

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55029; File No. SR-Amex-2006-76)

December 29, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendments No. 1, 2, 3, and 4 Thereto and Notice of Filing of Amendments No. 3 and 4 Relating to the Listing and Trading of the DB Multi-Sector Commodity Trust

I. Introduction

On August 16, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to list and trade the DB Multi-Sector Commodity Trust under Commentary .07 to Amex Rule 1202. On October 12, 2006, Amex filed Amendment No. 1 to the proposal. On November 3, 2006, Amex filed Amendment No. 2 to the proposal. The proposed rule change, as amended, was published for comment in the Federal Register on November 24, 2006 for a 15-day comment period.<sup>3</sup> The Commission received no comments regarding the proposal. On December 19, 2006, Amex filed Amendment No. 3 to the proposed rule change.<sup>4</sup> On December 29, 2006,

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

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

<sup>3</sup> See Securities Exchange Act Release No. 54770 (November 16, 2006), 71 FR 67935 (“Notice”).

<sup>4</sup> In Amendment No. 3, Amex clarified that (1) relevant Indicative Fund Values calculated by the Index Sponsor between 9:30 a.m. (when trading begins on the Amex) to 10:00 a.m. (when the oil futures open at the NYMEX) will be based on prices obtained from Reuters; (2) the Exchange will obtain a representation for each series of Portfolio Depositary Receipts that the net asset value per share will be calculated daily and will be made available to all market participants at the same time; and (3) the Exchange will require for each Fund that 200,000 Shares be outstanding prior to the commencement of trading on the Exchange.

Amex filed Amendment No. 4 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change as modified by Amendments No. 1, 2, 3, and 4 on an accelerated basis and solicits comments from interested persons on Amendments No. 3 and 4.

## II. Description of the Proposal

Amex Rules 1200, 1201 and 1202 provide for the listing and trading of Trust Issued Receipts (“TIRs”). Amex Rule 1202 sets out listing and trading criteria for TIRs. Pursuant to Commentary .07 to Amex Rule 1202, the Exchange may list and trade TIRs where the trust holds securities (“Investment Shares”) issued by an entity that invests in any combination of securities, futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities. Commentary .07 requires the Exchange to submit a proposal pursuant to Section 19(b) of the Act subject to Commission review and approval for each new series of such TIRs holding Investment Shares.

Accordingly, the Exchange proposes to list and trade shares (“Shares”) of: (1) the PowerShares DB Energy Fund (the “Energy Fund”); (2) the PowerShares DB Oil Fund (the “Oil Fund”); (3) the PowerShares DB Precious Metals Fund (the “Precious Metals Fund”); (4) the PowerShares DB Gold Fund (the “Gold Fund”); (5) the PowerShares DB Silver Fund (the “Silver Fund”); (6) the PowerShares DB Base Metals Fund (the “Base Metals Fund”); and (7) the PowerShares DB Agriculture Fund (the “Agriculture Fund”) (collectively the “Funds”).

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In Amendment No. 4, Amex clarified that the Exchange will delist or remove the listing of the Shares pursuant to Amex rules if a substitute index or other replacement benchmark is used in connection with the Shares, unless the Exchange files with the Commission a related proposed rule change pursuant to Rule 19b-4 under the Act seeking approval to continue trading the Shares of such Fund and such rule change is approved by the Commission. Amex also corrected a typographical error to clarify that the Shares will begin to trade on the Amex from 9:30 a.m.

In its proposal, the Exchange provided detailed description regarding the structure of the Funds and the listing and trading of the Shares. In particular, the Exchange addressed (i) the designation and calculation of each Fund’s underlying index, (ii) the calculation and dissemination of net asset value (“NAV”), (iii) the application of initial and continued listing criteria specified in Commentary .07 to Amex Rule 1202, (iv) the creation and redemption process, (v) dissemination of pricing and other information pertaining to the Shares, including intraday indicative value, Share price, and underlying index value, (vi) arbitrage of the Shares, (vii) listing fees, (viii) applicable Exchange trading rules, (ix) events triggering trading halts and/or delisting, (x) applicable suitability requirements, (xi) the distribution of an information circular regarding the Shares to Exchange members, and (xii) surveillance procedures.

#### Product Description

Each Fund’s Shares represent beneficial ownership interests in a corresponding Master Fund’s net assets.<sup>6</sup> These assets consist 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 Agriculture Master Fund (collectively, the “Master Funds”).

