



## Product Notice 2020-0627

Date: September 18, 2020

Re: United States Oil Fund, LP

MEMX LLC ("MEMX or the "Exchange") was approved by the Securities and Exchange Commission as a registered national securities exchange on May 4, 2020. MEMX intends to commence trading and other operations in September of 2020. This Product Notice is being issued to advise you that the following securities have been approved for trading pursuant to unlisted trading privileges ("UTP") on MEMX as UTP Derivative Securities pursuant to MEMX Rule 14.1.

<u>Securities (the "Fund" or the "ETF")</u>	<u>Symbol</u>	<u>CUSIP</u>
United States Oil Fund, LP	USO	91232N108

Compliance and supervisory personnel should note that, among other things, this Product Notice discusses the need to deliver a prospectus to customers purchasing shares of the exchange-traded fund. Please forward this Product Notice to interested persons within your organization.

The purpose of this Product Notice is to outline various rules and policies that will be applicable to trading in these new products pursuant to the Exchange's unlisted trading privileges, as well as to provide certain characteristics and features of the securities. For a more complete description of the Issuer, the securities, and the underlying market instruments or indexes, visit the Issuer Website, consult the Prospectus available on the Issuer Website or examine the Issuer Registration Statement, or review the most current information bulletin issued by the Primary Listing Exchange. The Issuer Website, the Prospectus and the Issuer Registration Statement are hereafter collectively referred to as the "Issuer Disclosure Materials."

### **Background Information on the Fund**

As more fully explained in the Registration Statement (No. 333-124950) for the United States Oil Fund, L.P. (USO) (the "Fund"), the Fund is designed to track the performance of the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma (the "WTI light, sweet crude oil"). Each Unit of the Fund (the "Unit" or "Units") represents a fractional undivided beneficial interest in the net assets of the Fund. The Fund is not registered as an investment company under the Investment Company Act of 1940.

The Fund is a Delaware limited partnership that was formed in May 2005 and operated by Victoria Bay Asset Management, LLC, a single member Delaware limited liability company (the "General Partner" or "Victoria Bay"). The General Partner is wholly owned by Wainwright Holdings, Inc. The General Partner is a registered commodity pool operator ("CPO") with the Commodity Futures Trading Commission ("CFTC") and a member of the National Futures Association ("NFA"). Brown Brothers Harriman & Co. (the "Administrator") is the administrator and custodian for the Fund and ALPS Distributors, Inc. (the "Marketing Agent") is the marketing agent for the Units of the Fund. ABN AMRO (the "Clearing Broker") is the clearing broker for the execution and clearing of the futures contracts of the Fund.

The investment objective of the Fund is for its net asset value ("NAV") to reflect the performance of the spot price of WTI light, sweet crude oil less the expense of operation. The assets of the Fund consist of futures contracts for light, sweet crude oil and other petroleum-based fuels that are traded on the New York Mercantile Exchange ("NYMEX") or other U.S. and foreign exchanges (collectively, "Oil Futures Contracts"). The Fund may also invest in other oil interests, such as cash settled options on Oil Futures Contracts, forward contracts for oil, and OTC transactions that are based on the price of oil, other petroleum-based fuels, Oil Futures Contracts and indices based on the foregoing (collectively, "Other Oil Interests") (Oil Futures Contracts and Other Oil Interests are collectively referred to as "Oil Interests"). The Fund will also hold short-term U.S. Treasury securities ("Treasuries") to satisfy its current or future margin and collateral requirements and to otherwise satisfy its obligations with respect to its investments in Oil Interests.

The Fund will pursue its investment objective by investing its assets in Oil Interests without leverage. The Fund will manage its investments so that its NAV closely tracks the price of the "Benchmark Oil Futures Contract" that the General Partner believes has historically exhibited a close price correlation with the spot price of WTI light, sweet crude oil. Currently, the Benchmark Oil Futures Contract is the NYMEX traded near-month (i.e., spot month) futures contract for delivery of WTI light, sweet crude oil.

