

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55453; File No. SR-NYSEArca-2006-62]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To Trade Shares of the PowerShares DB Energy Fund, the PowerShares DB Oil Fund, the PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund Pursuant to Unlisted Trading Privileges

March 13, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 19, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On October 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed Amendment No. 2 to the proposed rule change on February 16, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. This order provides notice of the proposed rule change as modified by Amendment Nos. 1 and 2 and approves the proposed rule change as amended on an accelerated basis.

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

The Exchange is proposing to trade shares (“Shares”) of the PowerShares DB Energy Fund, the PowerShares DB Oil Fund, the PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund (collectively the “Funds”) pursuant to unlisted trading privileges (“UTP”) under Commentary .02 to NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at the Exchange, the Commission’s

Public Reference Room, and <http://nysearca.com>.

#### 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust issued receipts (“TIRs”) investing in shares or securities (“Investment Shares”) that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities.<sup>3</sup> The Commission previously approved a proposal to list and trade the Shares of the Funds by the American Stock Exchange LLC (the “Amex”).<sup>4</sup>

The Exchange proposes to trade pursuant to UTP the Shares of each of the Funds pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200. The Shares represent beneficial ownership interests in the corresponding Fund’s net assets, consisting solely of the common units of beneficial interests of the DB Energy Master Fund, the DB Oil Master Fund, the DB Precious Metals Master Fund, the DB Gold Master Fund, the DB Silver Master Fund, the DB Base Metals Master Fund and the DB

<sup>3</sup> In April 2006, the Commission approved Commentary .02 to NYSE Arca Equities Rule 8.200, which sets forth the rules related to listing and trading criteria for Investment Shares, and approved trading pursuant to UTP the shares of the DB Commodity Index Tracking Fund. See Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22). In addition, the Commission recently approved trading pursuant to UTP the shares of the PowerShares DB G10 Harvest Fund pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200. See Securities Exchange Act Release No. 34-54569 (October 4, 2006), 71 FR 60594 (October 13, 2006) (SR-NYSEArca-2006-64).

<sup>4</sup> See Securities Exchange Act Release No. 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (the “Amex Order”).

Agriculture Master Fund, respectively (collectively, the “Master Funds”).

DB Multi-Sector Commodity Master Trust (the “Master Trust”) is organized as a Delaware statutory trust with each of the Master Funds representing a series of the Master Trust. The Master Funds will hold primarily<sup>5</sup> futures contracts<sup>6</sup> on the commodities comprising the Deutsche Bank Liquid Commodity Index—Optimum Yield Energy Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Crude Oil Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Precious Metals Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Gold Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Silver Excess Return™, Deutsche Bank Liquid Commodity Index—Optimum Yield Industrial Metals Excess Return™, and Deutsche Bank Liquid Commodity Index—Optimum Yield Agriculture Excess Return™ (collectively, the “Indexes”), as the case may be. The sponsor of the Indexes is Deutsche Bank AG London (the “Index Sponsor”). Each of the Funds and each of the Master Funds are commodity pools operated by DB Commodity Services LLC (the “Managing Owner”).<sup>7</sup>

#### The Shares

The Exchange submits that Commentary .02 to NYSE Arca Equities Rule 8.200 accommodates the listing and trading of the Shares. 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. The Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. until 4:15 p.m. Eastern Time (“ET”), except that shares of the PowerShares

<sup>5</sup> Other holdings of the Master Fund will include cash and U.S. Treasury securities for deposit with futures commission merchants as margin and other high credit quality short-term fixed income securities.

<sup>6</sup> Following is a list of futures contracts and other commodity interests in which the respective Master Fund may invest and the exchanges on which they trade: Energy Index—sweet light crude (NYMEX), heating oil (NYMEX), Brent crude oil (ICE Futures), RBOB gasoline (NYMEX), natural gas (NYMEX); Oil Index—sweet light crude (NYMEX); Precious Metals Index—gold (COMEX), silver (COMEX); Gold Index—gold (COMEX); Silver Index—silver (COMEX); Base Metals Index—aluminum (LME), zinc (LME), copper-grade A (LME); Agriculture Index—corn (CBOT), wheat (CBOT), soybeans (CBOT), sugar (NYBOT).

