

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57348; File No. SR-NASDAQ-2008-010)

February 19, 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 12 Month Oil Fund, LP and the United States 12 Month Natural Gas 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 February 5, 2008, 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 it on an accelerated basis.

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

Nasdaq proposes to trade, pursuant to unlisted trading privileges (“UTP”), units (“Units”) of the United States 12 Month Oil Fund, LP (“USOF”) and the United States 12 Month Natural Gas Fund, LP (“USGF”) (each, a “Partnership,” and collectively “Partnerships”).

The text of the proposed rule change is available from the Exchange’s Web site (<http://nasdaq.complinet.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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 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

Nasdaq proposes to trade pursuant to UTP the Units, each of which represents ownership of a fractional undivided beneficial interest in the net assets of either USOF or USGF. Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange. The Commission has approved the original listing and trading of the Units on the American Stock Exchange LLC (“Amex”).³ The net assets of each of USOF and USGF consist of investments in futures contracts based on crude oil, heating oil, gasoline, natural gas, and other petroleum-based fuels that are traded on the New York Mercantile Exchange (“NYMEX”), Intercontinental Exchange (“ICE Futures”), or other U.S. and foreign exchanges (collectively, “Futures Contracts”). In the case of USOF, the predominant investments are expected to be based on, or related to, crude oil. For the USGF, the predominant investments are expected to be based on, or related to, natural gas.

³ See Securities Exchange Act Release No. 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR-Amex-2007-98) (“Amex Order”). See also Securities Exchange Act Release No. 56719 (October 29, 2007), 72 FR 62277 (November 2, 2007) (SR-Amex-2007-98) (“Amex Notice”).

USOF may also invest in other crude-oil-related investments such as cash-settled options on Futures Contracts, forward contracts for gasoline, and over-the-counter (“OTC”) contracts that are based on the price of crude oil, heating oil, gasoline, natural gas, other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, “Other Crude Oil-Related Investments”). Futures Contracts and Other Crude Oil-Related Investments collectively are referred to as “Crude Oil Interests.” Similarly, the USGF may also invest in other natural-gas-related investments such as cash-settled options on Futures Contracts, forward contracts for natural gas, and OTC contracts based on the price of natural gas, crude oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing (collectively, “Other Natural Gas-Related Investments”). Futures Contracts and Other Natural Gas-Related Investments collectively are referred to as “Natural Gas Interests.”

Each of USOF and USGF will invest in Crude Oil Interests and Natural Gas Interests, respectively, to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations. In pursuing this objective, the primary focus of USOF’s and USGF’s investment manager, Victoria Bay Asset Management, LLC (“Victoria Bay” or “General Partner”), is the investment in Futures Contracts and the management of its investments in short-term obligations of the United States of two years or less (“Treasuries”) and cash and cash equivalents (collectively, “Cash”) for margining purposes and as collateral.

The investment objective of USOF is for changes in percentage terms of a Unit’s net asset value (“NAV”) to reflect the changes in percentage terms of the price of light, sweet crude oil delivered to Cushing, Oklahoma, as measured by the changes in the

average of the prices of 12 crude oil futures contracts traded on NYMEX (the “Oil Benchmark Futures Contracts”), less the USOF’s expenses.⁴

The investment objective of USGF is for changes in percentage terms of a Unit’s NAV to reflect the changes in percentage terms of the price of natural gas delivered at Henry Hub, Louisiana, as measured by the changes in the average of the prices of 12 futures contracts on natural gas traded on NYMEX (the “Natural Gas Benchmark Futures Contracts”), less the 12 Month Natural Gas Fund’s expenses.⁵ With respect to both funds, when calculating the daily movement of the average price of the relevant 12 futures contracts, each contract month will be equally weighted.

