

All submissions should refer to File Number SR-ISE-2006-56. 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 office of the ISE. 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-ISE-2006-56 and should be submitted on or before November 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54569; File No. SR-NYSEArca-2006-64]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Trading Shares of the PowerShares DB G10 Currency Harvest Fund Pursuant to Unlisted Trading Privileges

October 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 21, 2006, NYSE Arca, Inc. ("Exchange"), through its wholly owned

subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), filed with the Securities and Exchange Commission ("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 and is approving the proposal 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 G10 Currency Harvest Fund (the "Trust" or "Fund") pursuant to unlisted trading privileges ("UTP") under Commentary .02 to NYSE Arca Equities Rule 8.200.

#### 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 Fund<sup>4</sup> by the American Stock Exchange LLC (the "Amex").<sup>5</sup> The Exchange proposes to trade pursuant to UTP the Shares of the Fund pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200.

The Shares represent beneficial ownership interests in the Fund's net assets, consisting solely of the common units of beneficial interests of the DB G10 Currency Harvest Master Fund (the "Master Fund"). The Master Fund is a statutory trust created under Delaware law whose investment portfolio will consist primarily of futures contracts on the currencies comprising the Deutsche Bank G10 Currency Future Harvest Index—Excess Return™ (the "DBCHI" or "Index") and will include cash and U.S. Treasury securities for margin purposes and other high credit quality short-term fixed income securities. Both the Fund and the Master Fund will be commodity pools operated by DB Commodity Services LLC (the "Managing Owner").<sup>6</sup>

The investment objective of the Fund and the Master Fund is to reflect the performance of the Index, over time, less the expenses of the operation of the Fund and the Master Fund. The Fund will pursue its investment objective by investing substantially all of its assets in the Master Fund. Each Share will correlate with a Master Fund share issued by the Master Fund and held by the Fund. The Master Fund will pursue its investment objective by taking long futures positions in the three (3) Index Currencies associated with the highest interest rates and short futures positions in the three (3) Index Currencies associated with the lowest interest rates<sup>7</sup> and will adjust its holdings

<sup>4</sup> The Fund and Master Fund were previously named the DB Currency Index Value Fund and DB Currency Index Value Master Fund, respectively. Telephone conversation between Michael Cavalier, Associate General Counsel, NYSE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation ("Division"), Commission, on October 4, 2006.

<sup>5</sup> See Securities Exchange Act Release No. 54450 (September 14, 2006) (SR-Amex-2006-44) (the "Amex Order"). See also Securities Exchange Act Release No. 54351 (August 23, 2006), 71 FR 51245, as corrected by 71 FR 53492 (September 11, 2006) (SR-Amex-2006-44).

<sup>6</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 the Fund and the Master Fund.

<sup>7</sup> The use of long and short positions in the construction of the Index causes the Index to rise as a result of any upward price movement of Index Currencies expected to gain relative to the U.S. Dollar and to rise as a result of any downward price movement of Index Currencies expected to lose relative to the U.S. Dollar.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<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).

quarterly as the Index is adjusted. In addition, the Master Fund will also hold cash and U.S. Treasury securities for deposit with futures commission merchants as margin and other high credit quality short-term fixed income securities. The Fund is not managed on a discretionary basis but instead seeks to track the Index pursuant to established rules and procedures. For more information, see the Amex Order.

The Index, at any time, is comprised of six (6) currencies from The Group Ten ("G10") countries,<sup>8</sup> each of which is traded on the Chicago Mercantile Exchange (the "CME"). The notional amounts of each index currency included in the Index ("Index Currency") are based on the Index closing level as of the period in which the Index is re-weighted.<sup>9</sup> The Index closing level reflects an arithmetic weighted average of the change in the futures positions on the Index Currencies' exchange rates against the U.S. dollar since March 12, 1993. On such date, the Index closing level was \$100. The sponsor of the Index is Deutsche Bank AG London ("DB London" or the "Index Sponsor").

