



## Information Circular 08-134

**Date:** November 3, 2008

**Re:** United States Heating Oil Fund, LP

BATS Exchange, Inc. ("BATS") commenced operating as a national securities exchange for trading non-BATS listed securities on October 24, 2008. As a result, in the near future the following ETF will be traded by BATS as an exchange on an unlisted trading privileges (UTP) basis for the first time:

<b>Exchange-Traded Fund</b>	<b>Symbol</b>	<b>CUSIP</b>
United States Heating Oil Fund, LP	UHN	91204P107

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

As more fully explained in the Registration Statement (No. 333-142211), the United States heating Oil Fund, LP (the "Fund" or "USHO"), is a commodity pool that is not registered as an investment company under the Investment Company Act of 1940. Each Unit of the Fund (the "Unit" or "Units") represents a fractional undivided beneficial interest in the net assets of the Fund.

The Fund's investment objective is to have the changes in percentage terms of the Units' net asset value ("NAV") reflect the changes in percentage terms of the price of heating oil (also known as No. 2 fuel) delivered at the New York harbor, as measured by the changes in the price of the futures contract on heating oil traded on the New York Mercantile Exchange ("NYMEX") 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, less the Fund's expenses.

The Fund was organized as a limited partnership under Delaware law on April 13, 2007. The Fund is currently operated pursuant to the Amended and Restated Agreement of Limited Partnership dated March 7, 2008. The Fund is managed and controlled by its general partner, Victoria Bay Asset Management, LLC ("General Partner"). The General Partner is a single member limited liability company formed in Delaware on May 10, 2005 that is registered as a commodity pool operator ("CPO") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA"). The Fund will pay the General Partner a management fee of 0.60% of NAV on its average net assets.

The net assets of USHO will consist primarily of investments in futures contracts for heating oil, crude oil, gasoline, natural gas and other petroleum-based fuels that are traded on the NYMEX, ICE Futures or other U.S. and foreign exchanges (collectively, "Futures Contracts"). USHO may also invest in other heating oil-related investments such as cash-settled options on Futures Contracts, forward contracts for heating oil, and over-the-counter transactions that are based on the price of heating oil, crude oil and other petroleum-based fuels, Futures Contracts and indices based on the foregoing (collectively referred to as "Other Heating Oil-Related Investments"). For convenience and unless otherwise specified, Futures Contracts and Other Heating Oil-Related Investments collectively are referred to as "Heating Oil Interests" in this circular and the prospectus. The General Partner is authorized by USHO in its sole judgment to employ, establish the terms of employment for, and terminate commodity trading advisors or futures commission merchants.

The Fund will invest in Heating 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 Heating Oil-Related Investments. The primary focus of the General Partner will be the investment 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.

An investment in the units will allow both retail and institutional investors to easily gain exposure to the heating oil market in a cost-effective manner. The units are also expected to provide additional means for diversifying an investor's investments or hedging exposure to changes in heating oil prices.

The General Partner will employ a "neutral" investment strategy intended to track the changes in the price of heating oil regardless of whether the price goes up or goes down. USHO's "neutral" investment strategy is designed to permit investors generally to purchase and sell USHO's units for the purpose of investing indirectly in heating oil in a cost-effective manner, and/or to permit participants in the heating oil or other industries to hedge the risk of losses in their heating oil-related transactions. Accordingly, depending on the investment objective of an individual investor, the risks generally associated with investing in heating oil and/or the risks involved in hedging may exist. In addition, an investment in USHO involves the risk that the changes in the price of USHO's units will not accurately track the changes in the price of heating oil. For example, USHO will also invest in Treasuries and hold cash and/or cash equivalents to be used to meet its current or potential margin or collateral requirements with respect to its investments in Futures Contracts and Other Heating Oil-Related Investments. USHO does not expect there to be any meaningful correlation between the performance of USHO's investments in Treasuries/cash/cash equivalents and the changes in the price of heating oil. While the level of interest earned on or the market price of these investments may in some respect correlate to changes in the price of heating oil, this correlation is not anticipated as part of USHO's efforts to meet its objectives. This and certain risk factors discussed in the Fund's prospectus may cause a lack of correlation between the changes in USHO's NAV and the changes in the price of heating 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" or "Creation Basket."

Authorized Participants will pay a \$1,000 fee for each order to create or redeem one or more Creation Baskets. Authorized Purchasers will not be required to sell any specific number or dollar amount of Units. The per-unit price of Units offered in Creation Baskets on any day after the effective date will be the NAV of the Fund calculated shortly after the close of the American Stock Exchange ("Amex") on that day divided by the number of issued and outstanding Units.

The NAV is calculated by taking the current market value of the Fund's total assets and subtracting any liabilities. Under the Fund's current operational procedures, the Administrator calculates the NAV of the Fund's Units as of the earlier of 4:00 p.m. Eastern time ("ET") or the close of the New York Stock Exchange each day. The Amex currently calculates an approximate net asset value every 15 seconds throughout each day the Fund's Units are traded on the Amex for as long as the NYMEX's main pricing mechanism is open.

