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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-80427; File No. SR-NYSEArca-2016-173)

April 11, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 2 and No. 3 Thereto, to List and Trade Shares of the United States 3x Oil Fund and United States 3x Short Oil Fund under NYSE Arca Equities Rule 8.200, Commentary .02

I. Introduction

On December 23, 2016, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the United States 3x Oil Fund (“Oil Fund”) and United States 3x Short Oil Fund (“Short Oil Fund,” and together with the Oil Fund, “Funds”) under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the Federal Register on January 11, 2017.⁴ On February 22, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change,⁵ pursuant to Section 19(b)(2) of the Act.⁶ On March 13, 2017, the Exchange filed Amendment No. 1 to the proposed rule change. On March 29, 2017, the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 79742 (January 5, 2017), 82 FR 3366.

⁵ See Securities Exchange Act Release No. 80079 (February 27, 2017), 82 FR 11955 (designating April 11, 2017 as the date by which the Commission would approve the proposal, disapprove the proposal, or institute proceedings to approve or disapprove the proposal).

⁶ 15 U.S.C. 78s(b)(2).

Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.⁷ On April 7, 2017, the Exchange filed Amendment No. 3 to the proposed rule change.⁸ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendments No. 2 and No. 3.

⁷ In Amendment No. 2, the Exchange: (1) provided additional detail regarding the Funds' Benchmark Oil Futures Contract; (2) stated that the CME Group, Inc. ("CME") is a member of the Intermarket Surveillance Group; (3) provided additional clarification regarding the timing of the daily rebalancing of the Funds' holdings; (4) provided additional clarification and specificity regarding the instruments in which the Funds may invest; (5) provided additional information regarding accountability level requirements applicable to the Funds; (6) supplemented the description of how certain investments will be valued for computing a Fund's net asset value ("NAV"); (7) provided additional clarification regarding the calculation of the Indicative Fund Value ("IFV") for a Fund; (8) represented that certain aspects of the Funds' creation and redemption procedures will not impact market maker arbitrage opportunities; (9) provided information regarding the availability of the Benchmark Oil Futures Contract trading prices prior to the New York Mercantile Exchange closing time and end of day settlement price once published by the New York Mercantile Exchange after its closing; (10) removed statements regarding the rejection or suspension of redemption orders; (11) provided additional detail regarding the availability of information regarding the Funds and their portfolio holdings; (12) represented that the applicability of Exchange listing rules specified in the proposed rule change shall constitute continued listing requirements for listing the Shares on the Exchange; (13) supplemented its description of the information that the Exchange will provide to Equity Trading Permit Holders in an Information Bulletin; and (14) made other technical amendments. The amendments to the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2016-173/nysearca2016173.htm>. Amendment No. 2 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

⁸ In Amendment No. 3, the Exchange: (1) clarified that the futures contracts that trade under the symbol "CL" are WTI Crude Oil futures; and (2) stated that the contents of each Fund's portfolio would be disclosed to all market participants at the same time. Amendment No. 3 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

II. Description of the Proposal⁹

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.200, Commentary .02, which governs the listing and trading of Trust Issued Receipts.¹⁰ Each Fund is a series of the USCF Funds Trust (“Trust”), a Delaware statutory trust.¹¹ The Trust and the Funds are managed and controlled by United States Commodity Funds LLC (“USCF”). USCF is registered as a commodity pool operator with the Commodity Futures Trading Commission and is a member of the National Futures Association. Brown Brothers Harriman & Co. is the custodian, registrar, transfer agent, and administrator for the Funds. ALPS Fund Services, Inc. is the marketing agent for the Funds.

Overview of the Funds

The investment objective of the Oil Fund will be for the daily changes in percentage terms of its Shares’ per share NAV to reflect three times (3x) the daily change in percentage terms of the price of a specified short-term futures contract on light, sweet crude oil

⁹ A more detailed description of the Funds, the Shares, and the Benchmark Oil Futures Contract, as well as investment risks, creation and redemption procedures, NAV calculation, availability of values and other information regarding the Funds’ portfolio holdings, and fees, among other things, is included in the Registration Statements (defined below) and Amendments No. 2 and No. 3, as applicable. See infra note 11, and supra notes 7 and 8, respectively.

¹⁰ Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

¹¹ The Trust is registered under the Securities Act of 1933. The Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) relating to the United States 3x Oil Fund (File No. 333-214825) and the United States 3x Short Oil Fund (File No. 333- 214881) (each a “Registration Statement” and, collectively, “Registration Statements”) on November 29, 2016 and December 2, 2016, respectively.