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 Master Funds will hold primarily<sup>8</sup>

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<sup>6</sup> Each of the Funds will be formed as a separate series of the DB Multi-Sector Commodity Trust (the “Trust”), a Delaware statutory trust. Likewise, each of the Master Funds represents a series of the DB Multi-Sector Commodity Master Trust (the “Master Trust”), also a Delaware statutory trust.

<sup>7</sup> The Managing Owner, a subsidiary of DB London, is a commodity pool operator and commodity trading advisor.

<sup>8</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.

futures contracts<sup>9</sup> on the commodities comprising the: (1) Deutsche Bank Liquid Commodity Index – Optimum Yield Energy Excess Return™ (“Energy Index”); (2) Deutsche Bank Liquid Commodity Index – Optimum Yield Crude Oil Excess Return™ (“Oil Index”); (3) Deutsche Bank Liquid Commodity Index – Optimum Yield Precious Metals Excess Return™ (“Precious Metals Index”); (4) Deutsche Bank Liquid Commodity Index – Optimum Yield Gold Excess Return™ (“Gold Index”); (5) Deutsche Bank Liquid Commodity Index – Optimum Yield Silver Excess Return™ (“Silver Index”); (6) Deutsche Bank Liquid Commodity Index – Optimum Yield Industrial Metals Excess Return™ (“Base Metals Index”); and (7) Deutsche Bank Liquid Commodity Index – Optimum Yield Agriculture Excess Return™ (“Agriculture Index”) (collectively, the “Indexes”), as the case may be. Certain of the Indexes are based on a single commodity component. The Exchange noted that the commodities industry uses such indexes to track changes in the value of the underlying commodity over time.

The Managing Owner of the Master Funds will manage the futures contracts in order to track the performance of the respective Index. The Master Funds will include U.S. Treasury securities for margin purposes and other high credit quality short-term fixed income securities. The Master Funds are not “actively managed.”

#### Underlying Indexes

Deutsche Bank AG London (“Index Sponsor”) sponsors each of the Indexes. Additional description of each Index was included in the Exchange’s proposal. Notably, the Exchange

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<sup>9</sup> The futures contracts in which the respective Master Fund may invest are as follows: 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).

stated that the Index 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 Indexes and other personnel of the Index 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 Indexes, in order to prevent the improper sharing of information relating to the composition of the Indexes.

The Index Sponsor calculates intraday and closing levels of each Index on the basis of reported trading prices of the futures contract(s) constituting that index. The futures contract of each applicable Index commodity that is closest to expiration is used in the calculation of the respective Indexes. While the Index is calculated and disseminated by the Index Sponsor, a number of independent sources may verify both the intraday and closing Index values. The Index Sponsor uses independent feeds from Reuters to verify all pricing information used to calculate the Index.

#### Creation and Redemption of Shares

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 Amex’s proposal.<sup>10</sup> In summary, to create Shares, an Authorized Participant must properly place

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<sup>10</sup> See Notice, supra note 3, 71 FR at 67941.

a creation order and deliver the specified “cash deposit amount”<sup>11</sup> and applicable transaction fee to the Fund Administrator, designated to be 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>12</sup> for each Basket Aggregation that an Authorized Participant redeems.

#### Net Asset Value

As detailed in the Exchange’s proposal,<sup>13</sup> the NAV for each Fund equals the total assets of the corresponding Master Fund less total liabilities of such Master Fund. The NAV of each Share equals the NAV of the corresponding Fund divided by the number of its Shares outstanding. When calculating NAV for each of the Funds and each of the Master Funds, the Administrator will value U.S. futures contracts held by such Master Fund on the basis of their then current market value. All non-U.S. futures contracts will be calculated based upon the liquidation value.

#### Arbitrage

In its proposal, the Exchange stated that it did not expect the Shares to trade at a material discount or premium to the Shares of the corresponding Master Fund held by the corresponding Fund. As is the case for other exchange traded products, the Exchange believes that, because the

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<sup>11</sup> The “cash deposit amount” equals the NAV per Share of the applicable Fund times 200,000 (i.e., NAV per Basket Aggregation).

<sup>12</sup> The “cash redemption amount” equals the NAV per Basket Aggregation.

<sup>13</sup> See Notice, supra note 3, 71 FR at 67941-42.

Shares can be created and redeemed, arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time.

#### Dissemination of Index and Underlying Futures Contracts Information

The Index Sponsor will publish the intraday value and closing level of each of the Indexes at least every fifteen (15) seconds on its Web site at <http://index.db.com> and through major market data vendors (e.g., Bloomberg and Reuters). The Index Sponsor and the Exchange will also provide any adjustments or changes to any of the Indexes on their respective Web sites.