As described more fully in the prospectus and the registration statement for the Fund, the Fund issues Units on a continuous basis. The Fund issues and redeems Units only in blocks of 100,000 Units or integral multiples thereof to Authorized Participants. A block of 100,000 Units is called a "Basket." These transactions will be in exchange for a Deposit Amount equal to 100,000 multiplied by the net asset value ("NAV") per Unit of the Fund determined on each business day by the Administrator. The Administrator will determine the Deposit Amount for a given business day by multiplying the NAV for each Unit by the number of Units in each Basket. Only registered broker-dealers or other market participants, such as banks and other financial institutions that are exempt from broker-dealer registration, that become Authorized Participants by entering into a participant agreement with the General Partner and the Fund may purchase or redeem Baskets. Units will be offered to the public at prices that will reflect, among other things, the spot price of WTI light, sweet crude oil and the trading price of the Units at the time of the offer. Market prices for the Units may be different from the NAV per Share. Except when aggregated in Baskets, Units are not redeemable securities.

The NAV of the Fund is obtained by subtracting the Fund's expenses and liabilities on any day from the value of the Fund's assets. The NAV will be calculated shortly after the close of trading on the American Stock Exchange ("Amex") using the settlement value of Oil Futures Contracts traded on the NYMEX as of the earlier of the close of open-outcry of trading on the NYMEX (currently at 2:30 p.m. ET) or 4:00 p.m. ET, and for the value of other Oil Futures Interests and Treasuries, the value of such investments as of the earlier of 4:00 p.m. ET or the close of trading on the New York Stock Exchange. The NAV is calculated by including any unrealized profit or loss on Oil Futures Contracts and other Oil Interests and any other credit or debit accruing to the Fund but unpaid or not received. The NAV per Unit is obtained by dividing the NAV of the Fund on a given day by the number of Units outstanding on that date. The Administrator will value all Oil Futures Contracts based on that day's settlement price. However, if an Oil Futures Contract on a trading day cannot be liquidated due to the operation of daily limits or other rules of an exchange upon which such futures contract is traded, the settlement price on the most recent trading day on which such Oil Futures Contract could have been liquidated will be used in determining NAV. The value of the Other Oil Interests will be valued based upon a determination of the Administrator as to their fair market value.

Shortly after 4:00 p.m. ET each business day, the General Partner will determine and disseminate the Deposit Amount for orders placed by Authorized Participants by 12:00 p.m. ET that day. To receive the NAV of the Units on that business day, a purchase order must be received by 12:00 p.m. ET. Delivery of the Deposit Amount must occur by the third business day following the purchase order date (T+3). Purchase orders placed by 12:00 p.m. ET are irrevocable. Baskets are then issued as of 12:00 p.m. ET, on the business day immediately following the purchase order date (T+1) at the NAV per share on the purchase order date if the required payment has been timely received. The Administrator will also at the same time determine an "Estimated Deposit Amount" that Authorized Participants can use as an indicative amount of Treasuries and cash to be deposited for issuance of the Units on the next business day. The Deposit Amount, the Estimated Deposit Amount and the NAV are communicated by the Administrator to all Authorized Participants via facsimile or electronic mail message and will be available on the Fund's website at <http://unitedstatesoilfund.com>. The most recently reported NAV for the Units will also be available on Amex's website ([www.amex.com](http://www.amex.com)).

The Fund's expense ratio, in the absence of any extraordinary expenses and liabilities, is expected to be 1.25% of the net assets of the Fund for assets of up to \$1 billion and 0.90% of net assets of the Fund if assets are greater than \$1 billion. DTC serves as the securities depository for the Units, which may be held only in book-entry form; stock certificates will not be issued. DTC, or its nominee, is the record or registered owner of all outstanding Units of the Fund.

The registration statement for the Fund describes the various fees and expenses for the Units.

For a complete description of the Fund, visit <http://unitedstatesoilfund.com>. Indicative Fund Value

In order to provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem Units, the Amex disseminates through the facilities of Consolidated Tape Association ("CTA"), an updated Indicative Partnership Value (the "Indicative Partnership Value"). The Indicative Partnership Value is disseminated on a per Unit basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET under the index symbol "UOI." The Indicative Partnership Value is calculated based on the Treasuries and cash required for creations and redemptions (i.e. NAV per Share x 100,000) adjusted to reflect the price changes of the current benchmark Oil Futures Contract. The value of a Unit may be influenced by non-concurrent trading hours. The Indicative Partnership Value on a per Unit basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day by the Administrator.