<sup>7</sup> The Managing Owner is registered as a commodity pool operator (the “CPO”) and commodity trading advisor (the “CTA”) with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”). The Managing Owner will serve as the CPO and CTA of each of the Funds and each of the Master Funds.

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

<sup>2</sup> 17 CFR 240.19b-4.

DB Base Metals Fund will also trade from 4:15 p.m. until 8 p.m. ET, even if the Indicative Fund Value ("IFV"), as discussed below, is not disseminated from 4:15 p.m. until 8 p.m. ET.<sup>8</sup> The Exchange has appropriate rules to facilitate transactions in the Shares during these trading sessions.

Like other exchange traded fund products, each of the Funds will issue and redeem its Shares on a continuous basis at a price equal to the NAV per share next determined after an order is received in proper form. Also, each of the Funds will issue and redeem its Shares only in aggregations of 200,000 shares ("Basket Aggregations") and only through qualified market participants that have entered into agreements with the Managing Owner (each, an "Authorized Participant"). Additional information about the creation and redemption process is included in the Amex Order.<sup>9</sup> In summary, to create Shares, an Authorized Participant must properly place a creation order and deliver the specified "cash deposit amount"<sup>10</sup> and applicable transaction fee to the Fund Administrator ("The Bank of New York"). The Fund Administrator will issue to the Authorized Participant the appropriate number of Basket Aggregations. To redeem Shares, an Authorized Participant must properly place a redemption order and deliver Shares that in the aggregate constitute one or more Basket Aggregations, plus any applicable transaction fee. The Fund Administrator will deliver the appropriate "cash redemption amount"<sup>11</sup> for each Basket Aggregation that an Authorized Participant redeems.

On each business day, the Administrator will make available immediately prior to the opening of trading on Amex, through the facilities of the Consolidated Tape Association ("CTA"), the Basket Amount for the creation of a Basket. According to the

Amex Order, the Amex will disseminate every 15 seconds throughout the trading day, via the facilities of the CTA, an amount representing on a per Share basis, the current values of the Basket Amounts for each of the Funds.

After 4 p.m. ET each business day, the Administrator will determine the NAV for each of the Funds, utilizing the current settlement value of the particular commodity futures contracts. The calculation methodology for the NAV is described in more detail in the Amex Order.

After 4 p.m. ET each business day, the Administrator, Amex and Managing Owner will disseminate the NAVs for the Shares and the Basket Amounts (for orders placed during the day). The Basket Amounts and the NAVs are communicated by the Administrator to all Authorized Participants via facsimile or electronic mail message and the NAV will be available on the Funds' Web site at <http://www.dbfunds.db.com>.

Availability of Information About the Indexes, the Underlying Futures Contracts and the Shares

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System ("CTS"). The Index Sponsor will publish the value of each of the Indexes at least once every fifteen (15) seconds throughout each trading day on the CTA, Bloomberg, Reuters, and on the Fund's Web site at <http://www.dbfunds.db.com>. The closing Index levels will similarly be provided by the Index Sponsor. In addition, any adjustments or changes to the Indexes will also be provided by the Index Sponsor and Amex on their respective Web sites.

The Web site for the Fund (<http://www.dbfunds.db.com>), which is publicly accessible at no charge, will contain the following information: (a) The current NAV per share daily and the prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price");<sup>12</sup> (c) the calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the prospectus;

and (f) other applicable quantitative information.