(“Benchmark Oil Futures Contract”), less the Fund’s expenses. The Benchmark Oil Futures Contract is the futures contract on light, sweet crude oil as traded on the New York Mercantile Exchange (“NYMEX”), which is part of the CME, traded under the trading symbol “CL” (for WTI Crude Oil futures), that is the near month contract to expire, except when the near month contract is within two weeks of expiration, in which case it will be measured by the futures contract that is the next month contract to expire.¹²

The investment objective of the Short Oil Fund will be for the daily changes in percentage terms of its shares’ per share NAV to reflect three times the inverse (-3x) of the daily change in percentage terms of the price of the Benchmark Oil Futures Contract, less the Fund’s expenses.

To achieve these objectives, USCF will endeavor to have the notional value of a Fund’s aggregate exposure (in the case of the Oil Fund) or aggregate short exposure (in the case of the Short Oil Fund) to the Benchmark Oil Futures Contract at the close of each trading day approximately equal to 300% of the Fund’s NAV. The Funds will not seek to achieve correlation to the Benchmark Oil Futures Contract over a period of time greater than one day.¹³

Investments of the Funds

Each Fund will seek to achieve its investment objective by investing primarily in futures contracts for light, sweet crude oil that are traded on the NYMEX, ICE Futures-U.S., or other

¹² See Amendment No. 3, supra note 8. The Exchange represents that CME is a member of the Intermarket Surveillance Group (“ISG”). See Amendment No. 2, supra note 7, at 5 n.7.

¹³ The pursuit of daily leveraged investment goals means that the return of a Fund for a period longer than a full trading day may have no resemblance to 300% (in the case of the Oil Fund) or -300% (in the case of the Short Oil Fund) of the return of the Benchmark Oil Futures Contract for a period of longer than a full trading day because the aggregate return of the Fund is the product of the series of each trading day’s daily returns. See Amendment No. 2, supra note 7, at 5 n.6, 9 n.10.

U.S. and foreign exchanges (collectively, “Oil Futures Contracts”). The Funds will, to a lesser extent and in view of regulatory requirements and/or market conditions:

- (1) next invest in (a) cleared swaps based on the Benchmark Futures Contract, (b) non-exchange traded (“over-the-counter” or “OTC”), negotiated swap contracts that are based on the Benchmark Futures Contract, and (c) forward contracts for oil;
- (2) followed by investments in futures contracts for other types of crude oil, diesel-heating oil, gasoline, natural gas, and other petroleum-based fuels, each of which that are traded on the NYMEX, ICE Futures U.S., or other U.S. and foreign exchanges, as well as cleared swaps and OTC swap contracts valued based on the foregoing; and
- (3) finally, invest in exchange-traded cash settled options on Oil Futures Contracts.

All such other investments are referred to as “Other Oil-Related Investments” (Other Oil-Related Investments, together with Oil Futures Contracts, are referred to collectively as “Oil Interests”).

The Exchange states that regulatory requirements, such as accountability levels or position limits, and market conditions could cause a Fund to invest in Other Oil-Related Investments.¹⁴

To satisfy their margin, collateral, and other requirements, the Funds may hold short-term obligations of the United States of two years or less (“Treasuries”), cash, and cash equivalents.¹⁵

¹⁴ See *id.* at 6-7, 10. The Funds have not limited the size of their offerings and are committed to utilizing substantially all of their proceeds to purchase Oil Interests. If a Fund encounters accountability levels, position limits, or price fluctuation limits for Oil Futures Contracts on the NYMEX or ICE Futures U.S., it may then, if permitted under applicable regulatory requirements, purchase Oil Futures Contracts on other exchanges that trade listed crude oil futures or invest in Other Oil-Related Investments to meet its investment objective. See *id.* at 8, 11.

¹⁵ The Exchange states that cash equivalents are short-term instruments with maturities of less than three months and shall include the following: (i) certificates of deposit issued against funds deposited in a bank or savings and loan association; (ii) bankers’ acceptances, which are short-term credit instruments used to finance commercial transactions; (iii) repurchase agreements and reverse repurchase agreements; (iv) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (v) commercial paper, which are short-term unsecured promissory notes; and (vi) money market funds. See *id.* at 7 n.9.

The Exchange states that approximately 15% to 90% of each Fund's assets will be committed as margin for commodity futures contracts,¹⁶ but that from time to time the percentage of assets committed as margin may be substantially more, or less, than such range. The Funds may hold shares of money market funds and Treasuries with a maturity date of two years or less as investments, rather than just as margin or collateral.

For a Fund to maintain a consistent 300% (in the case of the Oil Fund) or -300% (in the case of the Short Oil Fund) return versus the Benchmark Oil Futures Contract, the Fund's holdings must be rebalanced on a daily basis by buying additional Oil Interests or by selling Oil Interests that the Fund holds. Such rebalancing generally will occur before or at the close of trading of the Shares on the Exchange, at or as near as possible to that day's settlement price, and will be disclosed on the Fund's website as pending trades before the opening of trading on the Exchange the next business day and will be taken into account in the Fund's IFV and reflected in the Fund's end of day NAV on that business day.¹⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁸ In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 2 and No. 3 thereto, is consistent with Section 6(b)(5) of the Exchange Act,¹⁹ which requires, among other things, that the Exchange's

¹⁶ See *id.* Ongoing margin and collateral payments will generally be required for both exchange-traded and OTC contracts based on changes in the value of the Oil Interests.