Daily settlement prices, delayed futures contract information, and market news are publicly available on the Web sites of the futures exchanges where the relevant contract trades.<sup>14</sup> Pricing and other information for the futures contracts underlying each of the Indexes is widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters.

#### Availability of Information Regarding the Shares

##### 1. Indicative Fund Value

During each day the Shares trade on the Exchange, Amex will disseminate through the facilities of CTA an indicative value for each of the Funds (“Indicative Fund Value”), representing an estimated net asset value for each Fund Share. The respective Indicative Fund Values will be disseminated on a per Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET.

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<sup>14</sup> The particular futures exchange for each futures contact with Web site information are as follows: (i) aluminum, zinc and copper – grade A – London Metals Exchange (LME) at [www.lme.com](http://www.lme.com); (ii) corn, wheat and soybeans – Chicago Board of Trade (CBOT) at [www.cbot.com](http://www.cbot.com); (iii) crude oil, heating oil, RBOB gasoline, natural gas, gold, and silver – New York Mercantile Exchange (NYMEX) at [www.nymex.com](http://www.nymex.com); (iv) brent crude oil – IntercontinentalExchange, Inc. (ICE) at [www.theice.com](http://www.theice.com); and (v) sugar – Board of Trade of the City of New York (NYBOT) at [www.nybot.com](http://www.nybot.com).

Notably, the Indicative Fund Values 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 the close of trading on the Amex at 4:15 p.m. ET.<sup>15</sup> The value of a Share may accordingly be influenced by non-concurrent trading hours between the Amex and the various futures exchanges where constituents of the Indexes trade.<sup>16</sup>

## 2. Other Information

In addition to the Indicative Fund Values, the Amex also intends to disseminate for each of the Funds on a daily basis by means of CTA/CQ High Speed Lines and on its Web site at [www.amex.com](http://www.amex.com) the following information:

- the daily trading volume of each of the Shares;
- the closing prices of each Fund's Shares and the corresponding NAV;
- a hyperlink on its Web site at <http://www.amex.com> to the Index Sponsor's Web site at <http://index.db.com>.

Additionally, the Web site for each of the Funds and/or the Exchange, which are 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<sup>17</sup> in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (e) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price

<sup>15</sup> A list of trading hours for each of the Index commodities underlying the futures contracts was included in Amex's proposal. See Notice, supra note 3, 71 FR at 67943.

<sup>16</sup> The Exchange states that between 9:30 a.m. (when trading begins on the Amex) to 10:00 a.m. (when the oil futures open at the NYMEX), the Index Sponsor calculates relevant Indicative Fund Values based on prices obtained from Reuters. See Amendment No. 3.

<sup>17</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.

against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the Prospectus; and (g) other applicable quantitative information.

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.

#### Criteria for Initial and Continued Listing

Each of the Funds will be subject to the criteria in Commentary .07(d) of Amex Rule 1202 for initial and continued listing of their respective Shares. The Exchange states that it will comply with the initial listing criteria set forth in Amex Rule 1002(a)(ii) which states that the Exchange will obtain a representation for each series of Portfolio Depositary Receipts that the NAV per share will be calculated daily and will be made available to all market participants at the same time.<sup>18</sup>

The continued listing criteria provides for the delisting or removal from listing of the Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Shares: (i) if the Fund has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the related Shares for 30 or more consecutive trading days; (ii) if the Fund has fewer than 50,000 Shares issued and outstanding; or (iii) if the market value of all Shares issued and outstanding is less than \$1,000,000;

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<sup>18</sup> See Amendment No. 3.

- If the value of the underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis through one or more major market data vendors during the time the Shares trade on the Exchange;<sup>19</sup>
  - The Indicative Fund Value is no longer made available on at least a 15-second delayed basis during the time the Shares trade on the Exchange;
  - If a substitute index or other replacement benchmark is used in connection with the Shares, unless the Exchange files with the Commission a related proposed rule change pursuant to Rule 19b-4 under the Act seeking approval to continue trading the Shares of such Fund and such rule change is approved by the Commission;<sup>20</sup>
- or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

For each Fund, a minimum of 200,000 Shares will be required to be outstanding at the time of commencement of trading on the Exchange.<sup>21</sup> The initial price of a Share is expected to be approximately \$25.

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<sup>19</sup> In calculating the Indexes, if futures prices are not available, the Index Sponsor will typically use the prior day's futures prices. In exceptional cases (such as when a daily price limit is reached on a futures exchange), the Index Sponsor may employ a "fair value" price (*i.e.*, the price for unwinding the futures position by OTC dealers). The Exchange represents that if the use of a prior day's price or "fair value" pricing for an Index commodity or commodities is more than of a temporary nature, the Exchange will submit a proposed rule change pursuant to Rule 19b-4 under the Act seeking Commission approval to continue to trade the Shares of a Fund. Unless approved for continued trading, the Exchange would commence delisting procedures.

