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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53876; File No. SR-NYSE-2006-16]

### Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Relating to the Listing and Trading of Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the Dow Jones—AIG Commodity Index Total Return

May 25, 2006.

#### I. Introduction

On March 6, 2006, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 <sup>2</sup> thereunder, a proposed rule change to list and trade Index-Linked Securities of Barclays Bank PLC (“Barclays”) linked to the performance of the Dow Jones—AIG Commodity Index Total Return (the “Index”). On March 27, 2006, NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on April 21, 2006 for a 15-day comment period.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The NYSE proposes to list and trade the Index-Linked Securities (“Notes”) that will track the performance of the Index pursuant to Section 703.19 (“Other Securities”) of the NYSE Listed Company Manual (the “Manual”). Barclays intends to issue the Notes under the name “iPath<sup>SM</sup> Exchange-Traded Notes.” The Exchange believes that the Notes will conform to the initial listing standards for equity securities under Section 703.19 of the Manual because Barclays is an affiliate of Barclays PLC,<sup>4</sup> an Exchange-listed company in good standing. Under Section 703.19 of the Manual, the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading.<sup>5</sup> The Notes will have a minimum life of one year, the minimum public market value of the Notes at the time of issuance will exceed \$4 million, there will be at least one million Notes outstanding, and there will be at least 400 holders at the time of issuance.

The Notes are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder’s option, based on the performance of the Index. The principal amount of each Note is \$50. The Notes will trade on the Exchange’s equity trading floor, and the Exchange’s existing equity trading rules will apply to trading the Notes. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the Index must increase for the investor to receive at least the \$50 principal amount per Note at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee (described below), the investor will

receive less, and possibly significantly less, than the \$50 principal amount per Note. In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes will have a term of 30 years. The Notes are not callable.<sup>6</sup>

Holders who have not previously redeemed their Notes will receive a cash payment at maturity equal to the principal amount of their Notes times the index factor on the Final Valuation Date (as defined below) minus the investor fee on the Final Valuation Date. The “index factor” on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The “initial index level” is the closing value of the Index on the date of issuance of the Notes (the “Trade Date”), and the “final index level” is the closing value of the Index on the Final Valuation Date. The investor fee is equal to 0.75% per year times the principal amount of a holder’s Notes times the index factor, calculated on a daily basis in the following manner: The investor fee on the Trade Date will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder’s Notes times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Notes.

Prior to maturity, holders may redeem their Notes on any Redemption Date (defined below) during the term of the Notes, provided that they present at least 50,000 Notes for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Notes for redemption with other investors’ Notes. If a holder chooses to redeem his Notes, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of his Notes times the index factor on the applicable Valuation Date (defined below) minus the investor fee on the applicable Valuation Date. A “Redemption Date” is the third business day following a Valuation Date (other than the Final Valuation Date (defined below)). A “Valuation Date” is each Thursday from the first Thursday after issuance of the Notes until the last Thursday before maturity of the Notes

<sup>4</sup> The issuer of the Notes, Barclays, is an affiliate of an Exchange-listed company (Barclays PLC) and not an Exchange-listed company itself. However, Barclays, though an affiliate of Barclays PLC, would exceed the Exchange’s earnings and minimum tangible net worth requirements in Section 102 of the Manual. Additionally, the Exchange states that the Notes, when combined with the original issue price of all other Note offerings of the issuer that are listed on a national securities exchange (or association), does not exceed 25% of the issuer’s net worth. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, and John Carey, Assistant General Counsel, Exchange, on April 11, 2006 (“April 11 Telephone Conference”).

<sup>5</sup> See Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990).

<sup>6</sup> April 11 Telephone Conference.

<sup>8</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. 53639 (April 12, 2006), 71 FR 20741 (the “Notice”).

