

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56880; File No. SR-Amex-2006-96)

December 3, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, 4, 5, and 6 Thereto, Relating to the Listing and Trading of Trust Units of the Nuveen Commodities Income and Growth Fund

I. Introduction

On October 12, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² to list and trade trust units of the Nuveen Commodities Income and Growth Fund (“Fund”) (“Shares”) pursuant to proposed Amex Rules 1600 et seq. On March 2, 2007, March 21, 2007, May 14, 2007, August 15, 2007, August 28, 2007, and September 17, 2007 the Amex submitted Amendment Nos. 1, 2, 3, 4, 5, and 6, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on September 25, 2007.³ The Commission received one comment letter regarding the proposal.⁴ This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to add Amex rules 1600 et seq. that would 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56465 (September. 19, 2007), 72 FR 54489 (“Notice”).

⁴ See letter to Nancy M. Morris, Secretary, Commission, from John G. Gainey, President, Managed Funds Association (“MFA”), dated October 15, 2007 (“MFA Letter”).

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 these proposed rules, the Amex proposes to list and trade the Shares, which represent beneficial ownership interests in the assets of the Fund, which in turn, consist solely of units (“Master Fund Units”) of the Nuveen Commodities Income and Growth Master Fund LLC (the “Master Fund”). The Exchange also proposes to amend Section 141 of the Amex Company Guide (“Company Guide”) regarding listing fees to accommodate the listing of Trust Units.⁵

As described in the Exchange’s proposal,⁶ 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 Master Fund will invest in commodity futures and forward contracts, options on commodity futures and forward contracts, and over-the-counter (“OTC”) commodity options in the following commodity groups: energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers and may in the future include other commodity investments that become the subject of commodity futures trading.⁷

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

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

⁶ For a more detailed description of the Fund and Master Fund, including their structure, investment objectives, holdings, applicable exchange listing and trading rules, disclosure of pricing information, surveillance, and other regulation, see Notice at 54489-94.

⁷ For information regarding the futures contracts and other investments in which the Master Fund may invest, see Notice at 54490.

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”).

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

⁸ TAP[®] is an actively managed, rules-based commodity investment strategy. TAP[®] is fundamental in nature and is designed to maintain consistent, fully collateralized exposure to commodities as an asset class. TAP[®] does not require the existence of price trends in order to be successful. TAP[®] currently requires investment in futures or forward contracts for three commodities in each of the energy, industrial metals, livestock, agriculturals, tropical foods and fibers and precious metal commodity groups. Commodity group weightings and individual commodity weightings are chosen by a process that blends two-thirds of five year global production value and one-third of five year value of commodity futures contracts traded in dollars. The process constrains the weightings of each commodity group such that no group may constitute more than 35% of TAP[®] and no single commodity interest can constitute more than 70% of its group. In addition, each commodity is rebalanced.

The Exchange submits that proposed Amex Rules 1600 et seq. will accommodate the listing and trading of Trust Units.⁹

III. Comment Letter and Response

The Commission received one comment letter, submitted by the MFA,¹⁰ which expressed concerns about the daily disclosure of the Fund's holdings and net asset value ("NAV"). MFA believed that such daily disclosure is proper in the case of traditional exchange-traded funds ("ETFs") because it facilitates the daily creation and redemption of units, which lowers the tracking error between an ETF's NAV and the trading price of such ETF.¹¹ In the case of the Fund, however, which does not provide for a continuous creation and redemption process, MFA argued that disclosure of the Fund's assets has no "commercially reasonable purpose," and may frustrate continued innovation and ultimately harm investors. The MFA believed that daily disclosure could allow market participants to discover proprietary trading strategies through reverse engineering. MFA argued that this could result in front-running and also remove incentives for the formation of new closed-end funds and strategies.¹² Likewise, daily disclosure of the Fund's NAV, in the MFA's view, is not necessary and may have negative consequences. MFA believed that closed-end exchange-traded commodity pools such as the Fund should be

⁹ Pursuant to Commentary .01 to proposed Amex Rule 1602, the Exchange shall file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios.

¹⁰ See MFA Letter, supra note 4.

¹¹ See id. at 1-2.