As described above, the respective NAVs for the Funds will be calculated and disseminated daily to all market participants at the same time. According to the Amex Order, the Amex also intends to disseminate for each of the Funds on a daily basis by means of CTA/CTS High Speed Lines information with respect to the corresponding IFV (as discussed below), recent NAV and shares outstanding. The Amex will also make available on its Web site daily trading volume of the Shares of each of the Funds, closing prices of such Shares, and the corresponding NAV. The closing price and settlement prices of the futures contracts comprising the Indexes and held by the corresponding Master Funds are also readily available from the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Amex has represented that it will disseminate through the facilities of the CTA an updated IFV for each of the Funds. The respective IFVs will be disseminated on a per Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET, according to the Amex Order. The IFVs will be calculated based on the cash required for creations and redemptions for the respective Funds adjusted to reflect the price changes of the corresponding Index commodities through investments held by the Master Funds, *i.e.*, futures contracts.

The IFVs will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and 4:15 p.m. ET. While the Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. to 4:15 p.m. ET (the shares of the PowerShares DB Base Metals Fund, however, will trade until 8 p.m. ET), regular trading hours for each of the Index commodities on the various futures exchanges vary widely, as set forth in detail in the Amex Order. Therefore, the value of a Share may be influenced by non-concurrent trading hours between the NYSE Arca Marketplace and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

#### UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca

<sup>8</sup> Because the LME is closed for floor and electronic trading during the Exchange's late trading session (from 4:15 p.m. until 8 p.m. ET), an updated IFV for the PowerShares DB Base Metals Fund is not possible to calculate during such session. The Exchange may rely on the listing market to monitor dissemination of the IFV during the Exchange's core trading session (9:30 a.m. to 4:15 p.m. ET). Currently the Index Sponsor for the PowerShares DB Base Metals Fund's index does not calculate updated index values during the Exchange's late trading session; however, if the Index Sponsor did so in the future, the Exchange will not trade shares of the PowerShares DB Base Metals Fund unless such official index value is widely disseminated.

<sup>9</sup> See Amex Order, *supra* note 4.

<sup>10</sup> The "cash deposit amount" equals the NAV per Share of the applicable Fund times 200,000 (*i.e.*, NAV per Basket Aggregation).

<sup>11</sup> The "cash redemption amount" equals the NAV per Basket Aggregation.

<sup>12</sup> The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

Equities Rule 7.12 or a halt because the IFV or the value of the Index is no longer available at least every 15 seconds; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. UTP trading in the Shares is also governed by the trading halts provisions of NYSE ARCA Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value (which would encompass the IFV) or the value of the underlying index.

#### Trading Rules

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. Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. until 4:15 p.m. ET, except that shares of the PowerShares DB Base Metals Fund will also trade from 4:15 p.m. until 8 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during core and evening trading sessions.<sup>13</sup>

The trading of the Shares will be subject to Commentary .02(e)(1)–(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. See “Surveillance” below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in 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 underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's “circuit breaker” rule<sup>14</sup> or by the halt or suspension of trading of the underlying futures contracts. See “UTP Trading Criteria”

<sup>13</sup> Telephone conversation between Tim Malinowski, Director, NYSE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation (“Division”), Commission, on March 6, 2007.

<sup>14</sup> See NYSE Arca Equities Rule 7.12.

above for specific instances when the Exchange will cease trading the Shares.<sup>15</sup>

The Shares will not be subject to the short sale rule pursuant to a letter issued in response to a request for no-action advice under Rule 10a–1 under the Act.<sup>16</sup>

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Further, trading in the Shares will be subject to Commentary .02(e)(1)–(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance.

Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. Commentary .02(e)(4) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying physical asset or commodity, related futures or options on futures or any other related derivative (including the Shares). In addition, Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from being

<sup>15</sup> Pursuant to a telephone conversation between Tim Malinowski, Director, NYSE and Ronesha A. Butler, Special Counsel, Division, Commission, on March 13, 2007, a paragraph contained in this section was deleted to eliminate the reference to the ITS Plan.