<sup>20</sup> See Amendment No. 4.

<sup>21</sup> See Amendment No. 3.

The Exchange believes that the anticipated minimum number of Shares of each of the Funds outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of the respective Funds.

The Exchange represents that, for the initial and continued listing, the Shares must be in compliance with Section 803 of the Amex Company Guide and Rule 10A-3 under the Act.

### Trading Rules

The Exchange represents that the Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in the Shares. Shares will trade on the Amex from 9:30 a.m. until 4:15 p.m. ET each business day and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127.

Importantly, specialist trading of the Shares will be subject to Amex Rule 1202 regarding conflicts of interest and the maintenance of books and records. Commentary .07(e) to Amex Rule 1202 prohibits the specialist in the Shares from acting as or being affiliated with a market maker in the Index commodities, related futures or options on futures, or any other related derivatives, unless information barriers are in place that satisfy the requirements of Amex Rule 193. Commentary .07(g)(1) and (g)(2) to Amex Rule 1202 also ensures that specialists handling the Shares provide the Exchange with all the necessary information relating to their trading in physical assets or commodities, related futures contracts and options thereon or any other derivative. Commentary .07(g)(3) to Amex Rule 1202 also prohibits the specialist in the Shares from using any material nonpublic information received from any person associated with a member, member organization or employee of such person regarding trading by such person or

employee in the Index commodities, related futures or options on futures, or any other related derivatives.

Also, pursuant to Commentary .07(f) to Amex Rule 1202, the Shares will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on "plus ticks" and sell on "minus ticks," in order to bring the Shares into parity with the underlying commodity or commodities and/or futures contract price. Pursuant to Commentary .05 to Amex Rule 190, specialist transactions of the Shares made in connection with the creation and redemption of Shares will not be subject to the prohibitions of Amex Rule 190. The Shares will not be subject to the short sale rule pursuant to no-action relief granted in petition to Rule 10a-1 under the Act.<sup>22</sup>

#### Trading Halts

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in the Shares. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the circular will advise that, in addition to the parameters set forth in Amex Rule 117, the Exchange will halt trading in any of the Shares if trading in the underlying related futures contract(s) is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

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<sup>22</sup> See letter to George T. Simon, Esq., Foley & Lardner LLP, from Racquel L. Russell, Branch Chief, Office of Trading Practices and Processing, Division of Market Regulation, ("Division"), Commission, dated July 21, 2006.

The Exchange will halt trading in the Shares of a Fund if (a) the NAV per share is not disseminated to all market participants at the same time, (b) trading in the underlying related futures contract(s) is halted or suspended, (c) the value of the underlying Index is no longer calculated or available on at least a fifteen (15) second basis through one or more major market data vendors during the time the Shares trade on the Amex, or (d) if the Indicative Fund Value per Share updated every fifteen (15) seconds is no longer calculated or available. However, in the case of (c) or (d), above, where an Indicative Fund Value or Index Value is no longer calculated or disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If such interruption to the calculation and dissemination of an Indicative Fund Value or Index Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

#### Information Circular

The Amex will distribute an Information Circular to its members in connection with the trading of the Shares. Specifically, the Circular, among other things, will discuss what the Shares are, special characteristics and risks of trading this type of security, the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules and trading hours, and dissemination of pricing and other information pertinent to the Shares. The Circular will explain that the Funds are subject to various fees and expenses described in the Registration Statement. The Circular will also reference the fact that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Circular will also notify members and member organizations about the procedures for purchases and redemptions of Shares in Baskets, and that Shares are not individually

redeemable but are redeemable only in one or more Baskets. The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

#### Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of Exchange rules. Specifically, the Exchange will rely on its existing surveillance procedures applicable to TIRs, Portfolio Depository Receipts and Index Fund Shares, which have been deemed adequate under the Act. The Exchange currently has in place an Comprehensive Surveillance Sharing Agreement ICE Futures, 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. The Exchange also notes that the CBOT and NYBOT are members of the Intermarket Surveillance Group (“ISG”).

#### III.     Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendments No. 3 and 4 to 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 at <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 No. SR-Amex-2006-76 on the subject line.