(the "Final Valuation Date") inclusive (or, if such date is not a trading day, the next succeeding trading day), unless the calculation agent determines that a market disruption event, as described below, occurs or is continuing on that day.<sup>7</sup> In that event, the Valuation Date for the maturity date or corresponding Redemption Date, as the case may be, will be the first following trading day on which the calculation agent determines that a market disruption event does not occur and is not continuing. In no event, however, will a Valuation Date be postponed by more than five trading days.<sup>8</sup>

To redeem their Notes, holders must instruct their broker or other person through whom they hold their Notes to take the following steps:

- Deliver a notice of redemption to Barclays via e-mail by no later than 11 a.m. Eastern time ("ET") on the business day prior to the applicable Valuation Date. If Barclays receives such notice by the time specified in the preceding sentence, it will respond by sending the holder a confirmation of redemption;

- Deliver the signed confirmation of redemption to Barclays via facsimile in the specified form by 4 p.m. ET on the same day; Barclays must acknowledge receipt in order for the confirmation to be effective; and

- Transfer such holder's book-entry interest in its Notes to the trustee, The Bank of New York, on Barclays' behalf at or prior to 10 a.m. ET<sup>9</sup> on the applicable Redemption Date (the third business day following the Valuation Date).

If holders elect to redeem their Notes, Barclays may request that Barclays Capital Inc. (a broker-dealer) purchase the Notes for the cash amount that would otherwise have been payable by Barclays upon redemption. In this case, Barclays will remain obligated to redeem the Notes if Barclays Capital Inc.

<sup>7</sup> Barclays will serve as the initial calculation agent for the Notes.

<sup>8</sup> If a "market disruption event" is of more than a temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b-4 seeking Commission approval to continue to trade the Notes. (17 CFR 240.19b-4.) Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Mike Cavalier, Assistant General Counsel, Exchange, on April 10, 2006 ("April 10 Telephone Conference").

<sup>9</sup> The Exchange authorized the Commission staff to clarify time zone references here and elsewhere in the proposal. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission; John Carey, Assistant General Counsel, Exchange; and Mike Cavalier, Assistant General Counsel, Exchange, on March 29, 2006 ("March 29 Telephone Conference").

fails to purchase the Notes. Any Notes purchased by Barclays Capital Inc. may remain outstanding for trading on the Exchange.

If an event of default occurs and the maturity of the Notes is accelerated, Barclays will pay the default amount in respect of the principal of the Notes at maturity.

### III. Indicative Value

An intraday "Indicative Value" meant to approximate the intrinsic economic value of the Notes will be calculated and published via the facilities of the Consolidated Tape Association ("CTA") every 15 seconds throughout the NYSE trading day on each day on which the Notes are traded on the Exchange. Additionally, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at <http://www.ipathetn.com>. In connection with the Notes, the term "Indicative Value" refers to the value at a given time based on the following equation:

$$\text{Indicative Value} = \text{Principal Amount per Unit} \times (\text{Current Index Level} / \text{Initial Index Level}) - \text{Current Investor Fee}$$

Where:

- Principal Amount per Unit = \$50
- Current Index Level = The most recent published level of the Index as reported by Dow Jones and AIG-Financial Products Corp. ("AIG-FP").<sup>10</sup>
- Initial Index Level = The Index level on the trade date for the Notes.
- Current Investor Fee = The most recent daily calculation of the investor fee with respect to the Notes, determined as described above (which, during any trading day, will be the investor fee determined on the preceding calendar day).

The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading of the Notes on the NYSE at 4 p.m. ET.<sup>11</sup> The value of the Notes may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures

<sup>10</sup> AIG-FP is a wholly-owned and guaranteed subsidiary of American International Group, Inc.

<sup>11</sup> April 11 Telephone Conference (confirming Notes will trade until 4:00 p.m. ET). The Notice includes a chart of the trading hours for each of the futures contract components in the Index. See Notice, *supra*, note 3.

contracts based on the Index commodities are traded.

While the market for futures trading for each of the Index commodities is open, the Indicative Value can be expected to closely approximate the redemption value of the Notes. However, during the NYSE 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 Notes and their redemption value. The Exchange states that the Indicative Value disseminated during the NYSE trading hours should not be viewed as a real time update of the redemption value.

