

sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the

<sup>3</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79445; File No. SR-NYSEArca-2016-152]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposal to Change Representation Regarding Investments by PowerShares DB Trust Issued Receipts Listed Under Commentary .02 to NYSE Arca Equities Rule 8.200

December 1, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 18, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to change a representation regarding investments by the following issues, which are currently listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 (Trust Issued Receipts): PowerShares DB Commodity Index Tracking Fund; PowerShares DB Energy Fund; PowerShares DB Oil Fund; PowerShares DB Precious Metals Fund;

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

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

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

PowerShares DB Gold Fund; PowerShares DB Silver Fund; PowerShares DB Base Metals Fund; PowerShares DB Agriculture Fund; PowerShares DB G10 Currency Harvest Fund; PowerShares DB US Dollar Index Bullish Fund; and PowerShares DB US Dollar Index Bearish Fund. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange currently lists and trades shares of the following securities under Commentary .02 to NYSE Arca Equities Rule 8.200 (Trust Issued Receipts): PowerShares DB Commodity Index Tracking Fund; PowerShares DB Energy Fund; PowerShares DB Oil Fund; PowerShares DB Precious Metals Fund; PowerShares DB Gold Fund; PowerShares DB Silver Fund; PowerShares DB Base Metals Fund; PowerShares DB Agriculture Fund; PowerShares DB G10 Currency Harvest Fund; PowerShares DB US Dollar Index Bullish Fund; and PowerShares DB US Dollar Index Bearish Fund (each a "Fund" and, collectively, the "Funds").<sup>4</sup>

<sup>4</sup> The Shares of each Fund represent beneficial ownership interests in the Fund's net assets, as described in the registration statements for the Funds. See the following registration statements on Form S-3 or Form S-1 under the Securities Act of 1933: (1) Registration statement on Form S-3ASR, PowerShares DB Commodity Index Tracking Fund (No. 333-203054, dated March 27, 2015); (2) registration statement on Form S-3, PowerShares DB G10 Currency Harvest Fund (No. 333-192126, December 6, 2013); (3) registration statement on Form S-3ASR, PowerShares DB US Dollar Index Bullish Fund (No. 333-207089-01, September 23, 2015); (4) registration statement on Form S-1, PowerShares DB US Dollar Index Bearish Fund (No. 333-193224, March 14, 2014); (5) registration

Shares of the Funds were originally approved for listing on the American Stock Exchange LLC (“Amex”) (now known as NYSE MKT LLC),<sup>5</sup> and were subsequently approved for listing on the Exchange.<sup>6</sup> The Funds’ Managing Owner is Invesco PowerShares Capital Management LLC.

Each Fund seeks to track an index of commodity or currency futures. As described in the Amex Filings and UTP Filings, the cash proceeds of the issuance of each Fund’s Shares are invested in cash and United States Treasury Securities (“Treasury Securities”), some of which are deposited with a futures commission merchant as margin for futures positions. The Exchange proposes to add to this representation that a Fund may gain exposure to Treasury Securities, for cash management and/or margin purposes, through an investment in (1) government money market funds (as defined in Rule 2a–7 under the Investment Company Act of 1940 (“1940 Act”)),<sup>7</sup> and (2) exchange-traded

statement on Form S–3, PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Base Metals Fund, (No. 333–209437–01–333–209437–05, March 4, 2016); (6) registration statement on Form S–1, PowerShares DB Silver Fund (No. 333–193222, March 14, 2014); and (7) registration statement on Form S–3ASR, PowerShares DB Agriculture Fund (No. 333–208439–01, dated December 10, 2015) (collectively, “Registration Statements”).

<sup>5</sup> See Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR–Amex–2005–59) (approving listing of DB Commodity Index Tracking Fund (now known as PowerShares DB Commodity Index Tracking Fund)); 55292 (February 14, 2007), 72 FR 8406 (February 26, 2007) (SR–Amex–2006–86) (approving listing of the PowerShares DB US Dollar Index Bullish Fund and PowerShares DB US Dollar Index Bearish Fund); 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR–Amex–2006–44) (approving listing of DB Currency Index Value Fund (now known as PowerShares DB G10 Currency Harvest Fund)); 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR–Amex–2006–76) (approving listing of PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund) (collectively, “Amex Filings”).