¹² See id. at 2-4.

subject to the same NAV and portfolio holding disclosure requirements applicable to closed-end exchange-traded registered investment companies.¹³

In its response,¹⁴ the Exchange disagreed with the MFA regarding disclosure of the Fund's NAV. Amex argued that daily disclosure allows investors to determine whether actual discounts or premiums to NAV per share based on supply and demand and future expectation are consistent with market fundamentals.¹⁵ With respect to the daily disclosure of the Fund's holdings, Amex largely agreed with MFA's comments, noting that it did not believe the daily portfolio holdings disclosure requirement to be particularly helpful or necessary, and agreeing that the Fund's structure does not provide for a mechanism to cause the market price per share to track NAV per share.¹⁶

IV. Discussion and Commission Findings

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.¹⁷ In particular, the Commission finds that the proposed rule change is

¹³ See *id.* at 4-5. MFA noted that many closed-end registered investment companies report their NAV weekly and the Investment Company Act of 1940 requires only quarterly portfolio holdings disclosure for closed-end registered investment companies.

¹⁴ See letter to Nancy M. Morris, Secretary, Commission, from Jeffrey P. Burns, Vice President and Associate General Counsel, Exchange, dated November 7, 2007.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 1-2. Though the Exchange in its current letter believed that there was significant justification to eliminate the proposed requirement or daily portfolio holdings disclosure, the Exchange did not file an amendment to propose such a change with respect to the Fund.

¹⁷ In approving this proposed 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).

consistent with Section 6(b)(5) of the Act,¹⁸ which requires that the rules of an exchange be 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 further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁹ 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. As described in the Notice, the Exchange represents that futures, forwards and related exchange traded options, quotes and last sale information for the commodity contracts held by the Fund are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures, forwards and exchange traded options is available by subscription from Reuters and Bloomberg. The relevant futures and forward exchanges also provide delayed futures and forward contract information on current and past trading sessions and market news free of charge on their respective Web sites. The contract specifications for the futures and forward contracts are also available from the futures and forward exchanges on their Web sites as well as other financial informational sources. 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.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will, prior to listing, obtain a representation from the Fund that the NAV per share will be calculated daily and made available to all market participants at the same time.²⁰ In addition, the Exchange represents that disclosure of the portfolio composition of the Fund will be made to all market participants at the same time.²¹ Moreover, the Exchange notes that each of the Manager, the Commodity Broker, and the Commodity Sub-Advisor has represented to the Exchange that it will establish firewall procedures with respect to personnel who have access to information concerning changes and adjustments to components of the Fund to prevent the use and dissemination of material non-public information.²² Further, the trading of the Shares is subject to the specialist prohibitions in Proposed Amex Rule 1603.

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 Amex Rule 1602(b)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in addition to other factors that may be relevant. In particular, if the portfolio holdings and net asset value per share 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 net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings

²⁰ See proposed Amex Rule 1602(a)(ii).

²¹ See Notice, supra note 3, at note 15.

²² See Notice at 54492.

or net asset value per share 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.

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 Amex's rules governing the trading of equity securities.

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

- (1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. In addition, Amex has represented that it has information sharing agreements with the InterContinental Exchange, the Chicago Mercantile Exchange, and the New York Mercantile Exchange and may obtain market surveillance information from other exchanges, including the Chicago Board of Trade, London Metals Exchange, and the New York Board of Trade through the Intermarket Surveillance Group.
- (2) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the prospectus or delivery requirements that apply to the Shares. The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares, as well as applicable Exchange rules. In addition, the Information Circular will also reference the fact that there is no

regulated source of last sale information regarding physical commodities and note the respective jurisdictions of the SEC and CFTC .

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

Finally, the Commission believes that the daily disclosure requirements relating to the Fund's holdings and NAV are appropriate. Specifically, the Commission believes that daily disclosure of the Fund's NAV per share should aid investors in determining the degree to which the Shares are tracking the Fund's NAV per share. The Commission believes that the same is true for daily disclosure of the holdings of the Fund as such disclosure provides additional transparency. In addition, the Commission notes that the Exchange did not file an amendment seeking to change this disclosure requirement. Accordingly, the Commission does not believe that the commenter's assertions form a basis either to disapprove or to delay approval of the Exchange's proposed rule change and listing of the Fund.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-Amex-2006-96), as modified, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon
Deputy Secretary

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).