### IV. Description of the Index

The investment objective of the Notes is to track the Index, which is described below and in more detail in the Notice.<sup>12</sup> The Index is designed to be a diversified benchmark for commodities as an asset class and reflects the returns that are potentially available through an unleveraged investment in the futures contracts on physical commodities comprising the Index plus the rate of interest that could be earned on cash collateral invested in specified Treasury Bills.<sup>13</sup> The Index currently is composed of the prices of 19 exchange-traded futures contracts on physical commodities.<sup>14</sup> Futures contracts on the Index are currently listed for trading on the Chicago Board of Trade ("CBOT"). The Index is a proprietary index that AIGI International Inc. ("AIGI") developed, that each year is determined by AIG-FP, subject to the oversight and approval of the Oversight Committee (defined below), and that Dow Jones calculates.<sup>15</sup> The methodology for

<sup>12</sup> The methodology for determining the composition and weighting of the Index and calculating its value is described in more detail in the Notice. See *supra*, note 3.

<sup>13</sup> These returns are calculated by using the 91-day U.S. Treasury Bill auction rate, designated as "High Rate" as published in the "Treasury Security Auction Results" report, published by the Bureau of the Public Debt currently available on its Web site (<http://www.publicdebt.treas.gov/AI/AIGateway>), which is generally published once per week on Monday.

<sup>14</sup> On March 3, 2006, the Oversight Committee of the Dow Jones—AIG Commodity Index announced that the Reformulated Gasoline Blendstock for Oxygen Blending ("RB") futures contract traded on the New York Mercantile Exchange ("NYMEX") will replace the New York Harbor Unleaded Gasoline ("HU") futures contract also traded on NYMEX. Telephone conference between Brian Trackman, Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on March 30, 2006.

<sup>15</sup> AIG-FP is not a broker-dealer or futures commission merchant; however, AIG-FP may have such affiliates. Therefore, AIG-FP (i) implemented and agrees to maintain procedures reasonably

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determining the composition and weighting of the Index and for calculating its value is subject to modification by Dow Jones and AIG-FP ("Index Sponsors") at any time.<sup>16</sup> Dow Jones disseminates the Index value at least every 15 seconds<sup>17</sup> (assuming the Index value has changed within such 15 second interval) from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET on each DJ-AIG Business Day (as defined below) on Reuters page AIGCII.<sup>18</sup> The Index value can still be retrieved after 3 p.m. ET until the end of the Exchange trading day, but its value is generally static after 3 p.m. ET, although it may change if settlement values for Index components become available after that time. A DJ-AIG Business Day ("DJ-AIG Business Day") is a day on which the sum of the Commodity Index Percentages (as defined below) for the Index commodities that are available to trade is greater than 50%. For example, based on the weighting of the Index commodities for 2006, if the CBOT and the NYMEX are closed for trading on the same day, a DJ-AIG Business Day will not exist.<sup>19</sup>

designed to prevent the use and dissemination by relevant employees of AIG-FP, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index and (ii) agrees to periodically check the application of such procedures as they relate to personnel of AIG-FP responsible for such changes. Barclays has informed the Exchange that Dow Jones does not have any affiliates engaged in the securities or commodities trading businesses and, as such, does not believe that such firewall procedures are necessary in its case. In addition, the Oversight Committee is subject to written policies that acknowledge their obligations with respect to material non-public information. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission and John Carey, Assistant General Counsel, Exchange, on May 11, 2006.

<sup>16</sup> In such case, the Commission would expect the Exchange to file a proposed rule change pursuant to Rule 19b-4 (17 CFR 240.19b-4), seeking Commission approval to continue trading the Notes. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

<sup>17</sup> April 11 Telephone Conference.

<sup>18</sup> The Oversight Committee (defined below) may exclude any otherwise eligible contract from the Index if it determines that it has an inadequate trading window. The Index currently includes contracts traded on the London Metal Exchange ("LME"), which is located in London. During the hours where the LME is closed, Dow Jones uses the last price and uses the settlement price once it is available in order to publish the Index value through the end of the trading day. The Index value does not reflect any after-hours or overnight trading in contracts traded on the LME.

<sup>19</sup> The Index value will be disseminated at least every 15 seconds and the daily Index value to be calculated and disseminated during the time the Notes trade on the Exchange; otherwise, the Exchange will halt trading in the Notes. April 11 Telephone Conference.

