior to June 13, 2008, the General Partner’s name was Victoria Bay Asset Management, LLC. The General Partner is not affiliated with a broker-dealer.

Clearing Broker. UBS Securities, LLC, a CFTC registered futures commission merchant, will act as clearing broker for USSO. The clearing arrangements between the clearing broker and USSO generally are terminable by the clearing broker once it has given USSO notice. Upon termination, the General Partner may be required to renegotiate or make other arrangements for obtaining similar services if USSO intends to continue trading in Futures Contracts or Other Crude Oil-Related Investments at its present level of capacity.

Administrator and Custodian. Brown Brothers Harriman & Co. is anticipated to be the registrar and transfer agent for the Units. It is also anticipated to be the Custodian for USSO. In this capacity, Brown Brothers Harriman & Co. will hold USSO’s Treasuries, cash and cash equivalents pursuant to a custodial agreement. In addition, Brown Brothers Harriman & Co. will perform certain administrative and accounting services for USSO and will prepare certain SEC and CFTC reports on behalf of USSO.

Marketing Agent. USSO plans to employ ALPS Distributors, Inc. as its marketing agent. USSO, through its marketing agent, will continuously offer Creation Baskets to and redeem

Redemption Baskets from Authorized Purchasers and will receive and process creation and redemption orders from Authorized Purchasers.

### Investment Strategy of USSO

To achieve its investment objective, USSO intends to maintain “short” positions in Futures Contracts and Other Crude Oil-Related Investments in which it invests. USSO seeks to have the percent changes in its Units’ NAV inversely track percentage changes in the price of light, sweet crude oil. For that reason, the net assets of USSO will consist primarily of short positions in futures contracts for crude oil, heating oil, gasoline, natural gas and other petroleum-based fuels that are traded on the NYMEX, ICE Futures or other U.S. or foreign exchanges. USSO may also take short positions in other crude oil-related investments such as cash-settled options on Futures Contracts and forward contracts for crude oil, and over-the-counter transactions that are based on the price of crude oil and other petroleum-based fuels, Futures Contracts and indices based on the foregoing.

In addition to the Futures Contracts and options on the Futures Contracts, there also exists an active non-exchange-traded market in derivatives tied to crude oil. These derivatives transactions (also known as over-the-counter contracts) are usually entered into between two parties. Unlike most of the exchange-traded Futures Contracts or exchange-traded options on the Futures Contracts, each party to such contract bears the credit risk that the other party may not be able to perform its obligations under its contract.

Some crude oil-based derivatives transactions contain fairly generic terms and conditions and are available from a wide range of participants. Other crude oil-based derivatives have highly customized terms and conditions and are not as widely available. Many of these over-the-counter contracts are cash-settled forwards for the future delivery of crude oil- or petroleum-

based fuels that have terms similar to the Futures Contracts. Others take the form of “swaps” in which the two parties exchange cash flows based on pre-determined formulas tied to the crude oil spot price, forward crude oil price, the Benchmark Futures Contract price, or other crude oil futures contract price. USSO anticipates that the use of Other Crude Oil-Related Investments together with its investments in Futures Contracts will produce price and total return results that closely track the investment goals of USSO.

#### Impact of Accountability Levels and Position Limits

According to the Registration Statement, U.S. designated contract markets such as NYMEX have established accountability levels and position limits on the maximum net long or net short futures contracts in commodity interests that any person or group of persons under common trading control (other than as a hedge, which an investment in USSO is not) may hold, own or control. The current accountability level for investments in Futures Contracts is not a fixed ceiling, but rather a threshold above which NYMEX may exercise greater scrutiny and control over an investor.

In addition to accountability levels and position limits, NYMEX also sets daily price fluctuation limits on Futures Contracts. The daily price fluctuation limit establishes the maximum amount that the price of futures contracts may vary either up or down from the previous day’s settlement price. Once the daily price fluctuation limit has been reached in a particular Futures Contract, no trades may be made at a price beyond that limit.

These limits may potentially cause a tracking error between the price of the Units and the price of the Benchmark Futures Contract. This may in turn prevent an investor from being able to effectively use USSO as a way to hedge against crude oil-related losses or as a way to indirectly take short positions in crude oil.

### Investment Procedures

According to the Registration Statement, USSO anticipates that the use of Futures Contracts, together with Other Crude Oil-Related Investments, as necessary, will produce price and total return results that closely track the investment goals of USSO.

Counterparty Procedures. To protect itself from the credit risk that arises in connection with taking short positions in Other Crude Oil-Related Investments, USSO will enter into agreements with each counterparty that provide for the netting of its overall exposure to its counterparty. The General Partner will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract pursuant to guidelines approved by the General Partner's Board of Directors. Furthermore, the General Partner on behalf of USSO will only enter into over-the-counter 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.

