

application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0104 (telephone (202) 551-8090).

#### Applicants' Representations:

1. Each Trust is organized as either a Delaware statutory trust or a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trusts offer separate series ("Funds") that may invest in other registered investment companies in reliance on section 12(d)(1)(G) of the Act and rule 12d1-2 under the Act ("Underlying Funds").<sup>1</sup> Applicants propose that the Funds be permitted to invest in futures contracts, options on futures contracts, swap agreements, derivatives, and other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments") in addition to the Underlying Funds and other securities.

2. SIMNA is a wholly-owned subsidiary of Schroders plc, a publicly-owned holding company organized under the laws of England. SIMNA Ltd. is an affiliate of SIMNA. SIMNA and SIMNA Ltd. are both registered as investment advisers under the Investment Advisers Act of 1940 and serve as investment advisers to the Funds. SFA, also an affiliate of SIMNA and registered as a broker-dealer under the Securities Exchange Act of 1934 Act ("Exchange Act"), provides all distribution and marketing services for the Trusts and serves as administrator to Schroder North American Equity Fund.

#### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no

<sup>1</sup> Applicants request that the relief apply to all existing and future series of the Trusts and all other registered open-end management investment companies and their series registered under the Act that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trusts (included in the term "Funds"). All Funds that currently intend to rely on the order have been named as applicants. Any other existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the

provisions of rule 12d1-2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. In connection with its approval of any investment advisory agreement under section 15 of the Act, the Board of the appropriate Fund, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory agreement. Such finding, and the basis upon which the finding is made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57187; File No. SR-Amex-2007-109]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Trading of Exchange Traded Notes (ETNs)

January 23, 2008.

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>

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

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

notice is hereby given that on October 9, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) 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 the Exchange. On January 11, 2008, the Amex submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Section 107 of the Amex *Company Guide* (“Company Guide”) to permit certain index-linked securities, commodity-linked securities, and currency-linked securities to trade under the rules applicable to exchange-traded funds (“ETFs”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.amex.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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

The Exchange proposes to amend Sections 107D, 107E and 107F of the Company Guide to permit certain index-linked securities (“Index-Linked Securities”), commodity-linked securities (“Commodity-Linked Securities”), and currency-linked securities (“Currency-Linked Securities”) (collectively, “Exchange-Traded Notes or ETNs”) that offer a weekly redemption feature to be traded

subject to the AEMI trading rules specific to ETFs.<sup>3</sup>

The Exchange believes that the existence of a weekly redemption feature, at the option of the holder, ensures a strong correlation between the market price of the ETN and the performance of the underlying asset. This feature is similar to the daily redemption feature available in ETFs. In addition, the Exchange notes that these Exchange Traded Notes are typically continuously offered, on a daily basis, so that the issuer would have the ability to issue new securities from time to time at market prices. This process is similar to the manner in which ETFs are continuously offered via the creation/redemption process in Creation Unit aggregations (*i.e.*, 50,000 shares).

#### **Background**

The Exchange states that Securities listed pursuant to Section 107 of the *Company Guide* (“Section 107 Securities”) are debt securities of an issuer that typically provide for a cash payment at maturity, or if available, upon earlier redemption (such as a weekly redemption feature) at the holder’s option, based on the performance of an underlying index or asset. Permitted underlying assets for Index-Linked Securities include domestic and international equity indexes. Commodity-Linked Securities may be based on a commodity index, basket of commodities, or single commodity while Currency-Linked Securities may similarly be linked to a currency index, basket of currencies, or single currency.

Section 107 Securities typically have a term of at least one (1) year but not greater than 30 years. The issuer may or may not provide for periodic interest payments to holders. The holder of a Section 107 Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying asset.

A number of Section 107 Securities based on securities indexes that are listed and traded on the Exchange provide for a payment amount in a multiple of the positive index return or performance, subject to a maximum gain or cap. The Exchange’s generic listing standards in connection with Section 107 Securities allow for the multiple performance on the upside but prohibit payment at maturity based on a multiple of the negative performance of an underlying asset. Section 107 Securities

<sup>3</sup> The Exchange states that with the introduction of iPath Exchange-Traded Notes Issued by Barclays Bank PLC linked to the performance of the CBOE S&P 500 BuyWrite Index (symbol: BWV) on May 23, 2007, the Exchange listed its first ETN that is structurally similar to an ETF.

may or may not provide for a minimum guaranteed amount to be repaid, *i.e.*, “principal protection.” The Exchange believes that the flexibility to list a variety of Section 107 Securities offers investors the opportunity to more precisely focus their specific investment strategies.

