

and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. As stated previously, 344 broker-dealers are presently fully-subject to Rule 15c3-3. In addition, 140 broker-dealers operate in accordance with the exemption provided in paragraph (k)(2)(i) which also requires that a broker-dealer maintain a Special Reserve Bank Account. The staff estimates that of the total broker-dealers that must comply with this rule, only 25%, or 121  $((344 + 140) \times .25)$  must obtain 1 new letter each year (either because the broker-dealer changed the type of business it does and became subject to either paragraph (e)(3) or (k)(2)(i) or simply because the broker-dealer established a new Special Reserve Bank Account). The staff estimates that it would take a broker-dealer approximately 1 hour to obtain this written notification from a bank regarding a Special Reserve Bank Account because the language in these letters is largely standardized. Therefore, Commission staff estimates that broker-dealers will spend approximately 121 hours each year to obtain these written notifications.

In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account. Commission staff estimates that broker-dealers file approximately 65 such notices per year. Broker-dealers would require approximately 30 minutes, on average, to file such a notice. Therefore, Commission staff estimates that broker-dealers would spend a total of approximately 33 hours each year to comply with the notice requirement of Rule 15c3-3.

Finally, a broker-dealer that effects transactions in securities futures products ("SFPs") for customers<sup>1</sup> also will have paperwork burdens associated with the requirement in paragraph (o) of Rule 15c3-3 to make a record of each change in account type.<sup>2</sup> More specifically, a broker-dealer that changes the type of account in which a customer's SFPs are held must create a record of each change in account type that includes the name of the customer,

the account number, the date the broker-dealer received the customer's request to change the account type, and the date the change in account type took place. As of December 31, 2006, broker-dealers that were also registered as futures commission merchants ("FCMs") reported that they maintained 38,815,092 customer accounts. The staff estimates that 8% of these customers may engage in SFP transactions  $(38,815,092 \text{ accounts} \times 8\% = 3,105,207)$ . Further, the staff estimates that 20% per year may change account type. Thus, broker-dealers may be required to create this record for up to 621,041 accounts  $(3,105,207 \text{ accounts} \times 20\%)$ . The staff believes that it will take approximately 3 minutes to create each record.<sup>3</sup> Thus, the total annual burden associated with creating a record of change of account type will be 31,052 hours  $(621,041 \text{ accounts} \times (3\text{min}/60\text{min}))$ .

Consequently, the staff estimates that the total annual burden hours associated with Rule 15c3-3 would be approximately 71,156 hours  $(39,950 \text{ hours} + 121 \text{ hours} + 33 \text{ hours} + 31,052 \text{ hours})$ .

In addition, a broker-dealer that effects transactions in SFPs for customers also will have an annualized cost burden associated with the requirements in paragraph (o) of Rule 15c3-3 to (1) provide each customer that plans to effect SFP transactions with a disclosure document containing certain information,<sup>4</sup> and (2) send each SFP customer notification of any change of account type.<sup>5</sup> Approximately 8% of the accounts held by broker-dealers that are also registered as FCMs, or 3,105,207 accounts, may engage in SFP transactions. The staff estimates that the cost of printing and sending each disclosure document will be approximately \$.12 per document sent.<sup>6</sup> Thus, the staff estimates that the cost of printing and sending disclosure documents would be approximately \$372,625  $(3,105,207 \text{ accounts} \times \$.12)$ . In addition, approximately 621,041 accounts  $(3,105,207 \text{ accounts} \times 20\%)$  may change account type per year requiring that broker-dealers provide notification to those customers. The staff estimates that the cost of sending this notification to customers will be about \$74,525  $(621,041 \text{ accounts} \times \$.12)$ . Consequently, the staff estimates that

the total annual cost associated with Rule 15c3-3 would be \$447,150  $(\$372,625 + \$74,525)$ .

Records required to be created and notices required to be filed with the Commission pursuant to Rule 15c3-3 must be maintained in accordance with Rule 17a-4 (17 CFR 240.17a-4). The collection of information is mandatory and the information required to be provided to the Commission pursuant to these Rules are deemed confidential, notwithstanding any other provision of law under Section 24(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(b)) and Section 552(b)(3)(B) of the Freedom of Information Act (5 U.S.C. 552(b)(3)(B)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [Alexander.T.Hunt@omb.eop.gov](mailto:Alexander.T.Hunt@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted within 30 days of this notice.

Dated: November 19, 2007.

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56822; File No. SR-FINRA-2007-023]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of Certain Rule Changes Approved in SR-NASD-2005-146

November 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November

<sup>1</sup> Broker-dealers that do not engage in an SFP business with or for customers are not affected by this section of Rule 15c3-3. Broker-dealers that engage in an SFP business must also register with the CFTC as a futures commission merchant ("FCM"). As of January 31, 2007 there were 64 broker-dealers that were also registered as FCMs.

<sup>2</sup> 17 CFR 240.15c3-3(o)(3)(i).

<sup>3</sup> In fact, the staff believes that most firms will have this process automated. To the extent that no person need be involved in the generation of this record, the burden will be very minimal.

<sup>4</sup> 17 CFR 240.15c3-3(o)(2).

<sup>5</sup> 17 CFR 240.15c3-3(o)(3)(ii).

<sup>6</sup> Based on past conversations with industry representatives regarding other rule changes as adjusted to account for inflation.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

16, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by FINRA. FINRA filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to establish January 14, 2008 as the final implementation date of the rule changes approved in SR-NASD-2005-146.<sup>6</sup> There are no new changes to the text of FINRA rules.

