

facilities and equipment and phone service charges.⁵

Pursuant to proposed Rule 309, if a member, member organization, or allied member fails to make payment within forty-five days after the fee or other sum becomes payable, notice of the arrearage will be given to the member and the member will be reported to the Chief Financial Officer ("CFO") of the Exchange or a designee. The CFO or designee will be responsible for taking any remedial action he or she deems appropriate, including suspension of the delinquent member's, member organization's, or allied member's access to some or all Exchange facilities.

In its filing, the Exchange stated that the terms "fees" and "any other sums" in the text of proposed Rule 309 will not include fines levied in connection with a disciplinary proceeding. The proposed rule provides that failure to pay such disciplinary fines will continue to be governed by the provisions of Exchange Rule 476(k) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others).⁶

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁷ and, in particular, the requirements of section 6 of the Act.⁸ Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be 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.

Currently, under Exchange Rule 476(k), the ability to suspend members,

member organizations, and allied members for non-payment of sums due to the Exchange becomes operative after 45 days. According to the Exchange, this provision currently is not utilized by the Exchange; instead, arrearages are referred to the Exchange's collections department for resolution, which generally does not avail itself of the recourse provided in Exchange Rule 476(k). The Exchange has proposed to have notice of certain overdue fees (other than disciplinary fines and fees) reported to the CFO (or his or her designee), and to vest in the CFO (or his or her designee) the authority to determine what if any remedial action should be taken upon receipt of a report that a member, member organization, or allied member failed to pay a fee. Specifically, the CFO, or his or her designee, would be empowered to suspend access to some or all of the facilities of the Exchange until payment of the arrearage is made.

The Commission believes that the Exchange's proposal to empower its Chief Financial Officer, or his or her designee, to consider and address non-payment of certain fees and other sums due to the Exchange, other than disciplinary fines, after notice has been given of the arrearage to such member, member organization, or allied member, is consistent with the Act.

The proposed rule would not preclude the Exchange's CFO from presenting notice of any arrearage to the Board pursuant to Exchange Rule 476(k) where appropriate, but rather provides a more efficient process for the Exchange's senior management to address non-payment of certain fees and other sums due to the Exchange, other than disciplinary fines, without the need to involve the Exchange's Board of Directors in what is normally a purely business matter.

In approving the proposed rule change, the Commission has relied on the Exchange's representation that failure to pay disciplinary fines and any fees assessed in connection with disciplinary matters will continue to be governed solely by Rule 476(k), and that suspension of members for failure to pay fines or fees arising out of disciplinary actions continues to be subject to consideration by the Exchange's Board of Directors pursuant to that rule.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-

NYSE-2007-119) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-2866 Filed 2-14-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57294; File No. SR-NYSEArca-2007-78]

Self-Regulatory Organizations; NYSE Arca, Inc.; 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

February 8, 2008.

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 July 30, 2007, NYSE Arca, Inc. ("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. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to trade pursuant to unlisted trading privileges ("UTP") units ("Units") of the United States Heating Oil Fund, LP ("USHO") and the United States Gasoline Fund, LP ("USG") (each, a "Partnership," and collectively "Partnerships") pursuant to NYSE Arca Equities Rule 8.300. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

⁵ Telephone bills for Exchange-provided portable phones are paid by the Exchange and thereafter the Exchange submits an invoice to the member, member organization, or allied member for reimbursement.

⁶ The Exchange stated that in the context of Rule 476(k), "fine" includes a fine levied in connection with a disciplinary proceeding and related fees also associated with a disciplinary proceeding.

⁷ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

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

Under NYSE Arca Equities Rule 8.300, the Exchange may propose to list and/or trade pursuant to UTP "Partnership Units." The Exchange proposes to trade the Units pursuant to UTP under NYSE Arca Equities Rule 8.300.

Each Unit represents ownership of a fractional undivided beneficial interest in the net assets of each of USHO or USG. Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange. 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").³

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 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 1933.⁴

Dissemination and Availability of Information About the Underlying Futures Contracts and the Units

As set forth in the Amex Proposal, the daily settlement prices for the NYMEX-traded Futures Contracts are publicly available at <http://www.nymex.com>. 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. 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>.