<sup>16</sup> See Letter to George T. Simon, Esq., Foley & Lardner LLP, from Racquel L. Russell, Branch Chief, Office of Trading Practices and Processing, Commission, dated June 21, 2006.

affiliated with a market maker in the underlying physical asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26. Commentary .02(e)(2)–(3) to NYSE Arca Equities Rule 8.200 requires that Market Makers handling the Shares provide the Exchange with all the necessary information relating to their trading in the underlying physical assets or commodities, related futures contracts and options thereon or any other derivative.

The Exchange currently has in place an Information Sharing Agreement with the Intercontinental Exchange, Inc. (ICE), Futures, London Metals Exchange (LME) and New York Mercantile Exchange (NYMEX), for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG, including Chicago Board of Trade (CBOT) and Board of Trade of the City of New York (NYBOT).<sup>17</sup>

#### Information Bulletin

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: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),<sup>18</sup> 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; (3) how information regarding the IFVs is disseminated; (4) the requirement that

<sup>17</sup> For a list of the current members and affiliate members of ISG, see <http://www.isgportal.com>.

<sup>18</sup> NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from a Fund (by delivery of the corresponding Cash Deposit Amount) will receive a prospectus. ETP Holders purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares will be calculated after 4 p.m. ET each trading day. The Bulletin will disclose that information about the Shares of each Fund and the corresponding Indexes will be publicly available on the Funds' Web site.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>19</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>20</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In addition, the proposed rule change is consistent with Rule 12f-5<sup>21</sup> under the Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

### *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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. 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 Exchange 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-NYSEArca-2006-62 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2006-62. 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 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices 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-NYSEArca-2006-62 and should be submitted on or before April 11, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>23</sup> which requires that an exchange have rules designed, among other things, 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.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>24</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>25</sup> The Commission notes that it previously approved the listing and trading of the Shares on the Amex.<sup>26</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>27</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

<sup>22</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78l(f).

<sup>25</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>26</sup> See Amex Order, *supra* note 4.

<sup>27</sup> 17 CFR 240.12f-5.

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

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 17 CFR 240.12f-5.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>28</sup> 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.

Finally, the Commission notes that, if the Shares should be delisted by the Amex, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in the core and evening trading sessions.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange. In particular, the Exchange has in place an Information Sharing Agreement with ICE, LME, and NYMEX, for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. Further, the Exchange is a member of the ISG. In addition, to facilitate surveillance, the Exchange represents that trading in the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200.

3. The Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

4. The Exchange will require its ETP Holders to deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading the Shares of a Fund if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IFV or the value of the applicable Underlying Index is no longer available at least every 15 seconds; or (b) the listing market delists the Shares.

6. The Exchange will halt trading as provided in NYSE Arca Equities Rule 7.34.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on the Amex is consistent with the Act.<sup>29</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-NYSEArca-2006-62), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-5085 Filed 3-20-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55475; File No. SR-OC-2007-02]

### Self-Regulatory Organizations; OneChicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Block Trades

March 15, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on February 5, 2007, OneChicago, LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago has also filed the proposed rule change

with the Commodity Futures Trading Commission ("CFTC").

OneChicago filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act<sup>3</sup> on February 2, 2007.

### I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its policy regarding block trades, the text of which is available at the Exchange and 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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 aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

OneChicago is proposing to amend its Policies: Block Trades, Pre-Execution Discussions and Cross Trades ("Block Trade Policy") relating to the block trade minimum contract size. In addition to the current minimum contract size of 100 contracts for block trades, the proposed rule change would permit a minimum block trade contract size that is the equivalent to 10,000 shares of the underlying security for futures on single security (or combined securities if a relevant corporate event has occurred).

Based on its experience, the Exchange believes the proposed rule change would permit an appropriate minimum contract size for block trades. The proposed rule change would set a minimum contract size for block trades that is equivalent to the customary size of large transactions in relevant markets, i.e., the securities market. The proposed rule change would also permit a block trade size based on combined securities if a relevant corporate event has occurred. Combined securities would be relevant with certain corporate events, such as spin offs or three for two splits.

<sup>28</sup> See Amex Order, *supra* note 4.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).