Dow Jones and AIGI have established the Dow Jones—AIG Commodity Index Oversight Committee (the "Oversight Committee") to assist them in connection with the operation of the Index. The Oversight Committee may also meet at such other times as may be necessary.

As described in more detail in the Notice, the Index is re-weighted and rebalanced each year in January on a price-percentage basis. The annual weightings for the Index are determined each year in June or July by AIG-FP under the supervision of the Oversight Committee, announced after approval by the Oversight Committee, and implemented the following January. The composition of the Index for 2006 was approved following a meeting in July 2005. The Index reweighting and rebalancing took place in January 2006.<sup>20</sup>

The Exchange states that a number of commodities have been selected that are believed to be sufficiently significant to the world economy to merit consideration for inclusion in the Index and which are the subject of a qualifying related futures contract. With the exception of several metals contracts (aluminum, lead, tin, nickel and zinc) that trade on the LME, each of the potential commodities is the subject of a futures contract that trades on a U.S. exchange. The 23 potential commodities currently considered for inclusion in the Index and the 19 Index commodities selected for 2006 are set out in the Notice.<sup>21</sup>

A futures contract known as a Designated Contract is selected for each commodity. With the exception of several LME contracts, where the Oversight Committee believes that there exists more than one futures contract with sufficient liquidity to be chosen as a Designated Contract for a commodity, the Oversight Committee selects the futures contract that is traded in North America and denominated in dollars. If more than one such contract exists, the Oversight Committee selects the most actively traded contract.<sup>22</sup> For the purposes of applying the diversification rules, the commodities considered for inclusion in the Index are assigned to "Commodity Groups."<sup>23</sup>

The relative weightings of the component commodities included in

<sup>20</sup> See Notice, *supra* note 3, for a chart of the composition percentages for the Index for 2006.

<sup>21</sup> See Notice, *supra* note 3.

<sup>22</sup> The Designated Contracts for the commodities included in the Index for 2005 are set out in the Notice. See *supra* note 3.

<sup>23</sup> The Commodity Groups and their effective target rounded weightings for 2006 are set out in the Notice. See *supra* note 3.

the Index are determined annually according to both liquidity and dollar adjusted production data in 2/3 and 1/3 shares, respectively. Each June, for each commodity designated for potential inclusion in the Index, liquidity is measured by the Commodity Liquidity Percentage ("CLP") and production by the Commodity Production Percentage ("CPP"). The CLP for each commodity is determined by taking a five-year average of the product of trading volume and the historical dollar value of the Designated Contract for that commodity, and dividing the result by the sum of such products for all commodities which were designated for potential inclusion in the Index. The CPP is determined for each commodity by taking a five-year average of annual world production figures, adjusted by the historical dollar value of the Designated Contract, and dividing the result by the sum of such production figures for all the commodities, which were designated for potential inclusion in the Index. The CLP and the CPP are then combined (using a ratio of 2:1) to establish the Commodity Index Percentage ("CIP") for each commodity. This CIP is then adjusted in accordance with certain diversification rules in order to determine the commodities, which will be included in the Index and their respective percentage weights.

The Index is designed to provide diversified exposure to commodities as an asset class. To ensure that no single commodity or commodity sector dominates the Index, the following diversification rules are applied to the annual re-weighting and rebalancing of the Index as of January of the applicable year:

- No related group of commodities designated as a "Commodity Group" (e.g., energy, precious metals, livestock, or grains) may constitute more than 33% of the Index.
- No single commodity may constitute more than 15% of the Index.
- No single commodity, together with its derivatives (e.g., crude oil, together with heating oil and unleaded gasoline), may constitute more than 25% of the Index.
- No single commodity that is in the Index may constitute less than 2% of the Index.

Following the annual re-weighting and rebalancing of the Index in January, the percentage of any single commodity or group of commodities at any time prior to the next re-weighting or rebalancing will fluctuate and may exceed or be less than the percentages set forth above.