#### Oil Futures Contracts

The Fund purchases Oil Futures Contracts traded on the NYMEX on WTI light, sweet crude oil and may also purchase Oil Futures Contracts traded on NYMEX based on Brent crude oil. In addition to the commodities and futures exchanges in New York and London, several other established futures exchanges currently offer, or have announced plans to offer, trading in futures contracts on light, medium, or heavy crude oils, including the TOCOM as well as exchanges in Shanghai and Dubai. The Fund may in the future invest in such contracts.

As noted above, the Benchmark Oil Futures Contract has closely tracked the investment objective of the Fund over the short-term, medium-term and the long-term. For that reason, the General Partner of the Fund anticipates making significant investments in the current Benchmark Oil Futures Contract. The

General Partner also believes that Other Oil Futures Contracts, such as Brent crude oil futures contracts traded on the NYMEX and ICE Futures, the Dubai crude oil futures contract traded on the TOCOM and elsewhere, and other NYMEX petroleum-based futures contracts such as heating oil and gasoline, also tend to track the investment objective of the Fund. The General Partner in managing the Fund may seek to invest in these contracts.

#### Oil-Related Listed Options and OTC Derivatives

The Fund may also invest in oil-related listed options and OTC derivatives in pursuing its investment objective. The OTC market in oil-based derivatives is especially active worldwide. OTC derivative transactions are privately-negotiated agreements between two (2) parties. Unlike exchange-traded instruments, each party to an OTC contract bears the credit risk that the counterparty may not be able to perform its obligations. Some oil-based derivatives transactions contain fairly generic terms and conditions and are available from a wide range of participants. Other oil-based derivatives have highly customized terms and conditions and are not as widely available. Many of these OTC contracts are cash-settled forwards for the future delivery of oil or petroleum based fuels that have terms similar to Oil Futures Contracts. Others take the form of “swaps” in which the two (2) parties exchange cash flows based on predetermined formulas tied to the price of oil as determined by the spot, forward or futures markets. The Fund may enter into OTC derivative contracts whose value will be tied to changes in the difference between the WTI spot price, the price of Oil Futures Contracts traded on NYMEX and the prices of non-NYMEX Oil Futures Contracts that may be invested in by the Fund.

To protect itself from the credit risk that arises in connection with such contracts, the Fund will enter into agreements with each counter party that provide for the netting of its overall exposure to its counterparty and/or provide collateral or other credit support to address the Fund’s exposure. The creditworthiness of each potential counter party will be assessed by the General Partner. Existing counterparties will also be reviewed periodically by the General Partner. The Fund anticipates that the use of Other Oil Interests together with its investments in Oil Futures Contracts will produce price and total return results that closely track the investment objective of the Fund.

#### Impact of Speculative Position Limits

The CFTC and U.S. futures exchanges, such as the NYMEX, have established limits or position accountability rules (i.e., speculative position limits or position limits) on the maximum net long or net short speculative position that any person or group of persons under common trading control (other than a hedger) may hold, own or control in commodity interests. Speculative position limits are intended, among other things, to prevent a corner or squeeze on a market or undue influence on prices by any single trader or group of traders. Speculative position limits will impact the mix of investments by the Fund with such mix varying depending on the accumulation of assets. Once the speculative position limits for the current Benchmark Oil Futures Contract are reached, the Fund will be required to invest in other Oil Futures Contracts and other Oil Interests. Investors should note that there is no regulated source of last-sale information regarding physical commodities, such as crude oil. Also, the Securities & Exchange Commission (the “SEC”) has no regulatory jurisdiction over the trading of gasoline, crude oil and other petroleum-based fuels. Instead, that responsibility lies with the CFTC.

The registration statement for the Fund describes the various fees and expenses for the Units. For a complete description of the Fund, please refer to the Fund’s website at [www.unitedstatesoilfund.com](http://www.unitedstatesoilfund.com).

### **Indicative Fund Value**

In order to provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem Units, the Amex disseminates through the facilities of Consolidated Tape Association (“CTA”), an updated Indicative Fund Value (the “IFV”). The IFV is disseminated on a per Unit basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET.