Section 107 Securities do not give the holder a right to receive the underlying asset or any other ownership right or interest in the underlying portfolio. The current value of the underlying asset is required to be widely disseminated at least every 15 seconds during the trading day.

The Exchange submits that Section 107 Securities are “hybrid” securities whose rates of return are largely the result of the performance of an underlying asset. Prior to the listing and trading of Section 107 Securities, the Exchange states that it typically highlights and discloses the special risks and characteristics of such security in an Information Circular.

#### **Current Rules**

Sections 107D,<sup>4</sup> 107E,<sup>5</sup> and 107F<sup>6</sup> of the Company Guide treat Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities as equity instruments subject to the Exchange’s AEMI trading rules for equities. The only exception to this requirement is when a Section 107 Security is listed as a bond or debt (*i.e.*, in \$1,000 denominations). In such a case, the Section 107 Security will be subject to Exchange rules applicable to bond or debt securities.<sup>7</sup>

Because the current Rules deem ETNs and other Section 107 Securities as “equity instruments,” the full range of AEMI trading rules specific to equities apply to all Section 107 Securities regardless of the particular structure of the Section 107 Security. In connection with an ETN that is continuously-offered with a weekly redemption option (such as BWV), the Exchange believes that the AEMI trading rules applicable to ETFs (rather than equities) should equally apply to such ETN.

#### **Proposal**

In order to qualify, the ETN would be required to offer a weekly redemption option to holders (“Eligible ETNs”).<sup>8</sup>

<sup>4</sup> See Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001).

<sup>5</sup> See Securities Exchange Act Release No. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR-Amex-2007-45).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See e-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Exchange, to Geoffrey

The Exchange believes that the redemption feature coupled with the effective continuous offering ensures a strong correlation between the price of the underlying asset and the performance of the Eligible ETN. This is similar to how ETFs have historically been structured. Accordingly, the Exchange submits that the specific AEMI trading rules developed for ETFs should also apply to Eligible ETNs.

The following rules specifically applicable to ETF trading would apply to the trading of Eligible ETNs:

- Rule 108—AEMI(c). The execution of Eligible ETN orders at the opening would be effected in the same manner as ETFs so that orders in Eligible ETNs would be executed before any broker-dealer bids or offers.
- Rule 110—AEMI(p). A Registered Trader in ETFs (including Eligible ETNs) would only actively quote ETFs traded on the same or contiguous panels for a maximum of three contiguous panels. A Registered Trader would also not actively quote more than a maximum of 15 ETFs (including Eligible ETNs). A Senior Floor Official of the Exchange may modify this restriction if a Registered Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.
- Rule 128A—AEMI(d)(iv). Any quotation in an ETF entered into the AEMI platform by the specialist or Registered Trader while Auto-Ex is enabled that would cause the Amex Published Quote (APQ) to be locked or crossed would be automatically executed. In the case of a non-ETF Amex-listed security or a non-Nasdaq UTP equity security, quotations that are entered into the AEMI platform by the specialist while Auto-Ex is enabled that would cause the APQ to cross would be rejected. Therefore, Eligible ETNs would be automatically executed, rather than rejected, when a specialist or Registered Trader quotation causes the APQ to be locked/crossed when Auto-Ex is enabled.

• Rule 128A—AEMI(f)(iv). AEMI does not automatically execute non-ETF orders when the automatic execution of an order exceeds the price change parameters of the “1%, 2, 1, ½ point” rule. This rule does not apply to ETFs and would accordingly not apply to the trading of Eligible ETNs.

• Rule 131—AEMI(o). AEMI rejects “too marketable” non-ETF stop and stop limit orders. “Too marketable” is defined as a buy stop order received

during the regular trading session with a stop price equal to the bid or lower, or a sell stop order received during the regular trading session with a stop price equal to the offer or higher. ETF stop orders that are “too marketable” are executed by AEMI under this Rule, and accordingly, Eligible ETN stop orders would similarly be executed.

• Rule 131—AEMI(r). AEMI does not accept electronic cross orders for non-ETFs and non-Nasdaq UTP securities. As a result, electronic cross orders are acceptable only for ETFs. As proposed, electronic cross orders for Eligible ETNs would be acceptable in AEMI.

• Rule 154—AEMI(c)(i). The Stop Order Rule requires floor official approval prior to the specialist electing a stop order by selling to the bid/buying on the offer. Prior floor official approval is not required for ETFs and would similarly not apply to Eligible ETNs.

• Rule 154—AEMI(c)(ii). Stop and stop limit orders in ETFs are elected by a quotation, although such orders in non-ETFs are not. Accordingly, stop and stop limit orders in Eligible ETNs would similarly be elected by quotation, pursuant to this rule.