Following application of the diversification rules discussed above, CIPs are incorporated into the Index by calculating the new unit weights for each Index commodity. Near the beginning of each new calendar year (the "CIM Determination Date"), the CIPs, along with the settlement prices on that date for Designated Contracts included in the Index, are used to determine a Commodity Index Multiplier ("CIM") for each Index commodity. This CIM is used to achieve the percentage weightings of the Index commodities, in dollar terms, indicated by their respective CIPs. After the CIMs are calculated, they remain fixed throughout the year. As a result, the observed price percentage of each Index commodity will float throughout the year, until the CIMs are reset the following year based on new CIPs.

In order to avoid delivering the underlying physical commodities and to maintain exposure to the underlying physical commodities, periodically futures contracts on physical commodities specifying delivery on a nearby date must be sold and futures contracts on physical commodities that have not yet reached the delivery period must be purchased. The rollover for each contract occurs over a period of five DJ-AIG Business Days each month according to a pre-determined schedule. This process is known as "rolling" a futures position. The Index is a "rolling index."

The Index is calculated by Dow Jones by applying the impact of the changes to the futures prices of commodities included in the Index (based on the commodities' relative weightings). Once the CIMs are determined as discussed above, the calculation of the Index is a mathematical process whereby the CIMs for the Index commodities are multiplied by the daily settlement prices in U.S. dollars for the applicable Designated Contracts. These products are then summed. During the rollover period, the sum includes both nearby and deferred contracts weighted according to the specified roll percentage. The percentage change in this sum from the prior day is then applied to the prior Index value. Finally, the value of one day's interest is added, calculated using the most recent (lagged by one day) 91-Day U.S. Treasury Bill Auction High Rate to arrive at the current Index value.

Dow Jones disseminates the Index value at least every 15 seconds (assuming the Index value has changed within such fifteen-second interval) from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET on each DJ-AIG Business Day

on its Web site at <http://www.djindexes.com>.<sup>24</sup> This information is also transmitted via one or more major market data vendors. Real time information about the trading of the component futures contracts and their daily settlement prices is available from one or more major market data vendors, and in some cases, the underlying futures exchanges.<sup>25</sup>

Additionally, in the event of a disruption, adjustment, discontinuance, or substitution of the Index, the calculation agent has discretion as to the computation methodology and adjustments. However, in such case, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Unless approved for continued trading, the Exchange would commence delisting proceedings.<sup>26</sup>

#### V. Continued Listing Criteria

The Exchange has represented that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.<sup>27</sup>

The Exchange will delist the Notes:

- If, following the initial twelve month period from the date of commencement of trading of the Notes: (i) The Notes have more than 60 days remaining until maturity and there are fewer than 50 beneficial holders of the Notes for 30 or more consecutive trading days; (ii) if fewer than 50,000 Notes remain issued and outstanding; or (iii) if the market value of all outstanding Notes is less than \$1,000,000;

- If the Index value ceases to be calculated or available during the time the Notes trade on the Exchange on at least a 15 second basis through one or more major market data vendors;<sup>28</sup>

- If, during the time the Notes trade on the Exchange, the Indicative Value ceases to be available on a 15 second delayed basis; or

- If such other event shall occur or condition exists which in the opinion of

<sup>24</sup> The Index value is static from 3 p.m. to 4 p.m. ET other than modifications to reflect settlement prices becoming available. April 11 Telephone Conference.

<sup>25</sup> Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on May 23, 2006.

<sup>26</sup> See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

<sup>27</sup> 17 CFR 240.10A-3.

<sup>28</sup> The Exchange confirmed that the Index value will be disseminated at least every 15 seconds by one or more major market data vendors during the time the Notes trade on the Exchange. The Exchange also confirmed that the index and its components have daily settlement values that are widely disclosed. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on May 23, 2006.

the Exchange makes further dealings on the Exchange inadvisable.