Amex will disseminate through the facilities of the Consolidated Tape Association ("CTA") an updated Indicative Partnership Value ("Indicative Partnership Value"), which 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 p.m. ET on each business day, the Administrator, Amex, and the General Partner will disseminate the Basket Amount⁵ for orders placed during that day, together with the net asset value ("NAV") for the Units.⁶ The Indicative Partnership Value will be calculated based on the Treasuries and cash required for creations and redemptions (*i.e.*, NAV per limit \times 100,000) adjusted to reflect the price changes of the relevant Benchmark Futures Contract.

The Indicative Partnership Value is based on open-outcry trading of the relevant Benchmark Futures Contract on

the NYMEX. Open-outcry trading on the NYMEX closes at 2:30 p.m. ET while NYMEX's energy futures contracts are traded on the Chicago Mercantile Exchanges CME Globex⁷ electronic trading platform on a 24-hour basis.⁷ After the close of trading on the NYNEX at 2:30 p.m. ET, the Indicative Partnership Value will reflect changes to the relevant Benchmark Futures Contract as provided for through CME Globex. The value of the relevant Benchmark Futures Contract will be available on a 15-second delayed basis during the time the Units trade on the Exchange.⁸

While the NYMEX is open for trading, the Indicative Partnership Value can be expected to closely approximate the value per Unit of the Basket Amount. However, during NYSE Arca Marketplace trading hours when the Futures Contracts have ceased trading, spreads and resulting premiums or discounts may widen and therefore increase the difference between the price of the Units and the NAV of the Units. The Indicative Partnership Value on a per-Unit basis disseminated from 9:30 a.m. to 4:15 p.m. ET should not be viewed as a real-time update of the NAV, which is calculated only once a day.

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 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; (6) the daily trading volume and closing price of the Units;

⁷ CME Globex operates on a 24-hour basis each trading day.

⁸ See NYSE Arca Confirmation, *supra* note 6.

⁹ See *id.*

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.

³ See Securities Exchange Act Release No. 57188 (January 23, 2008) (SR-Amex-2007-70) (approving Amex's proposal to list and trade the Units). 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) ("Amex Proposal").

⁴ See USHO's Registration Statement on Form S-1 filed on April 19, 2007 (File No. 333-142211); USG's Registration Statement on Form S-1 filed on April 18, 2007 (File No. 333-142206).

⁵ See *infra* note 14.

⁶ E-mail from Tim Malinowski, Director, NYSE Euronext, to Geoffrey Pemble, Special Counsel, Division of Trading and Markets, Commission, dated February 1, 2008 ("NYSE Arca Confirmation"). According to the Amex Proposal, 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. See Amex Proposal, *supra* note 3.

and (7) 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 respective Web sites at <http://www.unitedstatesheatingoilfund.com> and <http://www.unitedstatesgasolinefund.com>. 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, 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.

Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to its existing rules governing the trading of equity securities. The Exchange represents that the Units will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. ET. The Exchange represents that it has appropriate rules to facilitate transactions in the Units during all trading sessions.

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 3, 73 FR at 514.

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).

To facilitate surveillance, NYSE Arca Equities Rule 8.300(e) sets forth certain restrictions on ETP Holders acting as registered Market Makers in Units. NYSE Arca Equities Rule 8.300(e)(2)-(3) requires that an ETP Holder acting as a registered Market Maker in the Units provide the Exchange with necessary information relating to its trading in underlying assets or commodities, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.300(e)(4) prohibits the ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying asset or commodity, related futures or options on futures, or any other related derivative (including the Units). In addition, NYSE Arca Equities Rule 8.300(e)(1) prohibits the ETP Holder acting as a registered Market Maker in the Units from being affiliated with a market maker in the underlying asset or commodity, related futures or options on futures, or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying Futures Contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units could be halted pursuant to the Exchange's "circuit breaker" rule¹⁵ or by the halt or suspension of trading of the underlying securities.