The IFV will be calculated by using the prior day’s closing NAV per Unit of the Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the active Futures Contract on the NYMEX. The prices reported for the active Futures Contract month will be adjusted based on the prior day’s spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract will not be adjusted. The IFV per Unit basis disseminated during Amex’s trading hours should not be viewed as an actual real time update of the NAV, because NAV is calculated only once at the end of each trading day. The normal trading hours of the NYMEX are 10:00 a.m. ET to 2:30 p.m. ET. This means that there will be a gap in time at the beginning and the end of each day during which the Fund’s Units will be traded on the Amex, but real- time NYMEX trading prices for futures contracts traded on such Exchange will not be available. As a result, during those gaps there will be no update to the IFV.

### **Creation and Redemption of Units**

The Fund issues and redeems Units on a continuous basis only in Baskets of 100,000 Units or multiples thereof, by or through Authorized Participants. Basket-sized Aggregations are issued in exchange for the corresponding Deposit Amount determined on each business day by the Administrator. The Deposit Amount necessary for the creation of a Basket will change from day to day. On each day that Amex is open for regular trading, the Administrator will adjust the Deposit Amount as appropriate to reflect the prior day’s Partnership NAV and accrued expenses. Authorized Participants that wish to redeem a Basket will receive Treasuries and cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the “Redemption Amount”). These items are described in the Fund’s prospectus and registration statement.

Authorized Participants that wish to purchase a Basket must transfer the Deposit Amount plus a transaction fee of \$1,000 to the Fund in exchange for a Basket. No Units will be issued unless and until the Administrator has informed the Marketing Agent that it has allocated to the Fund’s account the required funds necessary for the Deposit Amount plus transaction fee. Authorized Participants who wish to redeem a Basket will receive the Redemption Amount in exchange for each Basket surrendered less the transaction fee of \$1,000. The Redemption Amount will be delivered to the Authorized Participant upon confirmation that the Fund’s DTC Account has received the Basket.

The total deposit required to create each basket (“Creation Basket Deposit”) will be an amount of Treasuries and/or cash that is in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to purchase is accepted as the number of Units to be created under the purchase order is in proportion to the total number of Units outstanding on the date the order is received. The General Partner determines, directly in its sole discretion or in consultation with the Administrator, the requirements for Treasuries and the amount of cash, including the maximum permitted remaining maturity of a Treasury and proportions of Treasury and

cash that may be included in deposits to create Baskets. The Marketing Agent will publish such requirements at the beginning of each business day. The amount of cash deposit required will be the difference between the aggregate market value of the Treasuries required to be included in a Creation Basket Deposit as of 4:00 p.m. ET on the date the order to purchase is properly received and the total required deposit.

An Authorized Purchaser who places a purchase order is responsible for transferring to the Fund's account with the Custodian the required amount of Treasuries and cash by 3:00 p.m. ET on the third business day following the purchase order date. Upon receipt of the deposit amount, the Administrator will direct DTC to credit the number of baskets ordered to the Authorized Purchaser's DTC account on the third business day following the purchase order date.

The Fund's prospectus and registration statement describe additional procedures and requirements that apply to the creation and redemptions of Units. MEMX members interested in becoming an Authorized Participant, or obtaining a list of Authorized Participants, can contact the Marketing Agent at [www.alpsinc.com](http://www.alpsinc.com) for more information.

### **Investment Risks**

MEMX members are referred to the Fund's prospectus and registration statement for a more detailed description of risks associated with an investment in the Units of the Fund. Some of the risks involved in an investment in the Fund include:

- Unlike mutual funds, commodity pools or other investment pools that actively manage their investments in an attempt to realize income and gains from their investing activities and distribute such income and gains to their investors, the Fund generally does not expect to distribute cash to limited partners or other unitholders. You should not invest in the Fund if you will need cash distributions from the Fund to pay taxes on your share of income and gains of the Fund, if any, or for any other reason.
- There is no assurance that the General Partner will successfully implement the Fund's investment strategy. If the General Partner permits the Fund to become leveraged, you could lose all or substantially all of your investment in the Fund.
- Investing in Oil Interests subjects the Fund to the risks of the oil industry and this could result in large fluctuations in the price of the Fund's Units.
- The price of the Fund's Units may be influenced by factors such as the supply and demand for oil and the supply and demand for the Fund's Units. This may cause the Units to trade at a price that is above or below the Fund's NAV per Unit.
- There is no direct regulation of the market in physical oil-based commodities and no SEC jurisdiction over the trading of WTI, light, sweet crude oil, Brent crude oil, heating oil, gasoline, natural gas or other petroleum-based fuels as a physical commodity.
- The Fund will pay fees and expenses that are incurred regardless of whether it is profitable.
- Investors will have no rights to participate in the management of the Fund and will have to rely on the duties and judgment of the General Partner to manage The Fund.
- The structure and operation of the Fund may involve conflicts of interest. For example, a conflict may arise because the General Partner and its principal and affiliates may trade for themselves. In addition, the General Partner has sole current authority to manage the investments and operations, which may create a conflict with the unitholders' best interests. The General Partner

may also have a conflict to the extent that its trading decisions may be influenced by the effect they would have on other commodity pools that it manages, or any other commodity pool the General Partner may form in the future.