Additionally, the Exchange has represented it will file a proposed rule change pursuant to Rule 19b-4 under the Act,<sup>29</sup> seeking approval to continue trading the Notes and unless approved, the Exchange will commence delisting the Notes if:

- Dow Jones and AIG-FP substantially change either the Index component selection methodology or the weighting methodology;

- If a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement;<sup>30</sup> or

- If a successor or substitute index is used in connection with the Notes. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

#### VI. Trading Rules

The Exchange's existing equity trading rules will apply to trading of the Notes. The Notes will trade between the hours of 9:30 a.m. and 4 p.m. ET<sup>31</sup> and will be subject to the equity margin rules of the Exchange.<sup>32</sup>

##### A. Trading Halts

The Exchange has agreed it will cease trading the Notes if there is a halt or disruption in the dissemination of the Index value or the Indicative Value.<sup>33</sup> The Exchange has also represented it will cease trading the Notes if a "market disruption event" occurs that is of more than a temporary nature.<sup>34</sup> In the event that the Exchange is open for business on a day that is not a DJ-AIG Business Day, the Exchange will not permit trading of the Notes on that day.

<sup>29</sup> 17 CFR 240.19b-4.

<sup>30</sup> Therefore, only 10% of the weight of all of the Index (and thus the Index components) could not be subject to comprehensive surveillance sharing arrangements with the Exchange. April 10 Telephone Conference.

<sup>31</sup> March 29 Telephone Conference.

<sup>32</sup> See NYSE Rule 431.

<sup>33</sup> In the event the Index value or Indicative Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

<sup>34</sup> In the event a "market disruption event" occurs that is of more than a temporary nature, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

### B. Specialist Trading Obligations

The Exchange has proposed Supplementary Material .10 to proposed NYSE Rule 1301B<sup>35</sup> in order to apply the provisions of NYSE Rule 1300B(b) and NYSE Rule 1301B to certain Notes listed on the Exchange pursuant to Section 703.19 (“Other Notes”) of the Manual. Specifically, NYSE Rules 1300B(b) and 1301B will apply to Notes listed under Section 703.19 where the price of such Notes is based in whole or part on the price of (a) a commodity or commodities, (b) any futures contracts or other derivatives based on a commodity or commodities; or (c) any index based on either (a) or (b) above.

As a result of application of NYSE Rule 1300B(b), the specialist in the Notes, the specialist’s member organization and other specified persons will be prohibited under paragraph (m) of NYSE Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the Index components, the commodities underlying the Index components, or options, futures or options on futures on the Index, or any other derivatives (collectively, “derivative instruments”) based on the Index or based on any Index component or any physical commodity underlying an Index component. If the member organization acting as specialist in the Notes is entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines, then that member organization could act in a market making capacity in the Index components, the commodities underlying the Index components, or derivative instruments based on the Index or based on any Index component or commodity underlying an Index component, other than as a specialist in the Notes themselves, in another market center.

Under NYSE Rule 1301B(a), the member organization acting as specialist in the Notes (1) will be obligated to conduct all trading in the Notes in its specialist account, (subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange), (2) will be required to file with the Exchange and keep current a list identifying all accounts for trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, which the member

organization acting as specialist may have or over which it may exercise investment discretion, and (3) will be prohibited from trading in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by NYSE Rule 1301B.

Under NYSE Rule 1301B(b), the member organization acting as specialist in the Notes will be required to make available to the Exchange such books, records or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under NYSE Rule 1301B(c), in connection with trading the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Index components or the physical commodities underlying the Index components, or derivative instruments based on the Index or based on the Index components or the physical commodities underlying the Index components.

#### C. Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes and the Index components. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Notes. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Notes and to detect violations of Exchange rules, consequently deterring

manipulation. In this regard, the Exchange has the authority under NYSE Rules 476 and 1301B to request the Exchange specialist in the Notes to provide NYSE Regulation with information that the specialist uses in connection with pricing the Notes on the Exchange, including specialist, proprietary or other information regarding Notes, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists and “upstairs” firms—to fulfill its regulatory obligations.

With regard to the Index components, the Exchange can obtain market surveillance information with respect to transactions occurring on the LME and NYMEX (and COMEX), including customer identity information, pursuant to comprehensive surveillance sharing arrangements with each of these exchanges. All of the other trading venues on which current Index components are traded, namely CBOT, the Coffee, Sugar and Cocoa Exchange of the New York Board of Trade, and the Chicago Mercantile Exchange Inc., are members of the Intermarket Surveillance Group (“ISG”), and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. All these surveillance arrangements constitute comprehensive surveillance sharing arrangements.

