

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57189; File No. SR-NASDAQ-2007-079)

January 23, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Units of the United States Heating Oil Fund, LP and the United States Gasoline 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 September 13, 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. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

Nasdaq proposes to trade units (“Units”) of the United States Heating Oil Fund, LP (“USHO”) and the United States Gasoline Fund, LP (“USG”) (collectively, the “Partnerships”) pursuant to unlisted trading privileges (“UTP”). The text of the proposed rule change is available at Nasdaq’s principal office, the Commission’s Public Reference Room, and www.nasdaq.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, Nasdaq included statements concerning the purpose of, and basis for, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Units of USHO and USG under Nasdaq Rule 4630 (Trading in Commodity-Related Securities)³ pursuant to UTP. The respective Units represent an ownership of a fractional undivided beneficial interest in the net assets of each of USHO and USG.⁴ The net assets of each of USHO and USG will consist of investments in futures contracts based on heating oil, gasoline, crude oil, and other petroleum-based fuels and natural gas that are traded on the New York Mercantile Exchange (“NYMEX”), Intercontinental Exchange (“ICE Futures”), or other U.S. and foreign exchanges (collectively, “Futures Contracts”). The Commission has approved the listing and trading of the Units on the American Stock Exchange LLC (“Amex”).⁵

Detailed information regarding the Partnerships; the investment strategies, objectives, and policies of the Partnerships; the petroleum-based fuels market, the structure, management, and regulation of the Partnerships; accountability levels and position limits; the Indicative

³ NASDAQ Rule 4630(c)(1) defines a Commodity-Related Security as a security that is issued by a trust, partnership, commodity pool, or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.

⁴ Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

⁵ See Securities Exchange Act Release No. 57188 (January 23, 2008) (SR-Amex-2007-70) (approving Amex's proposal to list and trade the Units of the Partnerships). See also Securities Exchange Act Release No. 57042 (December 26, 2007), 73 FR 514 (January 3, 2008) (SR-Amex-2007-70) (providing notice of Amex's proposal to list and trade the Units of the Partnerships) (“Amex Proposal”).

Partnership Value (as defined herein); the manner in which the Units will be offered and sold; calculation methodologies; and arbitrage can be found in the Amex Proposal and in the respective Registration Statements regarding the offering of the Units filed with the Commission under the Securities Act of 1933.⁶

The daily settlement prices for the NYMEX-traded Futures Contracts are publicly available on the NYMEX Web site at www.nymex.com. In addition, various market data vendors and news publications publish futures prices and related data, including quotation and last-sale information for the Futures Contracts. NYMEX also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the Futures Contracts are available on the NYMEX Web site and the ICE Futures Web site at www.icefutures.com.

Amex will disseminate through the facilities of the Consolidated Tape Association (“CTA”) an updated Indicative Partnership Value (“Indicative Partnership Value”). The Indicative Partnership Value for each Partnership will be disseminated on a per-Unit basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time (“ET”). In addition, shortly after 4:00 p.m. ET on each business day, the Administrator (as defined herein), Amex, and the General Partner, Victoria Bay Asset Management, LLC, will disseminate the Basket Amount⁷ for orders placed during that day, together with the net asset value (“NAV”) for the Units.⁸

⁶ See USHO’s Registration Statement on Form S-1 filed on April 19, 2007 (File No. 333-142211) and USG’s Registration Statement on Form S-1 filed on April 18, 2007 (File No. 333-142206).

⁷ See *infra* note 14.

⁸ E-mail from Sean Bennett, Assistant General Counsel, Nasdaq, to Rebekah Goshorn, Staff Attorney, Division of Trading and Markets, Commission, dated January 8, 2008 (“NASDAQ Confirmation”). Amex will obtain a representation from each Partnership

Quotations and last-sale information regarding the Units will be disseminated through the facilities of the CTA and the Consolidated Quote High Speed Lines.⁹ Amex intends to disseminate for each Partnership on a daily basis information with respect to the Indicative Partnership Value, recent NAV, Units outstanding, and the Basket Amount. Amex will also make available on its Web site daily trading volume and closing prices of the Units and 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");¹⁰ (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 SEC or required by the CFTC for each of the Partnerships; and (6) other applicable quantitative information.