- The Fund is new and has a limited operating history. Therefore, you do not have the benefit of reviewing the long-term past performance of the Fund as a basis for you to evaluate an investment in the Fund.

#### **Purchases and Redemptions in Creation Unit Size**

MEMX Members are hereby informed that procedures for purchases and redemptions of Shares in Creation Units are described in the Trust's Prospectus and SAI and that Shares are not individually redeemable but are redeemable only in Creation Unit aggregations or multiples thereof.

#### **Exchange Rules Applicable to Trading in the Shares**

Trading in the Shares on MEMX is subject to MEMX trading rules.

#### **Trading Hours**

The value of the Index underlying the Shares will be disseminated to the data vendors every 15 seconds during the Regular Trading Session.

The Shares will trade on MEMX between 7:00 am and 8:00 pm (EST). Please note that trading in the Shares during the Exchange's Pre-Market and Post-Market Sessions ("Extended Market Sessions") may result in additional trading risks which include: (1) that the current underlying indicative value may not be updated during the Extended Market Sessions, (2) lower liquidity in the Extended Market Sessions may impact pricing, (3) higher volatility in the Extended Market Sessions may impact pricing, (4) wider spreads may occur in the Extended Markets Sessions, and (5) because the indicative value is not calculated or widely disseminated during the Extended Market Sessions, an investor who is unable to calculate an implied value for the Shares in those sessions may be at a disadvantage to market professionals.

#### **Delivery of a Prospectus**

Exchange Members should be mindful of applicable prospectus delivery requirements under the federal securities laws with respect to transactions in the Fund. Prospectuses may be obtained through the Fund's website. The Prospectus for the Fund does not contain all of the information set forth in the Fund's Registration Statement (including the exhibits to the Registration Statement), parts of which have been omitted in accordance with the rules and regulations of the SEC. For further information about the Fund, please refer to its Registration Statement.

In the event that the Fund relies upon an order by the SEC exempting the Shares from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and in the future make available a written product description, Exchange Rules require that Exchange Members provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by the Issuer of the Fund, no later than the time a confirmation of the first transaction in the Shares is delivered to such purchaser. In addition, Exchange Members shall include such a written description with any sales material relating to the Shares that is provided to customers or the public. Any other written materials provided by a MEMX member to customers or the public making specific reference to the Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and

characteristics of [the UTP Derivative Securities] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Derivative Securities].”

An Exchange member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to such Exchange member under this rule.

Upon request of a customer, Exchange Members also shall provide a copy of the Prospectus.

### **Suitability**

Trading in the securities on the Exchange will be subject to MEMX Rule 3.7 and other applicable suitability rules. Members recommending transactions in the securities to customers should make a determination that the recommendation is suitable for the customer.

### **Trading Halts**

The Exchange will halt trading in the Shares of a security in accordance with the Exchange’s Rules. The grounds for a halt include a halt because the intraday indicative value of the security and/or the value of its underlying index are not being disseminated as required, a halt for other regulatory reasons or due to other conditions or circumstances deemed to be detrimental to the maintenance of a free and orderly market. In addition, MEMX will stop trading the Shares of a security if the primary market de-lists the security.

### **Exemptive, Interpretive and No-Action Relief Under Federal Securities Regulations**

The SEC has issued exemptive, interpretive or no-action relief from certain provisions of rules under the Securities Exchange Act of 1934 (the “Act”) regarding trading in the above-mentioned exchange-traded funds.

### **Regulation M Exemptions**

Generally, Rules 101 and 102 of Regulation M prohibit any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in Regulation M. The provisions of the Rules apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities.

