

that the Advisor is not affiliated with a broker-dealer and that any additional Fund sub-advisors that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.<sup>18</sup>

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A-3 under the Act.

the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>18</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

(5) The Underlying ETFs will be traded on a U.S. national securities exchange and, except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

#### V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Funds.<sup>20</sup> The Commission also notes that it has received no comments regarding the proposed rule change. Further, the Commission believes that the changes in Amendment No. 1 to the name of the Fund and the Sub-Advisor do not raise any novel regulatory concerns, particularly because Amendment No. 1 makes clear that all other representations in the Notice remain as stated therein, except that representations in the Notice to HTE Global Relative Value ETF and HTE Asset Management LLC are understood to mean and to apply to Mars Hill Global Relative Value ETF and Mars Hill Partners, LLC, respectively. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-NYSEArca-2010-10), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> See, e.g., Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (approving the listing and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61849; File No. SR-NYSEAmex-2010-30]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

April 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 31, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. Amex filed the proposal pursuant to Section 19(b)(3)(A)<sup>4</sup> of the Act and Rule 19b-4(f)(2)<sup>5</sup> thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to revise the manner in which marketing charges are made available to Specialists for Non-Directed orders. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

#### 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

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to introduce a quantitative, performance based measure to be used in the allocation of the pool of monies created from the collection of marketing charges on electronic Non-Directed orders.

Presently, marketing charges are collected by the Exchange on all electronically executed customer orders where a market maker is on the contra side. The Exchange pools the marketing fees and then distributes it to payment accepting firms (order flow providers) at the direction of the Specialist, e-Specialist, or Directed Market Maker.<sup>6</sup>

For those orders that are directed to a specific Specialist, e-Specialist, or market maker (Directed orders), the Exchange pools the marketing fees and then distributes it to payment accepting firms designated by the ATP holder that the order was directed to. Electronically executed customer orders that are not directed to a specific ATP holder (Non-Directed orders) that result in the collection of marketing charges, create a pool of monies made available to the Specialist in that particular option.

The Exchange recently introduced an e-Specialist program,<sup>7</sup> and seeks to ensure that those ATP holders are recognized for providing competitive quotes and attracting order flow to the Exchange. To do so the Exchange proposes that the pool of monies resulting from the collection of marketing charges on electronic Non-Directed orders be controlled by the Specialist or the e-Specialist with superior volume performance over a trailing quarterly review period for distribution by the Exchange at the direction of such Specialist or e-Specialist to eligible payment accepting firms. In making this determination the Exchange will, on a class by class basis, evaluate Specialist and e-Specialist performance based on the number of electronic contracts executed at NYSE Amex per class. The Specialist/e-

Specialist with the most electronic contracts executed on NYSE Amex per class will control the pool of marketing charges collected on the issue for the ensuing quarter. The Exchange may determine in the future to include additional metrics in the performance calculus subject to the submission of a subsequent filing to the Commission and upon notice via Regulatory Bulletin to the participants prior to the next quarterly evaluation period. The calculation used at the beginning of a calendar quarter will remain in effect for the duration of that calendar quarter. Each quarter the calculation will be performed to determine if control of that pool of monies belongs to either the Specialist or e-Specialist. In the event that the better performing party no longer quotes in that issue, control of the pool will default to whoever the assigned Specialist is in the subsequent quarter. If there is no Specialist assigned, but there is an e-Specialist assigned, the e-Specialist shall have control of these monies.

The Exchange believes that this is an appropriate means of allocating control of the pool of monies created by the collection of marketing charges as it rewards those ATP holders who are providing competitive quotes and attracting order flow to the Exchange. The Exchange further believes that this change benefits customers by incentivizing greater competition amongst specialists and e-specialists to provide tighter spreads and attract greater order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

*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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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-NYSEAmex-2010-30 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-NYSEAmex-2010-30. 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

<sup>6</sup> See Securities Exchange Act Release No. 59478 (February 27, 2009) 74 FR 9857 (March 6, 2009) (SR-NYSEALTR-2009-19).

<sup>7</sup> See NYSE Amex Rule 927.4NY (e-Specialists).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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 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-NYSEAmex-2010-30 and should be submitted on or before May 3, 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. 2010-8223 Filed 4-9-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61843; File No. SR-NYSEArca-2010-12]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing of the One Fund Under NYSE Arca Equities Rule 8.600

April 5, 2010.

On March 2, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), 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 shares of One Fund (the "Fund"), a series of the U.S. One Trust (the "Trust") under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"). The proposed rule change was published in the **Federal Register** on March 18, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval

of the proposed rule change on an accelerated basis.

#### I. Description of the Proposal

The Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under the Investment Company Act of 1940 ("1940 Act") ("Underlying ETFs").<sup>4</sup> U.S. One, Inc. (the "Adviser") is the adviser for the Fund. The Adviser is not affiliated with a broker-dealer. If the Adviser becomes affiliated with a broker-dealer, the Adviser would be required to comply with the "fire wall" provisions contained in Commentary .07 to NYSE Arca Equities Rule 8.600.<sup>5</sup> PNC Global Investment Servicing, Inc. serves as the custodian, transfer agent and administrator for the Fund.

The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A-3 under the Act,<sup>6</sup> as provided by NYSE Arca Equities Rule 5.3. The Fund's investment objective is to seek long-term capital appreciation. In pursuing its investment objective, the Adviser will normally invest at least 80% of its total assets in Underlying ETFs. The Adviser invests in Underlying ETFs that track various securities indices comprised of large, mid and small capitalization companies in the United States, Europe and Asia, as well as other developed and emerging markets.

Additional information regarding the Fund, the Shares, the Fund's investment objective, investment strategies,

<sup>4</sup> The Trust is registered under the 1940 Act. On February 5, 2010, the Trust filed with the Commission Amendment No. 2 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-160877 and 811-22320) ("Registration Statement").

<sup>5</sup> Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. In addition, Commentary .07 requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer, Commentary .07 reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.

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

policies, restrictions, risks, fees and expenses, creations and redemptions of Shares, 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>

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

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</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.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session through the facilities of the CTA. In addition, the Fund will make available on its Web site on each business day before commencement of trading of the Core Trading Session the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2)<sup>11</sup> that will form the basis for its calculation of

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

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 17 U.S.C. 78f(b)(5).

<sup>11</sup> The Exchange represents that the Fund will disclose on the Fund's Web site for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

<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. 61689 (March 11, 2010), 75 FR 13181 ("Notice").