(a) *The Shares.* A description of the operation of the Fund and the creation and redemption process for the Shares is set forth in the Amex Order. To summarize, issuances of Shares will be made only in one or more blocks of 200,000 Shares or multiples thereof ("Basket Aggregation" or "Basket"). The Fund will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an "Authorized Participant")<sup>10</sup> with the Managing Owner.

Baskets will be issued in exchange for an amount of cash equal to the NAV per Share times 200,000 Shares ("Basket Amount"). The Basket Amount will be determined on each business day by The Bank of New York ("Administrator").<sup>11</sup> Authorized

Participants that wish to purchase a Basket must transfer the Basket Amount to the Administrator (the "Cash Deposit Amount"). Baskets are then separable upon issuance into the Shares that will be traded on NYSE Arca Marketplace on a UTP basis.<sup>12</sup>

The Shares will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 200,000 shares). Authorized Participants that wish to redeem a Basket will receive cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the "Cash Redemption Amount"). Upon the surrender of the Shares and payment of applicable redemption transaction fee, taxes or charges, the Administrator will deliver to the redeeming Authorized Participant the Cash Redemption Amount. The operation of the Fund and creation and redemption process is described in more detail in the Amex Order.

After 4 p.m. Eastern time ("ET") each business day, the Administrator will determine the NAV<sup>13</sup> for the Fund, utilizing the current settlement value of the particular long and short exchange-traded futures contracts on the Index Currencies. 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 NAV for the Shares and the Basket Amount (for orders placed during the day). The Basket Amount and the NAV are communicated by the Administrator to all Authorized Participants via facsimile or electronic mail message and will be

orders to purchase Shares throughout the trading day until 1 p.m. ET, the actual Basket Amount is determined at 4 p.m. ET or thereafter. On each business day, the Administrator will make available immediately prior to 9:30 a.m. ET, the most recent 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 Consolidated Tape ("CT"), an amount representing on a per Share basis, the current value of the Basket Amount.

<sup>12</sup> Shares are separate and distinct from the shares of the Master Fund. The Exchange expects that the number of outstanding Shares will increase and decrease from time to time as a result of creations and redemptions of Baskets.

<sup>13</sup> The NAV for the Fund is the total assets of the Master Fund less total liabilities of the Master Fund. The NAV is calculated by including any unrealized profit or loss on futures contracts and any other credit or debit accruing to the Master Fund but unpaid or not received by the Master Fund. The NAV is then used to compute all fees (including the management and administrative fees) that are calculated from the value of Master Fund assets. The Administrator will calculate the NAV per Share by dividing the NAV by the number of Shares outstanding.

available on the Fund's Web site at <http://www.dbfunds.db.com>.<sup>14</sup> The Exchange will provide a hyperlink to the Fund's Web site on its Web site at <http://www.nysearca.com>.

(b) *Availability of Information About the Index, the Underlying Futures Contracts and the Shares.* In order to provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem the Shares, the Amex will disseminate through the facilities of the CT an updated Indicative Fund Value (the "IFV"). The IFV will be disseminated on a per Share basis every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The IFV will be calculated based on the cash required for creations and redemptions (*i.e.*, NAV x 200,000) adjusted to reflect the price changes of the Index Currencies through investments held by the Master Fund, *i.e.*, futures contracts and options on futures and/or forwards.<sup>15</sup>

The IFV will not reflect price changes to the price of an underlying currency 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, regular trading hours for each of the Index Currencies on the CME is 8:20 a.m. to 3 p.m. (ET), though electronic trading of exchange traded foreign currency products on computerized trading systems (*e.g.*, GLOBEX<sup>®</sup> at CME) takes place on a nearly 24-hour basis. 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 Currencies are traded.

While the market for futures trading for each of the Index Currencies is open, the IFV can be expected to closely approximate the value per Share of the Basket Amount. However, during trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the

<sup>14</sup> According to the Amex Order, Amex has represented that the NAV for the Fund will be made available to all market participants at the same time. If the NAV is not disseminated to all market participants at the same time, the Amex will halt trading in the Shares. However, if the Fund temporarily does not disseminate the NAV to all market participants at the same time, the Amex has agreed to immediately contact the Commission staff to discuss measures that may be appropriate under the circumstances.