The SEC has granted an exemption from Rule 101 under Regulation M to permit persons participating in a distribution of shares of the above-mentioned Fund to engage in secondary market transactions in such shares during their participation in such a distribution. In addition, the SEC has granted relief under Regulation M to permit persons who may be deemed to be participating in the distribution of Shares of the above-mentioned Fund (i) to purchase securities for the purpose of purchasing Creation Unit Aggregations of Fund Shares and (ii) to tender securities for redemption in Creation Unit Aggregations.

Further, the SEC has clarified that the tender of Fund Shares to the Fund for redemption does not constitute a bid for or purchase of any of the Funds' securities during the restricted period of Rule 101. The SEC has also granted an exemption pursuant to paragraph (e) of Rule 102 under Regulation M to allow the redemption of Fund Shares in Creation Unit Aggregations during the continuous offering of Shares.

**Rule 10b-10 (Customer Confirmations for Creation or Redemption of Fund Shares)**

Broker-dealers who handle purchases or redemptions of Fund Shares in Creation Unit size for customers will be permitted to provide such customers with a statement of the number of Creation Unit Aggregations created or redeemed without providing a statement of the identity, number and price of Shares of the individual securities tendered to the Fund for purposes of purchasing Creation Unit Aggregations ("Deposit Securities") or the identity, number and price of Shares to be delivered by the Trust for the Fund to the redeeming holder ("Redemption Securities"). The composition of the securities required to be tendered to the Fund for creation purposes and of the securities to be delivered on redemption will be disseminated each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This exemptive relief under Rule 10b-10 with respect to creations and redemption is subject to the following conditions:

- Confirmations to customers engaging in creations or redemptions must state that all information required by Rule 10b-10 will be provided upon request;
- Any such request by a customer for information required by Rule 10b-10 will be filed in a timely manner, in accordance with Rule 10b-10(c); and
- Except for the identity, number, and price of Shares of the component securities of the Deposit Securities and Redemption Securities, as described above, confirmations to customers must disclose all other information required by Rule 10b-10(a).

**Section 11(d)(1); Rules 11d1-1 and 11d1-2**

Section 11(d)(1) of the Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction. The SEC has clarified that Section 11(d)(1) does not apply to broker-dealers that are not Authorized Participants (and, therefore, do not create Creation Unit Aggregations) that engage in both proprietary and customer transactions in Shares of a Fund in the secondary market, and for broker-dealer Authorized Participants that engage in creations of Creation Unit Aggregations. This relief is subject to specific conditions, including the condition that such broker-dealer (whether or not an Authorized Participant) does not, directly or indirectly, receive from the Fund complex any payment, compensation or other economic incentive to promote or sell the Shares of a Fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B) or (C). (See letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.) The SEC also has taken a no-action position under Section 11(d)(1) of the Act that broker-dealers may treat Shares of a Fund, for purposes of Rule 11d1-2, as "securities issued by a registered open-end investment company as defined in the Investment Company Act" and thereby extend credit or maintain

or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

#### **Rule 14e-5**

An exemption from Rule 14e-5 has been granted to permit any person acting as a dealer-manager of a tender offer for a component security of the Fund (1) to redeem Fund Shares in Creation Unit Aggregations from the issuer that may include a security subject to such tender offer and (2) to purchase Fund Shares during such tender offer. In addition, a no-action position has been taken under Rule 14e-5 if a broker-dealer acting as a dealer-manager of a tender offer for a security of the Fund purchases or arranges to purchase such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Unit Aggregations of Shares, if made in conformance with the following:

- Such bids or purchases are effected in the ordinary course of business, in connection with a basket of 20 or more securities in which any security that is the subject of a distribution, or any reference security, does not comprise more than 5% of the value of the basket purchase; or
- Purchases are effected as adjustments to such basket in the ordinary course of business as a result of a change in the composition of the underlying index; and
- Such bids or purchases are not effected for the purpose of facilitating such tender offer.

#### **SEC Rule 15c1-5 and 15c1-6**

The SEC has taken a no-action position with respect to Rule 15c1-5 and Rule 15c1-6 as to the required disclosure of control by a broker or dealer with respect to creations and redemptions of Fund Shares and secondary market transactions therein. (See letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.)

**This Product Notice is not a statutory prospectus. Members should consult the Prospectus for a security and the security's website for relevant information.**

Please contact MEMX Regulation at [regulation@memx.com](mailto:regulation@memx.com) with any inquiries regarding this Product Notice.