USHO's and USG's total portfolio composition will be disclosed, each business day that Amex is open for trading, on their Web sites at www.unitedstatesheatingoilfund.com and www.unitedstatesgasolinefund.com, respectively. USHO's Web site disclosure of portfolio holdings will be made available daily and will include, as applicable, the name and value of each Heating Oil Interest,¹¹ the specific types and characteristics of such Heating Oil Interests,

that the respective NAV per Unit will be calculated daily and made available to all market participants at the same time. See Amex Proposal, supra note 5, 73 FR at 519.

⁹ See Nasdaq Confirmation, supra note 8.

¹⁰ The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

¹¹ Heating Oil Interests are defined as investments in Futures Contracts and other heating oil-related investments, such as cash-settled options on Futures Contracts, forward contracts for heating oil, and over-the-counter ("OTC") contracts that are based on the price of heating oil, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing. See Amex Proposal, supra note 4, 73 FR at 514.

Treasuries,¹² and the amount of cash and cash equivalents held in the portfolio of USHO. USG's Web site disclosure of portfolio holdings will be made available daily and will include, as applicable, the name and value of each Gasoline Interest,¹³ the specific types and characteristics of such Gasoline Interests, Treasuries, and the amount of cash and cash equivalents held in the portfolio of USG. The public Web site disclosure of the portfolio composition of each of USHO and USG will coincide with the disclosure by Brown Brothers Harriman & Co. (the "Administrator") of the NAV for the Units and the Basket Amount¹⁴ (for orders placed during the day) for each Partnership on each business day.

The Exchange will halt trading in the Units under the conditions specified in Nasdaq Rules 4120 and 4121. In addition, the Exchange represents that it will halt trading in the Units if the listing market halts trading in, or delists the Units and that the conditions for a halt include a regulatory halt by the listing market.

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. Nasdaq represents that the Units will trade on the Exchange during all three of its trading sessions.¹⁵

¹² Treasuries are defined as short-term obligations of the United States of two years or less. See id.

¹³ Gasoline Interests are defined as investments in Futures Contracts and other gasoline-related investments, such as cash-settled options on Futures Contracts, forward contracts for gasoline, and OTC transactions that are based on the price of gasoline, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing. See id.

¹⁴ See id., 73 FR at 519 (defining Basket Amount as the amount of Treasuries and/or cash equal to the NAV per Unit times 100,000 Units required for the purchase of a basket of Units).

¹⁵ See Nasdaq Confirmation, supra note 8. Nasdaq defines the Pre-Market Session as the trading session that begins at 7:00 a.m. and continues until 9:30 a.m. The Post-Market Session means the trading session that begins at 4:00 p.m. or 4:15 p.m. and continues until 8:00 p.m. The Regular Market Session means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m. See Nasdaq Rule 4120(b)(4). See also Nasdaq Rule 4630(a)

The Exchange believes that its surveillance procedures are adequate to address any concerns regarding the trading of the Units. Trading in the Units through Nasdaq facilities would be subject to the surveillance procedures of the Financial Industry Regulatory Authority, (“FINRA”) for equity securities, in general, and exchange-traded funds, in particular.¹⁶ In addition, Nasdaq is able to obtain information regarding trading in the Units and the underlying Futures Contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. The Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges that are members or affiliate members of ISG. Nasdaq also states is party to information sharing agreements with NYMEX and ICE Futures for the purpose of providing information in connection with the trading in Futures Contracts traded on the those markets. Nasdaq states to the extent that a Partnership invests in Heating Oil Interests or Gasoline Interests that are traded on other exchanges, it will enter into information sharing agreements with those other exchanges.

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Units. Specifically, the Information Circular will discuss the following: (1) the risks inherent with trading the Units during the Pre- and Post-Market Sessions when the updated Indicative Partnership Value is not calculated and disseminated;¹⁷ (2) the procedures for purchases and

(providing that a Commodity-Related Security approved for trading under this rule is eligible for trading during all market sessions if members comply with Nasdaq Rule 4631 when accepting Commodity-Related Security orders for execution in the Pre-Market Session or Post-Market Session. See infra note 17 and accompanying text.