In addition, the Exchange represents that it will cease trading the Units of a Partnership if: (a) The listing market stops trading the Units because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12; or (b) the listing market delists the Units. Additionally, the Exchange may cease trading the Units if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. UTP trading in the Units is also governed by the trading halts

provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of an Indicative Partnership Value or the value of an underlying Benchmark Futures Contract.¹⁶

Surveillance

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

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 that are members or affiliates of the ISG.¹⁷ In addition, the Exchange has an Information Sharing Agreement in place with NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to futures contracts traded on NYMEX and ICE Futures, respectively. To the extent that a Partnership invests in Heating Oil Interests or Gasoline Interests traded on other exchanges, the Exchange will seek to enter into information sharing agreements with those particular exchanges.

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

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Units. Specifically, the

¹⁶ NYSE Arca Equities Rule 7.34(a) literally addresses temporary interruptions in the calculation or wide dissemination of the Indicative Intra-Day Value and the value of an underlying index. The Units of each Partnership, however, do not have an underlying index, but have an underlying Benchmark Futures Contract. Therefore, the Exchange hereby represents that the provisions in NYSE Arca Equities Rule 7.34(a) that address interruptions in the calculation or wide dissemination of the value of an underlying index shall also apply to interruptions in the calculation or wide dissemination of the value of an underlying Benchmark Futures Contract.

¹⁷ For a list of the current members and affiliate members of ISG, see <http://www.isgportal.com>.

¹⁵ See NYSE Arca Equities Rule 7.12.

Bulletin will discuss the following: (1) The risks involved in trading the Units during the Opening and Late Trading Sessions when an updated Indicative Partnership Value will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Units in Baskets (and that Units are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a);¹⁸ (4) how information regarding the Indicative Partnership Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin 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 Bulletin will also discuss any exemptive, no-action, or interpretive relief granted by the Commission from any rules under the Act, and will disclose the trading hours of the Units of each Partnership and that the NAV for the Units will be calculated after 4 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,¹⁹ in general, and furthers the objectives of section 6(b)(5),²⁰ 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 Act²¹ because it deems the Units to be equity securities, thus rendering the Units subject to the Exchange's 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-2007-78 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-2007-78. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2007-78 and should be submitted on or before March 7, 2008.

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.²² In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,²³ 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 Units.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Act,²⁴ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.²⁵ The Commission

¹⁸ NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, 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 rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that it believes would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 17 CFR 240.12f-5.

²² 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).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(f).

²⁵ 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

notes that it approved the original listing and trading of the Units on Amex.²⁶ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²⁷ 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,²⁸ 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 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, the NAV, the 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 Units when transparency is impaired. If the listing market halts trading when the Indicative Fund Value is not being calculated or disseminated, the Exchange would halt trading in the

Units. The Exchange has represented that it would follow the procedures with respect to trading halts set forth in NYSE Arca Equities Rule 7.34.

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 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 ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units, including risks inherent with trading the Units during the Opening and Late Trading Sessions when the updated Indicative Partnership Value is not calculated and disseminated, and of suitability recommendation requirements.
3. The Information Bulletin also would discuss the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction.
4. Trading in the Units will be subject to NYSE Arca Equities Rule 8.300(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Units to facilitate surveillance.

This approval order is based on these 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 previously, the Commission previously found that the listing and trading of the Units on Amex is consistent with the Act.²⁹ 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 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.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-NYSEArca-

2007-78) thereto, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-2822 Filed 2-14-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57298; File No. SR-DTC-2007-13]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Foreign Currency Payment Option

February 8, 2007.

I. Introduction

On September 26, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2007-13 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 3, 2007.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change provides that DTC's Foreign Currency Payment Option ("FCP Option") may be used (1) in relation to securities denominated in U.S. dollars and (2) regardless of whether the terms of the issue originally contemplated the option of payment in one or more currencies. Currently, DTC offers the FCP Option in order for participants to elect to receive dividend, interest, principal, redemption, or maturity payments either in foreign currency outside of DTC or in U.S. dollars within DTC with respect to a foreign denominated issue when the foreign currency option is included in the initial offering terms of the DTC-eligible issue.

U.S. Denominated Securities

The rule change clarifies that the FCP Option will be made available for U.S. denominated securities as well as foreign denominated securities. When

listed and registered on the exchange even though it is not so listed and registered.

²⁶ See *supra* note 3.

²⁷ 17 CFR 240.12f-5.

²⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁹ See *supra* note 3.

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 56840 (November 27, 2007), 72 FR 67987.