¹⁷ See *id.* at 6, 9.

¹⁸ 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).

¹⁹ 15 U.S.C. 78f(b)(5).

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 Exchange Act,²⁰ 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. According to the Exchange, quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The intraday, closing prices, and settlement prices of the Oil Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors. Complete real-time data for the Oil Futures Contracts is available by subscription through on-line information services. ICE Futures U.S. and NYMEX also provide delayed futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for Futures Contracts are also available on the websites of those futures exchanges, as well as other financial informational sources. Information regarding exchange-traded cash-settled options and cleared swap contracts will be available from the applicable exchanges and major market data vendors. Information regarding exchange-traded cash-settled options and cleared swap contracts will be available from the applicable exchanges and major market data vendors.

²⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

The Funds' website, www.uscfinvestments.com, will display the applicable end of day closing NAV. The daily holdings of each Fund will be available on the Fund's website before 9:30 a.m. Eastern Time ("E.T.") each day. The website disclosure of portfolio holdings will be made daily and will include the following (as applicable): (1) the composite value of the total portfolio, (2) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of a swap, the type of swap, its notional value and the underlying instrument, index or asset on which the swap is based and, in the case of an option, its strike price, (3) the value of each Oil Interest (in U.S. dollars), (4) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (5) the amount of cash held in each Fund's portfolio.²¹

The trading price of the Benchmark Oil Futures Contract will be disseminated by one or more major market data vendors every 15 seconds during NYSE Arca's Core Trading Session (9:30 a.m. to 4:00 p.m. E.T.). An IFV will be disseminated for each Fund on a per Share basis every 15 seconds during the Exchange's Core Trading Session.²² The administrator for the Funds will calculate the NAV of each Fund once each NYSE trading day. On a normal trading day, the NAV of each Fund's Shares will be released after 4:00 p.m. E.T. The NAV will be disseminated daily to all market participants at the same time.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares

²¹ See Amendment No. 2, *supra* note 7, at 15.

²² Each IFV will be calculated by using the prior day's closing NAV per Share as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the active light, sweet Oil Futures Contract on the NYMEX. See *id.* at 12.

appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark Oil Futures Contract occurs. If the interruption to the dissemination of the IFV or the value of the Benchmark Oil Futures Contract persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Trading in Shares will also be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Moreover, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.²³ Moreover, trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain requirements to facilitate surveillance of Equity Trading Permit (“ETP”) Holders acting as registered Market Makers in Trust Issued Receipts.

The Commission notes that the Exchange or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain Oil Futures Contracts with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and certain Oil Futures Contracts from such markets and other entities. In addition, the Exchange may obtain information regarding

²³ See Amendment No. 2, supra note 7, at 18.

trading in the Shares and certain Oil Futures Contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).²⁴

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. In support of this proposal, the Exchange represented that:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.200.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.
- (4) 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 risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due

²⁴ For a list of the current members of ISG, see www.isgportal.org.

diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV is disseminated; (e) how information regarding portfolio holdings is disseminated; (f) 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 (g) trading information.

- (5) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act,²⁵ as provided by NYSE Arca Equities Rule 5.3.
- (6) The daily holdings of each Fund will be available on the Funds' website before 9:30 a.m. E.T. each day, and the daily website disclosure of each Fund's portfolio holdings will include the following (as applicable): (a) the composite value of the total portfolio, (b) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of a swap, the type of swap, its notional value and the underlying instrument, index or asset on which the swap is based and, in the case of an option, its strike price, (c) the value of each Oil Interest (in U.S. dollars), (d) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent; and (e) the amount of cash held in each Fund's portfolio.
- (7) Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts shall consist of futures contracts whose principal market is not a

²⁵ 17 CFR 240.10A-3.

member of the ISG or is a market with which the Exchange does not have a CSSA.

- (8) Website disclosure of each Fund' daily holdings will occur at the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at the same time.²⁶
- (9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.
- (10) All statements and representations made in the filing regarding (a) the description of the portfolios of the Funds, (b) limitations on portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.
- (11) The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements.
- (12) Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.²⁷
- (13) If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

²⁶ See Amendment No. 3, supra note 8.

²⁷ The Commission notes that certain other proposals for the listing and trading of exchange traded products include a representation that the listing exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of the Fund’s compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendments No. 2 and No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 2 and No. 3 thereto, is consistent with Section 6(b)(5) of the Act²⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²⁹ that the proposed rule change (SR-NYSEArca-2016-173), as modified by Amendments No. 2 and No. 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Eduardo A. Aleman
Assistant Secretary

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