Cash, Cash Equivalents, and Treasuries. USSO will also invest in cash, cash equivalents, and Treasuries with a remaining maturity of two years or less. The cash, cash equivalents, and Treasuries are to be used to meet USSO's current or potential margin or collateral requirements with respect to its short positions in Futures Contracts and Other Crude Oil-Related Investments. USSO plans to reinvest the earned interest income, hold it in cash, or use it to pay its expenses. If USSO reinvests the earned interest income, it will make investments that are consistent with its investment objectives.

### Creation and Redemption of Units

USSO will continuously offer Creation Baskets consisting of 100,000 Units to Authorized Purchasers through the marketing agent. USSO will create and redeem Units only in one or more Creation Baskets or Redemption Baskets. Only Authorized Purchasers may purchase or redeem Creation Baskets or Redemption Baskets. The creation and redemption of baskets will only be made in exchange for delivery to USSO or the distribution by USSO of the amount of Treasuries and any cash represented by the baskets being created or redeemed. The amount will be based on the combined NAV of the number of Units included in the baskets being created or redeemed determined as of 4:00 p.m. Eastern Time (“E.T.”) on the day the order to create or redeem baskets is properly received.

Calculation of Partnership NAV. The Administrator will calculate NAV by taking the current market value of USSO’s total assets and subtracting any liabilities. The Administrator will calculate NAV once each trading day and the NAV for a particular trading day will be released after 4:00 p.m. E.T. The Administrator will calculate NAV as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. E.T. USSO will use the NYMEX closing price (determined at the earlier of the close of that Exchange or 2:30 p.m. E.T.) for the contracts held on NYMEX, but will calculate or determine the value of all other USSO investments as of the earlier of the close of the NYSE Arca Core Trading Session or 4:00 p.m. E.T.

Calculation of Basket Amount. USSO will create and redeem Units only in blocks of 100,000 Units called Creation Baskets and Redemption Baskets, respectively. The price of each Unit offered in Creation Baskets on any day will be the total NAV of USSO calculated as of the close of the New York Stock Exchange on that day divided by the number of issued and outstanding Units.

The creation and redemption of baskets will only be made in exchange for delivery to USSO or the distribution by USSO of the amount of Treasuries and any cash represented by the baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Units included in the baskets being created or redeemed as of 4:00 p.m. E.T. on the day the order to create or redeem baskets is properly received. Additional procedures relating to the creation and redemption of Units are described in the Registration Statement.

#### Arbitrage

According to the Registration Statement, investors and market professionals will be able, through out the trading day, to compare the market price of USSO and the Indicative Partnership Value (“IPV”), as discussed below. If the market price of USSO Units diverges significantly from the IPV, market professionals will have an incentive to execute arbitrage trades. Such arbitrage trades can tighten the tracking between the market price of USSO and the IPV and thus can be beneficial to all market participants. In addition, quotation and last-sale information regarding the Units will be disseminated through the facilities of the Consolidated Tape Association.

#### Dissemination and Availability of Information

Underlying Spot Price and Price of Futures Contracts. The spot price of light, sweet crude oil delivered to Cushing, Oklahoma, and the applicable Futures Contracts are the underlying benchmark investment, commodity or asset, as applicable, for purposes of NYSE Arca Equities Rule 8.300(d)(2)(ii).<sup>13</sup>

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<sup>13</sup> NYSE Arca Equities Rule 8.300(d)(2)(ii) provides that NYSE Arca Equities will consider removing from listing Partnership Units if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at a least a 15-second delayed basis or NYSE Arca Equities stops providing a hyperlink on its Web site to any such investment, commodity or asset value.

The NYMEX disseminates price information on the Futures Contracts traded on the NYMEX on a real-time basis during normal trading hours on the NYMEX from 10:00 a.m. E.T. to 2:30 p.m. E.T.

Portfolio Disclosure. USSO's total portfolio composition will be disclosed each business day that the NYSE Arca is open for trading on USSO's Web site at [www.unitedstatesshortoilfund.com](http://www.unitedstatesshortoilfund.com). The Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name and value of each Crude Oil Interest, the specific types of Other Crude Oil-Related Investments and characteristics of such Other Crude Oil-Related Investments, Treasuries, and the amount of cash and cash equivalents held in USSO's portfolio. USSO's Web site is publicly accessible at no charge.

Indicative Partnership Value. In order to provide updated information relating to USSO for use by investors and market professionals, NYSE Arca will calculate and disseminate during the trading day an updated IPV, as described below. The IPV will be calculated by using the prior day's closing NAV per Unit of USSO as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the active Futures Contract on NYMEX. The prices reported for the active Futures Contract month will be adjusted based on the prior day's spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract will not be adjusted. The IPV disseminated during the NYSE Arca Core Trading Session should not be viewed as an actual real time update of the NAV, because NAV is calculated only once at the end of each trading day.