¹⁶ FINRA surveils trading pursuant to a regulatory services agreement. Nasdaq states that it is responsible for FINRA’s performance under this regulatory services agreement.

¹⁷ See Nasdaq Confirmation, supra note 8. See also Nasdaq Rule 4631 (requiring Exchange members to provide certain customer disclosures, including the risks inherent with

redemptions of Units (and that Units are not individually redeemable); (3) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Units to customers; (4) how information regarding the Indicative Partnership Value is disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action, or interpretive relief granted by the Commission from the Act or any rules thereunder. In addition, the Information Circular will reference that each Partnership is subject to various fees and expenses; there is no regulated source of last-sale information regarding physical commodities; the Commission has no jurisdiction over the trading of heating oil, gasoline, crude oil, natural gas, or other petroleum-based fuels; and the CFTC has regulatory jurisdiction over the trading of heating oil-based and gasoline-based futures contracts and related options. The Information Circular will also disclose the trading hours of the Units of each Partnership and that the NAV for the Units will be calculated after 4:00 p.m. ET each trading day.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is

trading the Units during the Pre- and Post-Market Sessions when the updated Indicative Partnership Value is not calculated and disseminated).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

consistent with Rule 12f-5 under the Act²⁰ 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

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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-2007-079 on the subject line.

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-2007-079. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²⁰ 17 CFR 240.12f-5.

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 such filing also will be available for inspection and copying at the principal offices 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-2007-079 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

After careful review, 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.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²² 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

²¹ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b)(5).

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,²³ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.²⁴ The Commission notes that it approved the original listing and trading of the Units on Amex.²⁵ The Commission finds that the proposal is consistent with Rule 12f-5 under the Act,²⁶ 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,²⁷ 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. Quotations and last-sale information regarding the Units will

²³ 15 U.S.C. 78l(f).

²⁴ 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.

²⁵ See supra note 5.

²⁶ 17 CFR 240.12f-5.

²⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

be disseminated through the facilities of the CTA and Consolidated Quote High Speed Lines. The daily settlement prices for the Futures Contracts are publicly available on various Web sites, and market data vendors and news publications publish futures prices and related data, including quotation and last-sale information for the Futures Contracts. Amex will disseminate through the facilities of the CTA an updated Indicative Partnership Value on a per-Unit basis at least every 15 seconds during regular Amex trading hours. Amex intends to disseminate for each Partnership on a daily basis information with respect to the Indicative Partnership Value, information related to the NAV, number of Units outstanding, the Basket Amount, and daily trading volumes and closing prices of the Units. Finally, USHO's and USG's total portfolio composition will be disclosed, each business day that the Amex is open for trading, on their respective Web sites.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. The Exchange will halt trading in the Units under the conditions prescribed in Nasdaq Rules 4120 and 4121. In addition, the Exchange represents that it will halt trading in the Units if the listing market halts trading in the Units.

The Commission notes that, if the Units should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Units pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

- (1) The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Units on a UTP basis.
- (2) The Exchange would inform its members in an Information Circular of the special characteristics and risks associated with trading the Units, including risks inherent

with trading the Units during the Pre- and Post-Market Sessions when the updated Indicative Partnership Value is not calculated and disseminated, and suitability recommendation requirements.

- (3) The Exchange would require its members to deliver a prospectus or product description to investors purchasing Units prior to or concurrently with a transaction in such Units and will note this prospectus delivery requirement in the Information Circular.

This approval order is based on the Exchange's 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 above, the Commission previously approved the original listing and trading of the Units on Amex.²⁸ The Commission presently is not aware of any regulatory issue that should cause it to revisit this finding or would preclude the trading of the Units on the Exchange pursuant to UTP. Accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such Units.

²⁸ See supra note 5.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-NASDAQ-2007-079) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Florence E. Harmon
Deputy Secretary

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).