<sup>15</sup> On each business day, the Administrator will make available immediately prior to 9:30 a.m. ET via the facilities of the CT the most recent Basket Amount for the creation of a Basket.

<sup>8</sup> The G10 currencies are the United States Dollar, the Euro, the Japanese Yen, the Canadian Dollar, the Swiss Franc, the British Pound, the Australian Dollar, the New Zealand Dollar, the Norwegian Krone and the Swedish Krona (the "Eligible Index Currencies").

<sup>9</sup> The Index Sponsor reviews and re-weights the Index on a quarterly basis. For more information, see the Amex Order, *supra* note 5.

<sup>10</sup> An "Authorized Participant" is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets: (i) Is a registered broker-dealer; (ii) is a Depository Trust Company Participant; and (iii) has in effect a valid Participant Agreement.

<sup>11</sup> At or about 4 p.m. Eastern time ("ET") each business day, the Administrator will determine the Basket Amount for orders placed by Authorized Participants received before 1 p.m. ET that day. Thus, although Authorized Participants place

difference between the price of the Shares and the NAV of the Shares. IFV on a per Share basis should not be viewed as a real time update of the NAV, which is calculated only once a day.

DB London, as the Index Sponsor, will publish the value of the Index at least once every fifteen (15) seconds throughout each trading day on the CT, Bloomberg, Reuters, and on its Web site at <http://index.db.com> and on the Fund's Web site at <http://www.dbfunds.db.com>. The closing Index level will similarly be provided by DB London and the Fund. In addition, any adjustments or changes to the Index will also be provided by DB London and the Fund on their respective Web sites.<sup>16</sup>

The daily settlement prices for the foreign currency futures contracts comprising the Index and held by the Master Fund are publicly available on the Internet Web sites of the futures exchanges trading the particular contracts, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Internet Web site to the Fund's Internet Web site. All of the foreign currency futures contracts in which the Master Fund currently expects to invest are traded on the CME, although currency futures contracts on the eligible Index Currencies also trade on other futures exchanges in the United States and the Master Fund may invest in such contracts.<sup>17</sup>

In addition, various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the Index Currencies are widely disseminated through a variety of major market data vendors worldwide,<sup>18</sup> including Bloomberg and Reuters. In addition,

complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The specific contract specifications for the futures contracts are also available from the CME on its Web site, as well as other financial informational sources.

The Web site for the Fund is <http://www.dbfunds.db.com>, to which the Exchange will hyperlink at <http://www.nysearca.com>. The Web site for the Fund, 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>19</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. The Amex will make available on its Web site the daily trading volume of the Shares. Quotations for and last sale information regarding the Shares will be disseminated via the CTA/CQS.

Investors may obtain, on a 24-hour basis, currency pricing information from various financial information service providers. Current currency spot prices are also generally available with bid/ask spreads from foreign exchange dealers. Complete real-time data for futures and options prices traded on the CME and the Philadelphia Stock Exchange ("Phlx") are also available by subscription from information service providers. CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites. There are a variety of other public Web sites that provide information on currency, such as Bloomberg ([http://www.bloomberg.com/markets/currencies/euraftr\\_currencies.html](http://www.bloomberg.com/markets/currencies/euraftr_currencies.html)), which regularly reports current foreign currency pricing for a fee. Other service providers include CBS Market Watch (<http://marketwatch.com/tools.stockresearch/globalmarkets>) and Yahoo! Finance (<http://finance.yahoo.com/currency>). Many of these sites offer price quotations drawn from other published sources, and as the information is

supplied free of charge, it generally is subject to time delays.

As noted above, the Administrator calculates the NAV of the Fund once each trading day and disseminates such NAV to all market participants at the same time.<sup>20</sup> In addition, the Administrator causes to be made available on a daily basis the Cash Deposit Amount to be deposited in connection with the issuance of the Shares in Baskets. Other investors can also request such information directly from the Administrator.

