

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57059; File No. SR-NYSEArca-2006-76)

December 28, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change As Modified by Amendment Nos. 1, 2 and 3 Thereto, Relating to Trading Shares of the Nuveen Commodities Income and Growth Fund 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 October 27, 2006, NYSE Arca, Inc. (the “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 8, 2007, May 4, 2007, and June 12, 2007, NYSE Arca submitted Amendment Nos. 1, 2 and 3, respectively, to the proposed rule change. This order provides notice of the proposed rule change as modified by Amendment Nos. 1, 2, and 3, and approves the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to add new NYSE Arca Equities Rule 8.500 to permit the listing and trading of units of a trust or other similar entity (“Trust Units”) 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 futures contracts, options on futures contracts, forward contracts, commodities and high credit quality short-term fixed income securities or other securities. Pursuant to proposed new NYSE Arca Equities Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

8.500, the Exchange seeks to trade Trust Units³ of the Nuveen Commodities Income and Growth Fund (“Trust” or “Fund”) pursuant to unlisted trading privileges (“UTP”). The text of the proposed rule change is available at the Exchange’s principal office, the Commission’s Public Reference Room, and www.nyse.com.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to add new NYSE Arca Equities Rule 8.500 in order to permit trading, either by listing or pursuant to UTP, of Trust Units. When the Exchange is the listing market for the Trust Units, the Trust Units will be subject to the continued listing and trading criteria under proposed new NYSE Arca Equities Rule 8.500(d). In such an event, the Exchange would file a Form 19b-4 to list such Trust Units.

Pursuant to proposed NYSE Arca Equities Rule 8.500, the Exchange proposes to trade pursuant to UTP the Shares, which represent beneficial ownership interests in the assets of the Fund, consisting solely of units (“Master Fund Units”) of the Nuveen Commodities Income and

³ The Trust Units of the Fund are referred to herein as the “Shares.”

Growth Master Fund LLC (the “Master Fund”).⁴ The Commission has approved the listing and trading of such Shares on the American Stock Exchange LLC (“Amex”).⁵

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 intends to pursue these investment objectives by investing all of its assets in the Master Fund, which in turn intends to pursue these investment objectives by utilizing: (a) an actively managed rules-based commodity investment strategy, whereby the Master 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 Master Fund; and (b) a risk management program designed to moderate the overall risk and return characteristics of the Master Fund’s commodity investments.

The NAV for the Fund will be calculated and disseminated daily.⁶ In addition, the Web site for the Fund and the Manager, <http://www.nuveen.com>, which is publicly accessible at no charge, will contain the following information: (a) the prior business day’s NAV and the

⁴ The Fund and the Master Fund are commodity pools. The Master 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 Commission (“CFTC”) and is a member of the National Futures Association (“NFA”).

⁵ See Securities Exchange Release No. 56880 (December 3, 2007), 72 FR 69259 (December 7, 2007) (“Amex Approval Order”). See also Securities Exchange Release No. 56465 (September 19, 2007), 72 FR 54489 (“Notice”).

⁶ The NAV will be calculated daily and made available to all market participants at the same time. If the NAV is not being disseminated as required, the Amex has represented that it may halt trading during the day in which the interruption to the dissemination of the NAV occurs. If the interruption to the dissemination of the NAV persists past the trading day in which it occurred, the Amex has represented that it will halt trading no later than the beginning of the trading day following the interruption.

reported closing price; (b) calculation of the premium or discount of such price against such NAV; and (c) other applicable quantitative information. During the initial offering period, the Fund's prospectus also will be available on the Fund's Web site.

The Fund's total portfolio holdings will also be disclosed on the Fund's Web site on each business day that the Amex is open for trading.⁷ 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 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.

The Amex will also make available on its Web site daily trading volume, closing prices, and the NAV, according to the Notice. The closing price and settlement prices of the futures contracts held by the Master 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.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in accordance with NYSE Arca Equities Rule 7.34. The Exchange represents that it has appropriate rules to facilitate transactions in the Shares

⁷ The disclosure of the portfolio holdings will be made to all market participants at the same time. If the portfolio holdings are not being disseminated as required, Amex has represented that it may halt trading during the day in which the interruption to the dissemination of the portfolio holdings occurs. If the interruption to the dissemination of the portfolio holdings persists past the trading day in which it occurred, Amex has represented that it will halt trading no later than the beginning of the trading day following the interruption.

during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01. The Exchange represents that trading of the Shares will be subject to NYSE Arca Equities, Inc. Rule 8.500 (f) - (h), which sets forth certain restrictions on ETP Holders⁸ acting as registered Market Makers in Trust Units that invest in the Shares to facilitate surveillance.