#### VII. Suitability

Pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.<sup>36</sup> With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

<sup>35</sup> See Amendment No. 1 to SR–NYSE–2006–17, filed with the Commission on March 24, 2006.

<sup>36</sup> NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

## VIII. Information Memorandum<sup>37</sup>

The Exchange will, prior to trading the Notes, distribute a memorandum to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes. The memorandum will note to members language in the prospectus used by Barclays in connection with the sale of the Notes regarding prospectus delivery requirements for the Notes. Specifically, in the initial distribution of the Notes,<sup>38</sup> and during any subsequent distribution of the Notes, NYSE members will deliver a prospectus to investors purchasing from such distributors.<sup>39</sup>

The memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the memorandum, among other things, will discuss what the Notes are, how the Notes are redeemed, applicable Exchange rules, dissemination of information regarding the Index value and the Indicative Value, trading information, and applicable suitability rules.

The memorandum will also notify members and member organizations about the procedures for redemptions of Notes and that Notes are not individually redeemable but are redeemable only in aggregations of at least 50,000 Notes.

The memorandum will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the SEC has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the Notes is based, and that the Commodity Futures Trading Commission has no regulatory jurisdiction over the trading of certain foreign based futures contracts. The memorandum will also discuss other exemptive or no-action relief under the Act provided by the Commission staff.<sup>40</sup>

## IX. Discussion and Commission's 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 exchange.<sup>41</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,<sup>42</sup> which requires, among other things, that the Exchange's rules 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.

### A. Surveillance

Information sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing arrangements with LME, NYMEX (and COMEX), pursuant to which the Exchange can obtain market surveillance information, including customer identity information, along with the Exchange's participation in the ISG, create the basis for the Exchange to monitor for fraudulent and manipulative practices in the trading of the Notes. In addition, the Exchange represents that it will delist the Notes if a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement.

Moreover, NYSE Rules 476 and 1301B give NYSE the authority to request the Exchange specialist in the Notes to provide NYSE Regulation with pricing information, among other things. Furthermore, the Exchange believes that it also has the authority to request any other information from its members—including floor brokers, specialists and "upstairs" firms—to fulfill its regulatory obligations. The Commission believes that these rules provide the NYSE with the tools necessary to adequately surveil trading in the Notes.

### B. Dissemination of Information

The Commission believes that sufficient venues for obtaining reliable

price information exist so that investors in the Notes can monitor the underlying Index relative to the Indicative Value of the Notes. There is a considerable amount of information about the Index and its components available through public Web sites and professional subscription services, including Reuters and Bloomberg. During the time that the Notes will trade on the Exchange, Dow Jones disseminates via one or more major market data vendors the Index value at least every 15 seconds<sup>43</sup> from 8 a.m. to 3 p.m. ET and publishes a daily Index value at approximately 4 p.m. ET on Reuters. Real time information about the trading of the component futures contracts and their daily settlement prices is available from one or more major market data vendors, and in some cases, the underlying futures exchanges.

While the Indicative Value will not reflect price changes of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4 p.m. New York time, the Exchange will disseminate the Indicative Value of the Notes via the facilities of the CTA every 15 seconds throughout the NYSE trading day on each day on which the Notes are traded on the Exchange. Additionally, Barclays or an affiliate will calculate and publish the closing Indicative Value of the Notes on each trading day at <http://www.ipathetn.com>.

### C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Notes are consistent with the Act. Notes will trade as equity securities under Section 703.19 and will be subject to NYSE rules applicable to equity trading including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Notes should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Notes. The Exchange represents that it would file a proposed rule change, pursuant to Rule 19b-4,<sup>44</sup> if the Index Sponsors materially change the composition of the Index, the methodology of calculating the value of the Index, or any other policies relevant to the Index. Finally, the Commission notes that the Information Memorandum the Exchange

<sup>37</sup> The Exchange initially referred to the distributed document in its filing as an "Information Circular." The Exchange requested that the Commission change the reference to an "Information Memorandum" in the Commission's Notice. See *supra*, note 3. Telephone conference between Kristie Diemer, Attorney, Division, Commission, and John Carey, Assistant General Counsel, Exchange, on April 10, 2006.