(c) *UTP Trading Criteria.* The Exchange represents that it will cease trading the Shares 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 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.

(d) *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. The Exchange has appropriate rules to facilitate transactions in the Shares during this trading session. The minimum trading increment for Shares on the Exchange will be \$0.01.

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.

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"

<sup>16</sup> According to the Amex Order, the Sponsor has in place procedures to prevent the improper sharing of information between different affiliates and departments. Specifically, an information barrier exists between the personnel within DB London that calculate and reconstitute the Index and other personnel of the Sponsor, including but not limited to the Managing Owner, sales and trading, external or internal fund managers, and bank personnel who are involved in hedging the bank's exposure to instruments linked to the Index, in order to prevent the improper sharing of information relating to the reconstitution of the Index.

<sup>17</sup> Other futures exchanges may include, for example, the New York Board of Trade and other futures exchanges which have a comprehensive surveillance sharing agreement with the Exchange or is an Intermarket Surveillance Group ("ISG") member.

<sup>18</sup> Telephone conversation between Michael Cavalier, Associate General Counsel, NYSE, and Ronesha A. Butler, Special Counsel, Division, Commission, on October 4, 2006.

<sup>19</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.

<sup>20</sup> See *supra* note 14.

rule<sup>21</sup> or by the halt or suspension of trading of the underlying futures contracts. See “UTP Trading Criteria” above for specific instances when the Exchange will cease trading the Shares.

Shares will be deemed “Eligible Listed Securities,” as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (“ITS”) Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Unless exemptive or no-action relief is available, the Shares will be subject to the short sale rule, Rule 10a–1 under the Act.<sup>22</sup> If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

(e) *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. 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 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. 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).

The Exchange is able to obtain information regarding trading in the Shares and the underlying futures contracts via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG, including the CME.<sup>23</sup> In addition, to the extent that the Master Fund invests in foreign currency futures contracts traded on futures exchanges other than CME, the Exchange must have a comprehensive surveillance sharing agreement with that futures exchange or the futures exchange must be an ISG member.

(f) *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>24</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 IFV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (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 Fund. The Exchange notes that investors purchasing Shares directly from the Fund (by delivery of the Basket Amount) will receive a prospectus. ETP Holders purchasing Shares from the 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 Fund is 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 that the NAV for the Shares will be calculated after 4 p.m. ET each trading day and that information about the Shares and the Index will be publicly available on the Fund Web site to which the Exchange will hyperlink from its Web site.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>26</sup> in particular, because it is designed to prevent fraudulent and manipulative act and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule

<sup>21</sup> See NYSE Arca Equities Rule 7.12.

<sup>22</sup> According to the Amex Order, the Fund expects to seek relief, in the near future, from the Commission in connection with the trading of the Shares from the operation of the short sale rule, Rule 10a–1 under the Act. If granted, the Shares would be exempt from Rule 10a–1 under the Act permitting sales without regard to the “tick” requirements of Rule 10a–1 under the Act.

<sup>23</sup> For a list of the current members and affiliate members of ISG, see <http://www.isgportal.com>.

<sup>24</sup> The Exchange recently amended NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) to provide 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).

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

12f-5 under the Act<sup>27</sup> because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing 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*

Written comments on the proposed rule change were neither solicited nor received.

### **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 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-2006-64 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-2006-64. 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-2006-64 and should be submitted on or before November 3, 2006.

### **IV. Commission's Findings and Order Granting Accelerated Approval of 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>28</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>29</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>30</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>31</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>32</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. NYSEArca rules deem 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.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>33</sup> which sets forth Congress's 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.

In support of the proposed rule change, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.
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 IOPV or the value of the applicable Underlying Index is no longer available; or (b) the listing market delists the Shares.

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

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously found that the listing and trading of these Shares on the Amex is consistent with the Act.<sup>34</sup> The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

<sup>28</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>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78f(f).

<sup>31</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>32</sup> 17 CFR 240.12f-5.