<sup>6</sup> See Securities Exchange Act Release No. 58993 (November 21, 2008), 73 FR 72548 (November 28, 2008) (SR–NYSEArca–2008–128) (order approving listing on the Exchange of the Funds) (“NYSE Arca Order”). The Funds were previously traded on the Exchange pursuant to unlisted trading privileges (“UTP”). See Securities Exchange Act Release Nos. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR–PCX–2006–22) (order approving UTP trading of DB Commodity Index Tracking Fund); 55453 (March 13, 2007), 72 FR 13333 (March 21, 2007) (SR–NYSEArca–2006–62) (order approving UTP trading of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds) (collectively, “UTP Filings”).

<sup>7</sup> 15 U.S.C. 80a–1, Rule 2a–7(a)(14) under the 1940 Act states that government money market fund

funds that track indexes that measure the performance of U.S. Treasury obligations with a maximum remaining maturity of up to 12 months (“T-Bill ETFs”).<sup>8</sup> The Funds may receive dividends or distributions of capital gains from such investment in government money market funds and T-Bill ETFs.

The Funds’ Managing Owner (Invesco PowerShares Capital Management LLC) represents that the proposed change to permit investment in T-Bill ETFs, as described above, is consistent with each Fund’s investment objective, and will further assist the Funds’ Managing Owner to achieve each Fund’s investment objective. Specifically, by investing in government money market funds and T-Bill ETFs, in addition to U.S. Treasury Securities, each Fund will have additional flexibility to gain exposure to Treasury Securities. Except for the changes noted above, all other representations made in the Amex Filings and UTP Filings remain unchanged. The Funds will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.200.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that trading in government money market funds and T-Bill ETFs occurs in transparent, liquid markets in the U.S. By investing in government money market funds and T-Bill ETFs, in addition to U.S. Treasury Securities, each Fund will have additional flexibility to gain exposure to Treasury Securities. The Adviser

means a money market fund that invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully.

<sup>8</sup> The T-Bill ETFs in which a Fund may invest may be affiliated with the Managing Owner and will be registered under the 1940 Act. For purposes of this filing, T-Bill ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such T-Bill ETFs all will be listed and traded in the U.S. on registered exchanges. The Funds will not invest in inverse, leveraged or inverse leveraged (e.g., –1X, 2X, –2X, 3X or –3X) T-Bill ETFs.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

represents that the respective investment objectives of the Funds have not changed.

## 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 purpose of the Act. The Exchange believes the proposed rule change, which would permit each Fund to utilize government money market funds and T-Bill ETFs for cash management and/or margin purposes, will enhance competition among issues of Trust Issued Receipts that invest in commodity and currency futures.

## C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b–4(f)(6) thereunder.<sup>11</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because each Fund is already permitted to seek exposure to Treasury Securities, and the proposed rule change will merely provide each Fund with additional flexibility to gain such exposure through investments in government money market funds and T-Bill ETFs, which trade in transparent, liquid markets in the United States. Therefore, the Commission designates

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

<sup>11</sup> 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

the proposed rule change to be operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-152 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSEArca-2016-152. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-152 and should be submitted on or December 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-29290 Filed 12-6-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79443; File No. SR-NYSEMKT-2016-109]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Governing Business Continuity and Disaster Recovery Planning

December 1, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November 22, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its rules governing business continuity and disaster recovery to delete Rule 49—Equities (Emergency Powers) and set an operative date for Rule 49—Equities (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing). The proposed rule change is

available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend its rules governing business continuity and disaster recovery to delete Rule 49—Equities (Emergency Powers) ("Print as P Rule") and set an operative date for Rule 49—Equities (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing) ("Rule 49"). The Exchange proposes to make these changes because the Exchange has completed testing of the operation of Rule 49 in its Disaster Recovery "DR" facility and therefore plans to implement it. Accordingly, the Exchange proposes to delete its Print as P Rule as obsolete, with an operative date of November 23, 2016.

On September 29, 2016, the Commission approved amendments to the Exchange's business continuity and disaster recovery plans.<sup>4</sup> In that filing, the Exchange added the following preamble to the Print as P Rule:

*This version of Rule 49—Equities will remain operative until the proposed rule changes described in SR-NYSEMKT-2016-68 are approved and the Exchange files a separate proposed rule change to delete this version of Rule 49—Equities and preamble and to establish the operative date of paragraph (a) of "Rule 49—Equities. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing." Subject to such separate proposed rule change, the Exchange will announce via Trader*

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> See Securities Exchange Act Release No. 78917 (September 23, 2016), 81 FR 67036 (September 29, 2016) (SR-NYSEMKT-2016-68) (order granting approval of proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2).