

Accordingly, the Exchange will charge a higher fee to External Distributors than to Internal Distributors. The fees therefore do not unreasonably discriminate among types of distributors, such as by favoring participants in the Phlx market or penalizing participants in other markets. Second, Phlx projects that the total revenues generated by the TOPO Plus Orders fee initially will amount to \$1.2 million per year, which is significantly less than the \$8 million per year that NYSE Arca projected would be generated by its ArcaBook data.<sup>22</sup>

The Exchange also reasonably believes that External Distributors will distribute TOPO Plus Orders market data to Professional Subscribers who would use the data for commercial purposes, whereas Non-Professional Subscribers may not by definition use the data for any commercial purpose. Therefore, the Exchange will assess on External Distributors a monthly subscriber fee of \$20 per Professional Subscriber, and \$1 per Non-Professional Subscriber. The monthly subscriber fees assessed upon External Distributors are based upon the manner in which the data will ultimately be used, i.e., for commercial vs. non-commercial purposes, and therefore do not unreasonably discriminate among types of distributors, such as by favoring participants in the Phlx market or penalizing participants in other markets.

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

Phlx 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, as amended. To the contrary, the market for options orders and executions is already highly competitive and Phlx's proposal is itself pro-competitive in several ways. First, the TOPO Plus Orders depth of book data feed offers a comprehensive, competitive alternative to the consolidated data OPRA feed for users and situations where consolidated data is unnecessary. Second, the Phlx believes that offering the TOPO Plus Orders data feed will help attract new users and new order flow to the Phlx market, thereby improving Phlx's ability to compete in the market for options order flow and executions.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

#### **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 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 shall: (a) By order approve such 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-Phlx-2010-48 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-48. 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,<sup>23</sup> 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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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-Phlx-2010-48 and should be submitted on or before May 7, 2010.

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

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

[FR Doc. 2010-8686 Filed 4-15-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61879; File No. SR-CBOE-2010-031]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Title of CBOE Rule 6.8C**

April 8, 2010.

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 March 29, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange 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> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>24</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>23</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

<sup>22</sup> *Id.* at 101-104 [sic].

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

The Exchange proposes to make a technical amendment to change the title of a rule. The text of the proposed rule change is available on CBOE's Web site at <http://www.cboe.org>, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

## 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 self-regulatory organization 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. The Exchange 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

In April 2009, the Commission approved a CBOE rule change to modify Rule 6.8C, *Prohibition Against Members Functioning as Market-Makers*, to eliminate some of its restrictions. As revised, Rule 6.8C's restrictions are now only applicable to customer orders (*i.e.*, non-broker-dealer orders that are not Voluntary Professional and Professional orders), since such customer orders have priority at any price over the bids and offers of non-customers.<sup>5</sup> The restrictions are no longer applicable to instances where a member is acting as principal on its own behalf or is acting as agent on behalf of other broker-dealer orders or Voluntary Professional or Professional order [sic].

The purpose of this rule change is solely to amend the title of Rule 6.8C to better reflect the current application of the rule. In particular, the title of Rule

6.8C will be changed from "Prohibition Against Members Functioning as Market-Makers" to "Prohibition Against Customers Functioning as Market-Makers."

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to update the title of CBOE Rule 6.8C to better reflect the current application of the rule.

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposal.

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 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>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant

to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the amended title of CBOE Rule 6.8C better reflects the current application of the rule. Therefore, the Commission designates the proposal operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of the 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 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-CBOE-2010-031 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2010-031. 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

<sup>5</sup> See Securities Exchange Act No. 59700 (April 2, 2009), 74 FR 16246 (April 9, 2009) (SR-CBOE-2009-009). When Rule 6.8C was amended in April 2009, it only referenced Voluntary Professionals. In December 2009, the Exchange received Commission approval of a rule change related to Professionals. That rule change, among other things, excluded Professional orders from the restrictions of Rule 6.8C in the same manner that Voluntary Professionals are excluded from the restrictions of Rule 6.8C. See Securities Exchange Act Release No. 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR-CBOE-2009-078).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to 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 of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 Web site viewing and printing 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-CBOE-2010-031 and should be submitted on or before May 7, 2010.