Information regarding the Partnerships and the General Partner, as well as detailed descriptions of the manner in which the Units will be offered and sold, and the investment strategy of USOF and USGF, are included in their respective registration

⁴ The Oil Benchmark Futures Contracts consist of the near-month contract to expire and the contracts for the following 11 months, for a total of 12 consecutive months’ contracts, except when the near-month contract is within two weeks of expiration, in which case it will be measured by the futures contracts that are the next-month contract to expire and the contracts for the 11 consecutive months following that contract. The average price is determined by summing up the 12 individual monthly prices and dividing them by 12, and then comparing that result to the prior day’s average price determined in the same fashion. The composition of the Oil Benchmark Futures Contracts will be changed or “rolled” over a one-day period by selling the near-month contract and buying the contract, which at that time is the 13-month contract.

⁵ The Natural Gas Benchmark Futures Contracts consist of the near-month contract to expire and the contracts for the following 11 months, for a total of 12 consecutive months’ contracts, except when the near-month contract is within two weeks of expiration, in which case it will be measured by the futures contracts that are the next-month contract to expire and the contracts for the 11 consecutive months following that contract. The average price is determined by summing up the 12 individual monthly prices and dividing them by 12, and then comparing that result to the prior day’s average price determined in the same fashion. The composition of the Natural Gas Benchmark Futures Contract will be changed or “rolled” over a one-day period by selling the near-month contract and buying the contract which at that time is the 13-month contract on the same day.

statements regarding the offering of the Units filed with the Commission under the Securities Act of 1933.⁶

As set forth in the Amex Proposal, the daily settlement prices for the NYMEX-traded Futures Contracts are publicly available on the NYMEX Web site at <http://www.nymex.com>. In addition, various market data vendors and news publications publish futures prices and related data. Quote and last-sale information for the Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, real-time futures data is available by subscription from Reuters and Bloomberg. The 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 also available on the NYMEX Web site and the ICE Futures Web site at <http://www.icefutures.com>.

The Web site for Amex at <http://www.amex.com>, which is publicly accessible at no charge, will contain 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");⁷ (3) 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

⁶ See USOF's Form S-1 filed with the Commission on July 5, 2007, as amended (File No. 333-144348) and USGF's S-1 filed with the Commission on July 6, 2007 (File No. 333-144409).

⁷ The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

recent periodic reports filed with the SEC or required by the CFTC; and (6) other applicable quantitative information.

The total portfolio composition of each Partnership will be disclosed, each business day that the Amex is open for trading, on their respective Web sites at <http://www.unitedstates12monthoilfund.com> and <http://www.unitedstates12monthnaturalgasfund.com>. USOF's 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 Crude Oil Interests and characteristics of such Crude Oil Interests, Treasuries, and amount of cash and cash equivalents held in the portfolio of the USOF. The USGF's Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name and value of each Natural Gas Interest, the specific types of Natural Gas Interests and characteristics of such Natural Gas Interests, Treasuries, and amount of cash and cash equivalents held in the portfolio of USGF.

The public Web site disclosure of the portfolio composition of each of USOF and USGF will coincide with the disclosure by Brown Brothers Harriman & Co. ("Administrator") on each business day of the NAV for the Units and the Basket Amount (for orders placed during the day) for each Partnership. Therefore, the same portfolio information will be provided on the public Web site for each Partnership as well as in the facsimile or e-mail to Authorized Purchasers containing the NAV and Basket Amount ("Daily Dissemination"). The format of the public Web site disclosure and the Daily Dissemination will differ because the public Web site will list all portfolio holdings while

the Daily Dissemination will provide the portfolio holdings in a format appropriate for Authorized Purchasers, i.e., the exact components of a Creation Unit.

Each Partnership's NAV will be calculated and disseminated daily.⁸ According to the Amex Proposal, the Amex also intends to disseminate for each Partnership on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Partnership Value (as discussed below), the recent NAV, the number of Units outstanding, the Basket Amount, and the Deposit Amount. The Amex 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 each Partnership are also readily available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

To provide updated information relating to each Partnership for use by investors, professionals, and persons wishing to create or redeem the Units, the Amex will disseminate through the facilities of the Consolidated Tape Association an updated Indicative Partnership Value ("Indicative Partnership Value"), according to the Amex Proposal. The Indicative Partnership Value for each Partnership will be disseminated on a per-Unit basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The Indicative Partnership Value will be calculated based on the Treasuries and cash required for creations and redemptions (i.e., NAV per Unit x 100,000) adjusted to reflect the price changes of the relevant Benchmark Futures Contract.