<sup>38</sup> The Registration Statement reserves the right to do subsequent distributions of these Notes.

<sup>39</sup> April 10 Telephone Conference.

<sup>40</sup> March 29 Telephone Conference.

<sup>41</sup> 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).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

<sup>43</sup> April 11 Telephone Conference.

<sup>44</sup> 17 CFR 240.19b-4.

will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Notes, including their prospectus delivery obligations.

#### X. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-NYSE-2006-16), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>45</sup>

**J. Lynn Taylor**,

*Assistant Secretary.*

[FR Doc. E6-8549 Filed 6-1-06; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53875; File No. SR-NYSEArca-2006-11]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of the United States Oil Fund, LP Pursuant to Unlisted Trading Privileges

May 25, 2006.

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 April 26, 2006, NYSE Arca, Inc. (the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving 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 amend its rules governing NYSE Arca, L.L.C. (also referred to as the “NYSE Arca Marketplace”), the equities trading facility of NYSE Arca Equities. The Exchange proposes new NYSE Arca Equities Rule 8.300 in order

to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”), units in a partnership that is a commodity pool under the Commodity Exchange Act (“CEA”) that is designed to track a specified commodity or index of commodities by holding any combination of investments (i) comprised of or based on futures contracts, options on futures contracts, forward contracts, swaps, and over-the-counter (“OTC”) contracts for commodities or based on price changes in commodities, and (ii) in securities that may be required to satisfy margin or collateral requirements associated with investments in the financial instruments listed in item (i) above (such units are referred to generally herein as “Partnership Units”). Pursuant to these proposed rules, the Exchange initially proposes to trade, pursuant to UTP, units (“Units”) of the United States Oil Fund, LP (“USOF” or the “Partnership”).

The text of the proposed rule change appears below. Additions are *underlined*.

\* \* \* \* \*

Rules of NYSE Arca Equities, Inc.

*Rule 8.300*

*Partnership Units*

*(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Partnership Units that meet the criteria of this Rule.*

*(b) Definitions. The following terms as used in the Rule shall, unless the context otherwise requires, have the meanings herein specified:*

*(1) Commodity. The term “commodity” is defined in Section 1(a)(4) of the Commodity Exchange Act.*

*(2) Partnership Units. The term “Partnership Units” for purposes of this Rule means a security (a) that is 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 is issued and redeemed daily in specified aggregate amounts at net asset value.*

*(c) Designation. The Corporation may list and trade Partnership Units based on an underlying asset, commodity or security. Each issue of a Partnership Unit shall be designated as a separate series and shall be identified by a unique symbol.*

*(d) Initial and Continued Listing. Partnership Units will be listed and/or traded on the Corporation subject to application of the following criteria:*

*(1) Initial Listing—The Corporation will establish a minimum number of*

*Partnership Units required to be outstanding at the time of commencement of trading on the Corporation.*

*(2) Continued Listing—The Corporation will consider removing from listing Partnership Units under any of the following circumstances:*

*(i) if following the initial twelve month period following the commencement of trading of Partnership Units, (A) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Partnership Units for 30 or more consecutive trading days; (B) if the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (C) if the market value of all Partnership Units issued and outstanding is less than \$1,000,000;*

*(ii) if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or the Corporation stops providing a hyperlink on its Web site to any such investment, commodity, or asset value;*

*(iii) if the Indicative Partnership Value is no longer made available on at least a 15-second delayed basis; or*

*(iv) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.*

*Upon termination of a partnership, the Corporation requires that Partnership Units issued in connection with such partnership be removed from Corporation listing. A partnership will terminate in accordance with the provisions of the partnership prospectus.*

*(3) Term—The stated term of the partnership shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Partnership prospectus.*

*(4) General Partner—The following requirements apply:*

*(i) The general partner of a partnership must be an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner.*

*(ii) No change is to be made in the general partner of a listed issue without prior notice to and approval of the Corporation.*

*(5) Voting—Voting rights shall be as set forth in the applicable partnership prospectus.*

*(e) Market Maker Accounts.*

<sup>45</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.