The Fund will provide information to its unitholders to the extent required by applicable SEC, CFTC, and Amex requirements. An issuer, such as the Fund, of exchange-traded securities may not always readily know the identities of the investors who own those securities. The Fund will post the same information that would otherwise be provided in the Fund's reports to limited partners, including its monthly account statements, which will include, without limitation, the Fund's NAV, on the Fund's website at [www.unitedstatesheatingoilfund.com](http://www.unitedstatesheatingoilfund.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 0.60% of the net assets of the Fund.

Individual certificates will not be issued for the Units. Instead, Units will be represented by one or more global certificates, which will be deposited by the Administrator with the Depository Trust Company ("DTC") and registered in the name of Cede & Co., as nominee for DTC.

Investors should note that there is no regulated source of last-sale information regarding physical commodities, such as heating oil. Also, the Securities & Exchange Commission (the "SEC") has no regulatory jurisdiction over the trading of heating oil, 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.unitedstatesheatingoilfund.com](http://www.unitedstatesheatingoilfund.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. Members of BATS ("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.

## **Futures Contracts**

Futures Contracts are agreements between two parties. One party agrees to buy a commodity such as heating oil from the other party at a later date at a price and quantity agreed upon when the contract is made. Futures contracts are traded on futures exchanges. For example, heating oil Futures Contracts traded on the NYMEX trade in units of 42,000 U.S. gallons (1,000 barrels). The heating oil Futures Contracts traded on the New York Mercantile Exchange are priced by floor brokers and other exchange members both through an "open outcry" of offers to purchase or sell the contracts and through an electronic, screen-based system that determines the price by matching electronically offers to purchase and sell.

## **Investment Risks**

BATS 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 Heating Oil Interests subjects the Fund to the risks of the heating 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 heating 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.
- The Futures Contracts may not correlate with the spot price of heating oil and this could cause the changes in the price of units to substantially vary from changes in the price of heating oil. If this were to occur, then you may not be able to effectively use the Fund as a way to hedge against heating oil losses or as a way to indirectly invest in heating oil.
- 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**

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

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

Trading in the Shares on BATS is subject to BATS equity trading rules.

### **Trading Hours**

The values of the indexes underlying the Shares are disseminated to data vendors every 15 seconds. The Shares will trade on BATS between 8:00 a.m. and 4:00 p.m. ET. Please note that trading in the Fund's Shares during the pre-opening session may result in additional trading risks which include: (1) lower liquidity in the pre-opening session may impact pricing, (2) higher volatility in the pre-opening session may impact pricing, (3) wider spreads may occur in the pre-opening session. Additional risks may exist during the pre-opening session, when Index's value may not be disseminated.

### **Suitability**

Trading in the Shares on BATS will be subject to applicable suitability rules.

### **Trading Halts**

BATS will halt trading in the Shares of a Fund in accordance with BATS Rule 14.1(c)(4). The grounds for a halt under BATS Rule 14.1(c)(4) include a halt by the primary market because the intraday indicative value of the Fund and/or the value of its underlying index are not being disseminated as required, or a

halt for other regulatory reasons. In addition, BATS will stop trading the Shares of a Fund if the primary market de-lists the Fund.

### **Delivery of a Prospectus**

BATS Members should be mindful of applicable prospectus delivery requirements under the federal securities laws with respect to transactions in the Funds. Prospectuses may be obtained through the Fund's website. The prospectus for a 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 Securities and Exchange Commission ("SEC"). For further information about a Fund, please refer to its registration statement.

In the event that the Funds rely upon an order by the SEC exempting the Shares from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and in the future make available a written product description, BATS Rule 14.1(c)(3) requires that BATS Members provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by the Trust for the Fund, no later than the time a confirmation of the first transaction in the Shares is delivered to such purchaser. In addition, BATS 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 BATS 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*]."

A BATS 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 BATS member under this rule.

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

### **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 Funds 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 Funds (i) to purchase securities for the purpose of purchasing Creation Unit Aggregations of Fund Shares and to (ii) tender securities for redemption in Creation Unit Aggregations.

Further, the SEC has clarified that the tender of Fund Shares to the Funds 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.

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

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 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 redemptions is subject to the following conditions:

- (1) Confirmations to customers engaging in creations or redemptions must state that all information required by Rule 10b-10 will be provided upon request;
- (2) 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);
- (3) 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).

### **SEC 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 Funds to (1) 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:

- (1) 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 purchased; or
- (2) 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
- (3) such bids or purchases are not effected for the purpose of facilitating such tender offer.

### **Section 11(d)(1); SEC 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 the Funds 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 the ETF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830 (I)(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 the Funds, 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.

### **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 Information Circular is not a statutory prospectus. BATS Members should consult the prospectus for a Fund and the Fund's website for relevant information.**

Please contact Eric Swanson, 212.378.8523, [eswanson@batstrading.com](mailto:eswanson@batstrading.com), with any inquiries regarding this Information Circular.