Because the Exchange is trading the Shares pursuant to UTP, the Exchange will cease trading the Shares if: (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12; or (b) the listing market delists the Shares. In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading in the underlying related futures contract(s) is not occurring; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, if the Exchange becomes aware that the total portfolio holdings or the NAV are not disseminated to all market participants at the same time, it will immediately halt trading in the Shares.⁹

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

⁸ “ETP Holder means a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or “ETP.” An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. See 15 U.S.C. 78o(b).

⁹ See E-mail from Timothy J. Malinowski, Director, NYSE Euronext, to Ronesha Butler, Special Counsel, Division of Trading and Markets (“Division”), Commission, dated December 27, 2007 (“E-mail from Timothy J. Malinowski”).

The Exchange's current trading surveillance focuses 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 may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME"), and New York Board of Trade ("NYBOT").¹⁰ In addition, the Exchange has in place Information Sharing Agreements with Intercontinental Exchange ("ICE FUTURES"), London Metals Exchange ("LME"), and New York Mercantile Exchange ("NYMEX") for the purpose of providing information in connection with trading in or related to futures contracts traded on the respective exchanges.

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 Shares. Specifically, the Bulletin will discuss the following: (1) what the Shares are; (2) NYSE Arca Equities Rule 9.2(a),¹¹ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement

¹⁰ For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange notes that not all of the underlying securities may trade on exchanges that are members or affiliate members of the ISG.

¹¹ The Exchange amended NYSE Arca Equities Rule 9.2(a) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Securities Exchange Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (4) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the registration statement. The Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, that the SEC has no jurisdiction over the trading of physical commodities, and that the CFTC has regulatory jurisdiction over the trading of futures contracts and options on futures contracts. The Bulletin will also reference 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 Bulletin will also indicate that OTC instruments or products may effectively be unregulated. 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 Shares will be calculated after 4:00 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change is consistent with Rule 12f-5 under the Act¹⁴ because the Exchange

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 240.12f-5.

deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange'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 impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2006-76 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-NYSEArca-2006-76. 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 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-NYSEArca-2006-76 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, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁶ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

¹⁵ 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).

¹⁶ 15 U.S.C. 78f(b)(5).

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁷ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁸ The Commission notes that it has approved the listing and trading of the Shares on Amex.¹⁹ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²⁰ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²¹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. 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

¹⁷ 15 U.S.C. 78l(f).

¹⁸ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

¹⁹ See Amex Approval Order, *supra* note 5.

²⁰ 17 CFR 240.12f-5.

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

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 specific 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. Finally, the Web site for the Fund and the Manager, 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.

Furthermore, the Commission believes that the proposal to list the Trust Units and trade the Shares pursuant to UTP is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Exchange represents that trading of the Shares is subject to proposed NYSE Arca Equities Rule 8.500(f) which sets forth certain restrictions to prevent the use of material non-public corporate or market information by ETP Holders acting as registered Market Makers in Trust Units. The Commission notes that if the Exchange is the listing market, the Exchange will obtain a representation from the issuer of each of the series of Trust Units that the NAV will be calculated daily and made available to all market participants at the same time.²² In addition, the Exchange represents that, if it is the listing market, the disclosure of the portfolio composition of the Trust Units will be made to all market participants at the same time.²³

²² See NYSE Arca Equities Rule 8.500(d)(1)(ii).

²³ See E-mail from Timothy J. Malinowski, Director, NYSE Euronext, to Ronesha Butler, Special Counsel, Division, Commission, dated December 21, 2007.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Proposed NYSE Arca Equities Rule 8.500(d)(2)(i)(B)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Rule 7.12 have been reached. In addition, the Exchange represents that, if the Exchange becomes aware that the total portfolio holdings or the NAV are not disseminated to all market participants at the same time, NYSE Arca shall immediately halt trading in the Shares.²⁴ If the Exchange is the listing market and the portfolio holdings and NAV are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or NAV occurs.²⁵ If the Exchange is the listing market and the interruption to the dissemination of the portfolio holdings or NAV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.²⁶

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to NYSE Arca Equities rules governing the trading of equity securities.

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

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

1. The Exchange's existing surveillance procedures applicable to derivative products are adequate to properly monitor Exchange trading of the Shares in all trading

²⁴ See E-mail from Timothy J. Malinowski, *supra* note 9.

²⁵ See NYSE Arca Equities Rule 8.500(d)(2)(ii).

²⁶ Id.

sessions and to deter and detect violations of Exchange rules. In addition, the Exchange has represented that it has Information Sharing Agreements with ICE FUTURES, LME, and NYMEX and may obtain market surveillance information via the ISG and other from other exchanges that are members or affiliates of ISG, including CBOT, CME, and NYBOT.

2. Prior to the commencement of trading, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares.
3. The Bulletin will discuss the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

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 has approved the original listing and trading of the Shares on Amex.²⁷ The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares 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 Shares.

²⁷ See Amex Approval Order, supra note 5.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NYSEArca-2006-76), as modified, be, and it hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Nancy M. Morris
Secretary

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).