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

In its filing with the Commission, FINRA 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 those statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

##### **1. Purpose**

On February 26, 2007, the Commission approved SR-NASD-2005-146, which, among other things, amended IM-2110-2<sup>7</sup> to expand the

scope to apply to OTC equity securities and modify the minimum price-improvement standards for securities trading in decimals. The amendments relating to OTC equity securities and the minimum price-improvement provisions are scheduled to become effective on November 26, 2007.<sup>8</sup>

On June 27, 2007, FINRA filed a proposed rule change (SR-NASD-2007-041) to amend the minimum price-improvement standards in IM-2110-2 that were approved as part of SR-NASD-2005-146.<sup>9</sup> FINRA has proposed to implement the changes in SR-NASD-2007-041 on the final implementation date of SR-NASD-2005-146. SR-NASD-2007-041 remains pending at the Commission.

To provide additional time for the Commission to consider and act upon the proposed changes in SR-NASD-2007-041 and, if SR-NASD-2007-041 is approved, allow firms sufficient time to make the required technological changes to implement the proposed changes in SR-NASD-2007-041, FINRA is proposing that the final implementation date of SR-NASD-2005-146 currently scheduled for November 26, 2007 be delayed until January 14, 2008.<sup>10</sup> In doing so, the proposed minimum price-improvement provisions in SR-NASD-2007-041, if approved, would become effective on January 14, 2008. FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to implement the proposed rule change as described herein.

##### **2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule

change is consistent with the provisions of the Act noted above because extending the final implementation date of SR-NASD-2005-146 will ensure that the Commission has adequate time to act on the proposed changes in SR-NASD-2007-041 and, if SR-NASD-2007-041 is approved, ensure firms have sufficient time to make the necessary changes to comply with the new price-improvement standards.

#### **B. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the 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 were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.<sup>14</sup>

A proposed rule change filed under Commission Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to thirty days after the date of filing. FINRA requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow FINRA to delay the implementation date of SR-NASD-2005-146 currently scheduled for November 26, 2007 until January 14, 2008. The Commission believes that waiving the 30-day operative delay is

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> FINRA has requested that the Commission waive the 5 day pre-filing notice and 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion *infra* Section III.

<sup>6</sup> See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146). See also NASD Notice to Members 07-19 (April 2007) (announcing the effective date of the rule changes in SR-NASD-2005-146).

<sup>7</sup> Currently, IM-2110-2 generally prohibits a member from trading for its own account in an

exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.

<sup>8</sup> See Securities Exchange Act Release No. 56103 (July 19, 2007), 72 FR 40918 (July 25, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-039). See also Member Alert, dated June 20, 2007 (announcing a revised implementation date of certain rule changes approved in SR-NASD-2005-146 until November 26, 2007).

<sup>9</sup> See File No. SR-NASD-2007-041.

<sup>10</sup> Certain other rule changes that were approved as part of SR-NASD-2005-146 became effective on July 26, 2007 and are not effected by this proposed rule change. See *supra* note 8.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> FINRA has requested that the Commission waive the requirement that it provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which FINRA filed the proposed rule change pursuant to Rule 19b-4(f)(6)(iii). The Commission hereby grants this request. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

consistent with the protection of investors and the public interest because if SR-NASD-2007-041 is approved by the Commission, it would allow firms sufficient time to make the required technological changes. For these reasons, the Commission designates the proposed rule change as operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

#### IV. 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2007-023 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-FINRA-2007-023. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2007-023 and should be submitted on or before December 19, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56832; File No. SR-NYSEArca-02007-102]

#### **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 12 Month Oil Fund, LP and the United States 12 Month Natural Gas Fund, LP Pursuant to Unlisted Trading Privileges**

November 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 2, 2007, 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. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

The Exchange proposes to trade pursuant to unlisted trading privileges

("UTP") units ("Units") of the United States 12 Month Oil Fund, LP ("12 Month Oil Fund") and the United States 12 Month Natural Gas Fund, LP ("12 Month Natural Gas Fund") (each, a "Partnership," and collectively, the "Partnerships"). The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and <http://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**

Under NYSE Arca Equities Rule 8.300, which sets forth criteria to permit the trading of Partnership Units<sup>3</sup> either by listing or pursuant to UTP, the Exchange proposes to trade pursuant to UTP the Units of each Partnership. The Commission has approved the listing and trading of such Units on the American Stock Exchange LLC ("Amex").<sup>4</sup>

Ownership of each Partnership Unit represents a fractional undivided unit of a beneficial interest in the net assets of the applicable Partnership.<sup>5</sup> The net assets of each of the Partnerships will consist primarily of investments in futures contracts for crude oil, heating oil, gasoline, natural gas, and other petroleum-based fuels that are traded on

<sup>3</sup> NYSE Arca Equities Rule 8.300(b)(2) defines Partnership Units as securities issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities and that are redeemed daily in specified aggregate amounts at net asset value ("NAV").

<sup>4</sup> See Securities Exchange Act Release No. 56831 (November 21, 2007) (SR-Amex-2007-98) (granting approval to list and trade the Units on Amex); Securities Exchange Act Release No. 56719 (October 29, 2007), 72 FR 62277 (November 2, 2007) (SR-Amex-2007-98) (providing notice of Amex's proposal to list and trade the Units) ("Amex Notice").

<sup>5</sup> Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

<sup>16</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.