<sup>33</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>34</sup> See Amex Order, *supra* note 4.

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

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2006-64), is hereby approved on an accelerated basis.<sup>35</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>36</sup>

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-16952 Filed 10-12-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54572; File No. SR-OCC-2006-12]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to an Escrow Program Fee To Be Charged to Escrow Banks

October 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 12, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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 proposed rule change would amend OCC's Schedule of Fees by adding a \$200 escrow fee to be charged to OCC-approved banks.

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

In its filing with the Commission, OCC 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below,

of the most significant aspects of such statements.<sup>2</sup>

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

The purpose of the proposed rule change is to amend OCC's Schedule of Fees by adding a \$200 escrow fee to be charged to OCC-approved banks.

As background, OCC's escrow deposit program allows a custodian bank that has entered into an escrow agreement with OCC ("escrow bank") to make deposits of eligible collateral on behalf of its customers with respect to stock option contracts and index option contracts carried in short positions and to rollover and withdraw such deposits by submitting electronic instructions to OCC through OCC's escrow deposit system.<sup>3</sup> Escrow deposits are pledged to both the customer's clearing member and to OCC in order to satisfy the customer's obligation to deposit customer level margin at the clearing member and in order to satisfy the clearing member's obligation to deposit clearing level margin at OCC with respect to a specified short position in stock or index options.<sup>4</sup> Under OCC's form of escrow agreement, an escrow bank is obligated to hold the deposited collateral subject to the lien of OCC and the clearing member until such liens are released.

In 2005, the escrow deposit system was integrated into OCC's clearing system, which enabled escrow banks to access the escrow system through the internet. Before the integration, escrow banks were required to lease or buy a personal computer that was configured by OCC to provide secure access to the escrow deposit system. Banks that elected the lease alternative are charged a \$200.00 monthly fee of which \$150.00 is an equipment leasing fee and \$50.00 is an access fee.<sup>5</sup> Banks that (i) Elected the purchase alternative or (ii) became escrow banks after the systems

integration are charged only the \$50 access fee, which is intended to cover the costs associated with administering the escrow deposit program. Costs to administer the program include: (1) Legal costs related to addressing the contractual aspects of the program; (2) audit costs related to ensuring compliance with the external audit reporting requirements of the program; and (3) staff costs related to servicing program users (*i.e.*, escrow banks and clearing members).

In connection with reviewing different back-up solutions to Internet access, OCC also examined its costs to administer the escrow program and concluded that the costs greatly exceed the \$50.00 per month access fee. Accordingly, OCC has determined to charge all escrow banks a \$200.00 per month escrow program fee, which would be reflected in OCC's Schedule of Fees. The proposed program fee will allow OCC to partially offset its escrow program administration costs but will not affect the overwhelming majority of escrow banks which already pay \$200.00 per month in aggregate escrow deposit program fees.

OCC believes that the proposed change is consistent with Section 17A of the Act<sup>6</sup> and the rules thereunder because it amends OCC's Schedule of Fees to include a reasonable fee to be charged to escrow banks that utilize OCC's escrow deposit system to partially offset OCC's cost to administer the escrow program. The proposed rule change is not inconsistent with the existing rules of OCC including any other rules proposed to be amended.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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

OCC has not solicited or received written comments with respect to the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> Escrow banks also use the escrow deposit system to receive and review OCC and relevant clearing member responses and to access reports.

<sup>4</sup> Escrow deposits may include: (i) the underlying securities for any stock option contract; (ii) cash, short-term U.S. Government securities, and/or common stocks for any index call option contract; and (iii) cash and/or short-term U.S. Government securities for stock or index put options.

<sup>5</sup> OCC has continued to charge current escrow banks with leased equipment the \$200.00 per month total fee as they have retained such equipment as a back-up to Internet access to the escrow system. However, a different back-up solution is being implemented for all escrow banks, which is rendering the leased equipment obsolete for purposes of accessing the escrow system.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</sup> 17 CFR 200.30-3(a)(12).

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