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

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

[FR Doc. 2010-8687 Filed 4-15-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61881; File No. SR-NYSEArca-2010-14]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing of the United States Brent Oil Fund, LP

April 9, 2010.

#### I. Introduction

On March 3, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade units of the United States Brent Oil Fund, LP. The proposed rule change was published for comment in the **Federal Register** on March 24, 2010.<sup>3</sup> The Commission

received no comments on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

#### II. Description of Proposed Rule Change

The Exchange proposes to list and trade units ("Units") of the United States Brent Oil Fund, LP ("USBO") pursuant to NYSE Arca Equities Rule 8.300, which governs the listing and trading of partnership units on the Exchange.<sup>4</sup> USBO, a Delaware limited partnership, is a commodity pool that is managed and controlled by its general partner, United States Commodity Funds LLC ("General Partner"). The General Partner is a single member limited liability company that was formed in Delaware on May 10, 2005 and is registered as a commodity pool operator with the Commodity Futures Trading Commission ("CFTC"), and is a member of the National Futures Association. The General Partner is not affiliated with a broker-dealer. The Exchange represents that USBO will comply with the requirements NYSE Arca Equities Rule 8.300<sup>5</sup> and with the requirements of Rule 10A-3 under the Act<sup>6</sup> as it applies to limited partnerships.

The net assets of USBO 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 the ICE Futures Exchange, New York Mercantile Exchange ("NYMEX"), or other U.S. and foreign exchanges (collectively, "Futures Contracts"). USBO may also invest in other crude oil-related investments, such as cash-settled options on Futures Contracts, forward contracts for crude oil, cleared swap contracts and over-the-counter transactions that are based on the price of crude oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing ("Other Crude Oil-Related Investments" and, together with Futures Contracts, "Crude Oil Interests").

USBO will invest in Crude Oil Interests to the fullest extent possible without being leveraged or unable to satisfy its current or potential margin or collateral obligations with respect to its investments in Futures Contracts and

Other Crude Oil-Related Investments. The primary focus of the General Partner will be investing in Futures Contracts and the management of investments in short-term obligations of the United States of two years or less ("Treasuries"), cash and/or cash equivalents for margining purposes and as collateral.

The investment objective of USBO is intended to have the daily changes in percentage terms of its Units' NAV reflect the daily changes in percentage terms of the spot price of Brent crude oil as measured by the changes in the price of the futures contract on Brent crude oil, as traded on ICE Futures Exchange that is the near-month contract to expire, except when the near-month contract is within two weeks of expiration, in which case the futures contract will be the next-month contract to expire ("Benchmark Futures Contract"), less USBO's expenses. The General Partner will employ a "neutral" investment strategy intended to track the changes in the price of the Benchmark Futures Contract regardless of whether the price goes up or goes down. USBO may invest in Crude Oil Interests other than the Benchmark Futures Contract to comply with accountability levels and position limits. On each day during a four-day period, the General Partner anticipates it will "roll" USBO's positions in oil investments by closing, or selling, a percentage of USBO's positions in Crude Oil Interests and reinvesting the proceeds from closing those positions in new Crude Oil Interests that reflect the change in the Benchmark Futures Contract.

The Exchange represents that USBO will create and redeem Units only in blocks of 100,000 Units called Creation Baskets and Redemption Baskets, respectively. Only Authorized Purchasers may purchase or redeem Creation Baskets or Redemption Baskets.

Additional information regarding the Units, USBO, the investment objective, policies, investment strategies, accountability levels, position limits, calculation of NAV, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.<sup>7</sup>

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Units is consistent with

<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. 61721 (March 16, 2010), 75 FR 14237 ("Notice").

<sup>4</sup> USBO has filed with the Commission Amendment No. 2 to Form S-1, dated January 22, 2010 (File No. 333-162015) ("Registration Statement").

<sup>5</sup> The Exchange represents that a minimum of 100,000 Units will be outstanding at the commencement of trading on the Exchange, the net asset value ("NAV") per Unit will be calculated daily, and the NAV and the portfolio composition will be made available to all market participants at the same time.

<sup>6</sup> 17 CFR 240.10A-3.

<sup>7</sup> See *supra* notes 3 and 4.