• Rule 154—AEMI(e). Maximum price variation requirements are set forth in Rule 154—AEMI(e) (also known as the “1%-2, 1, .5 Point Rule”). This Rule specifically provides that it does not apply to the trading of ETFs.

Accordingly, Rule 154—AEMI(e) would similarly not apply to Eligible ETNs.

• Commentary .03 to Rule 170—AEMI. A specialist quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist’s position, would bear a proper relation, in the case of ETFs or other derivatively-based securities, to the value of underlying or related securities. Eligible ETNs would similarly be subject to this requirement.

• Commentary .11 to Rule 170—AEMI. Commentary .11 to Rule 170—AEMI specifically exempts ETFs from the stabilization requirements.

Accordingly, Eligible ETNs would similarly be exempt.

• Rule 206—AEMI. This Rule prohibits a specialist from crossing the market for the purpose of electing odd-lots and requires floor official approval in various circumstances for non-ETFs. The exemption for ETFs would similarly apply to Eligible ETNs.

Eligible ETNs would be subject to the same parity allocation as currently exists for ETFs and other equity-traded products that are not listed stocks, UTP stocks, or closed-end funds. In addition, Rule 110—AEMI (o), among other

things, permits market makers (*i.e.*, “Registered Traders”) to participate in transactions in Section 107 Securities, including Eligible ETNs. However, due to the manner in which Eligible ETNs are designated in the AEMI platform as “equities” consistent with Sections 107D, 107E and 107F, AEMI effectively prevents Registered Traders from receiving a parity allocation consistent with Rule 126—AEMI(c). In addition, the proposal would also provide Registered Traders with a greater ability to trade Eligible ETNs through the parity allocation process and the designation of such Eligible ETNs as “ETFs.” Accordingly, the Exchange believes that the proposal would better coordinate the requirements in AEMI by permitting the designation of Eligible ETNs as ETFs subject to the AEMI trading rules applicable to ETFs.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.

### 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 did not receive any written comment on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-Amex-2007-109 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-Amex-2007-109. 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 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-Amex-2007-109 and should be submitted on or before February 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-1612 Filed 1-29-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57188; File No. SR-Amex-2007-70]

### **Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Listing and Trading of Units of the United States Heating Oil Fund and the United States Gasoline Fund, LP**

January 23, 2008.

#### I. Introduction

On June 29, 2007, 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")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to list and trade units (a "Unit," and collectively, the "Units") of each of the United States Heating Oil Fund, LP ("USHO") and the United States Gasoline Fund, LP ("USG") (each, a "Partnership," and collectively, the "Partnerships") pursuant to Amex Rules 1500-AEMI and 1501 through 1505. On August 16, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. On December 20, 2007, the Exchange submitted Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 3, 2008 for a 15-day comment period.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

<sup>12</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.

<sup>3</sup> See Securities Exchange Act Release No. 57042 (December 26, 2007), 73 FR 514 ("Notice").

#### II. Description of Proposal

The Exchange proposes to list and trade Units issued by USHO and USG pursuant to Amex Rules 1500-AEMI and 1501 through 1505.<sup>4</sup> The Exchange has represented that the Units will conform to the initial and continued listing criteria under Rule 1502,<sup>5</sup> specialist prohibitions under Rule 1503, and the obligations of specialists under Rule 1504.

Each Unit represents ownership of a fractional undivided beneficial interest in the net assets of USHO and USG.<sup>6</sup> The net assets of each Partnership will consist primarily of investments in futures contracts for heating oil, gasoline, crude oil, 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 USHO, the predominant investments are expected to be based on, or related to, heating oil. The predominant investments of USG are expected to be based on, or related to, gasoline.

USHO may also invest in 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 (collectively, "Other Heating Oil Related Investments"). Futures Contracts and Other Heating Oil Related Investments collectively are referred to as "Heating Oil Interests."

Similarly, USG may also invest in other gasoline-related investments such as cash-settled options on Futures Contracts, forward contracts for gasoline, and OTC transactions based on the price of gasoline, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the

<sup>4</sup> Amex Rule 1500-AEMI provides for the listing of Partnership Units, which are defined as securities, that are: (a) issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or securities; and (b) that are issued and redeemed daily in specified aggregate amounts at net asset value. See Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (approving Amex Rules 1500-AEMI and 1501 through 1505 in conjunction with the listing and trading of Units of the United States Oil Fund, LP).

<sup>5</sup> The Amex stated that it will require a minimum of 100,000 Units to be outstanding at the start of trading and expects that the initial price of a Unit will be \$50.00.

<sup>6</sup> Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.