⁸ According to the Amex Proposal, the Amex will obtain a representation from each Partnership that its NAV per Unit will be calculated daily and made available to all market participants at the same time.

The Indicative Partnership Value is based on open-outcry trading of the relevant Benchmark Futures Contracts on NYMEX. Open-outcry trading on the NYMEX closes daily at 2:30 p.m. ET while NYMEX's energy futures contracts are traded on the Chicago Mercantile Exchange's CME Globex electronic trading platform on a 24 hour basis.⁹ After the close of open outcry on NYMEX at 2:30 p.m. ET, the Indicative Partnership Value will reflect changes to the relevant Benchmark Futures Contracts as provided for through Globex. The value of the relevant Benchmark Futures Contracts will be available on a 15-second delayed basis from 9:30 a.m. to 4:15 p.m. ET.

Trading Halts

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

Trading Rules

Nasdaq 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. Nasdaq will

⁹ CME Globex® ("Globex") is an open-access marketplace that operates virtually 24 hours each trading day. Electronic trading on Globex is conducted from 6:00p.m. ET Sunday through 5:15 p.m. ET Friday each week. There is a 45-minute break each day between 5:15 p.m. ET and 6:00 p.m. ET.

allow trading in the Units 7:00 a.m. until 8:00 p.m. ET.

Surveillance

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Units on Nasdaq. Trading of the Units through Nasdaq will be subject to FINRA's surveillance procedures for equity securities in general and ETFs in particular.¹⁰ The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliates of the ISG.¹¹

Information Circular

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 procedures for purchases and redemptions of Units in Baskets (and that Units are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Units to customers; (3) how information regarding the Indicative Partnership Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (5) trading information. The Information Circular will also discuss any

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

¹¹ For a list of the current members and affiliate members of ISG, [see www.isgportal.com](http://www.isgportal.com).

exemptive, no-action, or interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that each Partnership is subject to various fees and expenses described in the relevant registration statement.

The Information Circular 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, natural gas, heating oil, gasoline, or other petroleum-based fuels; and that the CFTC has regulatory jurisdiction over the trading of crude-oil-based and natural-gas-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 the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, Nasdaq believes that the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that an exchange have rules designed 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. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹³ 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

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 240.12f-5.

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

The Exchange neither solicited nor received comments on the proposal.

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-2008-010 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-2008-010. 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 office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-010 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.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ 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

¹⁴ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Units.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁶ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁷ The Commission notes that it previously approved the listing and trading of the Units on Amex.¹⁸ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,¹⁹ 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,²⁰ 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

¹⁶ 15 U.S.C. 78l(f).

¹⁷ 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.

¹⁸ See supra note 4.

¹⁹ 17 CFR 240.12f-5.

²⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Units are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, Amex will calculate and disseminate the Indicative Partnership Value per Unit for each Partnership through the facilities of the Consolidated Tape Association at least every 15 seconds throughout the Amex trading hours for the Units. Amex will also make available on its Web site daily trading volume, the closing prices, and the NAV. Web site disclosure of portfolio holdings for both Funds will be made daily. Finally, quotations and last-sale information regarding the Futures Contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters.

The Commission also believes that the proposal appears reasonably designed to preclude trading of the Units if transparency is impaired or there is unfair dissemination of the NAV. Trading in the Units will be subject to Nasdaq Rule 4120(b), which provides that, if the listing market halts trading when the IIV or value of the underlying index is not being calculated or disseminated, the Exchange also would halt trading. Nasdaq will halt trading in the Units of a Partnership if it learns that the listing market halts trading because the NAV is not being disseminated to all market participants at the same time.

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

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules.
2. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Units.
3. The Information Bulletin also would discuss the requirement that members deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction.

This approval order is based on the Exchange's representations.

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.

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 found that the listing and trading of the Shares on Amex is consistent with the Act. 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. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Units.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASDAQ-2008-010) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).