The IPV will be disseminated on a per Unit basis every 15 seconds during the Core Trading Session of NYSE Arca from 9:30 a.m. E.T. to 4:00 p.m. E.T. The normal trading hours

of NYMEX are 10:00 a.m. E.T. to 2:30 p.m. E.T. This means that there will be a gap in time at the beginning and the end of each day during which USSO Units will be traded on the NYSE Arca, but real-time NYMEX trading prices for futures contracts traded on the NYMEX will not be available. As a result, during those gaps there will be no update to the IPV. The IPV will not be updated during the Exchange's Opening Trading Session from 4:00 a.m. to 9:30 a.m., during that part of the Exchange's Core Trading Session when NYMEX is not normally open for trading (specifically, 9:30 a.m. to 10:00 a.m. E.T. and 2:30 p.m. to 4:00 p.m. E.T.), and during the Late Trading Session from 4:00 p.m. to 8:00 p.m. E.T.

The NYSE Arca will disseminate the IPV through the facilities of CTA/CQ High Speed Lines. In addition, the IPV will be published on the NYSE Arca's Web site and will be available through on-line information services such as Bloomberg and Reuters. Dissemination of the IPV provides additional information that is not otherwise available to the public and is useful to investors and market professionals in connection with the trading of the Units on the NYSE Arca.

#### Trading Rules

The Exchange 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 Units will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. The minimum trading increment for the Units on the Exchange will be \$0.01.

NYSE Arca Equities Rule 8.300(e) sets forth certain restrictions on ETP Holders acting as registered Market Makers in Partnership Units to facilitate surveillance. NYSE Arca Equities Rule 8.300(e)(2)-(3) requires that the ETP Holder acting as a registered Market Maker in

Partnership Units provide the Exchange with necessary information relating to its trading in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.300(e)(4) prohibits the ETP Holder acting as a registered Market Maker in Partnership Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying asset or commodity, related futures or options on futures or any other related derivative (including the Partnership Units). In addition, NYSE Arca Equities Rule 8.300(e)(1) prohibits the ETP Holder acting as a registered Market Maker in Partnership Units from being affiliated with a market maker in the underlying asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying Futures Contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Units could be halted pursuant to the Exchange's "circuit breaker" rule.<sup>14</sup> If the value of the underlying benchmark investment, commodity or asset or IPV applicable to the Units is not being disseminated as required, the Exchange may halt trading in the Units during the day on which the interruption first occurs. If such interruption persists past the trading day in which it

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<sup>14</sup> See NYSE Arca Equities Rule 7.12.

occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>15</sup> Under Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Units is not being disseminated to all market participants at the same time, it will halt trading in the Units on the Exchange until such time as the NAV is available to all market participants. In addition, if the portfolio composition applicable to the Units, as disseminated on the Web site for the Units, is not disseminated to all market participants at the same time, the Exchange will halt trading in the affected Units.

### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Partnership Units, to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Units, the applicable physical commodities included in, or options, futures or options on futures on, or any other derivatives based on such commodities, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the Futures Contracts, the Exchange can obtain market

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<sup>15</sup> E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated November 20, 2008.

surveillance information, including customer identity information, with respect to transactions occurring on NYMEX and ICE Futures pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Futures Contracts are traded are members of the Intermarket Surveillance Group (“ISG”) and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org).

In addition, to the extent that the Partnership invests in Futures Contracts traded on other exchanges, not more than 10% of the weight of the Partnership assets in the aggregate shall consist of Crude Oil Interests whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Units. Specifically, the Bulletin will discuss the following: (1) the risks involved in trading the Units during the Opening and Late Trading Sessions when an updated IPV will not be calculated or publicly disseminated; (2) the risks involved in trading the Units during the part of the Core Trading Session when an updated IPV will not be available;<sup>16</sup> (3) the procedures for purchases and redemptions of Units (and that Units are not individually redeemable); (4) NYSE

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<sup>16</sup> As noted above, the IPV will not be updated during that part of the Exchange’s Core Trading Session when NYMEX is not normally open for trading (specifically, 9:30 a.m. to 10:00 a.m. E.T. and 2:30 p.m. to 4:00 p.m. E.T.).

Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (5) how information regarding the IPV is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Bulletin will reference that each Partnership is subject to various fees and expenses described in the relevant Registration Statement.

The Bulletin 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 crude oil, heating oil, gasoline, natural gas or other petroleum-based fuels, and that the CFTC has regulatory jurisdiction over the trading of futures contracts traded on U.S. exchanges and related options.

The Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Bulletin will also disclose that the NAV for the Units will be calculated after 4:00 p.m. E.T. each trading day.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in

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

<sup>18</sup> 15 U.S.C. 78f(b)(5).

securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will allow the listing of the Units on the Exchange, which the Exchange believes will benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.300 are intended to protect investors and the public interest.

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 self-regulatory organization consents, the Commission will:

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

The Exchange has requested accelerated approval of this proposed rule change prior to the 30<sup>th</sup> day after the date of publication of the notice thereof in the Federal Register. The Commission has determined that a 15-day comment period is appropriate in this case.

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-NYSEArca-2008-125 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-125. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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-NYSEArca-2008-125 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Florence E. Harmon  
Acting Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).