##### Paper Comments:

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

All submissions should refer to File No. SR-Amex-2006-76. 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 at <http://www.sec.gov/rules/sro.shtml>. Copies of the submission, all subsequent amendments, all written statements with respect to the Amendments No. 3 and 4 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 Amex. 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 No. SR-Amex-2006-76 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Discussion and Commission's Findings

After careful consideration, 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>23</sup> In particular, the Commission finds that the proposed rule

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<sup>23</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>24</sup> which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, facilitate transactions in securities, 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.

A. Surveillance

The Commission notes that the Exchange has represented that its surveillance procedures for the Shares are adequate to monitor the trading of the Shares. The Exchange’s Comprehensive Surveillance Sharing Agreement with the ICE Futures, 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 and membership in the Intermarket Surveillance Group (“ISG”) creates the basis for the Amex to monitor fraudulent and manipulative practices in the trading of the Shares.

In addition, the Exchange represents that, in the event that a successor or substitute index is used by the Managing Owner, or the Index Sponsor substantially changes either the Index component selection methodology or the weighting methodology, Amex will file with the Commission a proposed rule change, which addresses, among other things, applicable surveillance procedures, and unless approved by the Commission, the Exchange will commence delisting of the Shares.

Moreover, Amex Rule 1202 should facilitate surveillance of trading of the Shares because it requires Exchange specialists, upon Amex’s request, to provide the Exchange with information that the specialist uses in connection with pricing and trading the Shares. In

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<sup>24</sup> 15 U.S.C. 78f(b)(5).

particular, Commentaries .07(g)(1) and (g)(2) to Amex Rule 1202 require that the specialist handling the Shares provide the Exchange with information relating to its trading in the Shares and the accounts of the member organization acting as specialist, member organization, or approved person of such member organization in the Index components, related futures or options on futures, or any other related derivatives.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Shares should be able to monitor the underlying Indexes relative to the Indicative Values of their Shares.

Real-time information is available about the trading of relevant futures contracts through major market data vendors by subscription. Delayed information is often publicly available from futures exchanges. The Exchange stated that the daily settlement prices for the futures contracts held by each of the Master Funds are publicly available on the Web sites of the futures exchanges trading those contracts.

The Exchange has represented that the Index Sponsor, Deutsche Bank AG London, will calculate and publish the value of the Indexes at least every 15 seconds during Amex trading hours to Bloomberg, Reuters, and the Index Sponsor's Internet Web site, <http://index.db.com>. While the Index is calculated and disseminated by the Index Sponsor, an affiliate of a registered broker-dealer, the Commission notes that a number of independent sources may verify both the intraday and closing Index values.

Additionally, the Exchange has represented that it will calculate and publish to the CTA the Indicative Fund Values for the Shares, at least every 15 seconds during the time that the Shares trade on the Amex. The Commission believes that dissemination of the Indicative Fund

Values provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or the creation or redemption of the Shares. The Commission believes that publication of such information should promote transparency with regard to the Shares.

The Commission further notes that the NAV of each Fund will be calculated and disseminated daily on a per share basis and made available to all market participants at the same time. If not, the Exchange has represented that it will halt trading of the relevant series of Shares. Likewise, if trading in a futures contract included in an Index is halted or suspended, the Exchange will halt trading of the relevant series of Shares. If an Indicative Fund Value or Index Value is not disseminated as described in its proposal, the Exchange may halt trading of the relevant series of Shares during the day in which the interruption occurs. If such interruption to the calculation and dissemination of an Indicative Fund Value or Index Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Commission believes that these trading halt rules, together with the NAV dissemination requirements and the Exchange's delisting criteria, will help ensure that an appropriate level of transparency exists with respect to the proposed Shares to allow for the maintenance of fair and orderly markets.

### C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to Amex rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and prohibitions, account opening, and customer

suitability requirements.<sup>25</sup> Notably, the Commission believes that the listing and delisting criteria for the Shares should provide a minimum level of liquidity and, therefore, minimize the potential for manipulation of the Shares. The Commission further believes that Commentary .07 to Amex Rule 1202 is reasonably designed to address potential conflicts of interest in connection with specialist trading of the Shares and help ensure that the Exchange has the information it needs with regard to transactions in the Shares.<sup>26</sup>

The Commission notes that the Information Circular the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares, including their prospectus delivery obligations.

**D. Accelerated Approval of the Proposed Rule Change As Modified By Amendments No. 3 and 4 Thereto**

The Commission finds good cause to approve the proposed rule change as modified by Amendments No. 3 and 4 prior to the 30<sup>th</sup> day after the amendment is published for comment in the Federal Register. Amendments No. 3 and 4 makes clarifying changes to the description of the proposed rule change. The Commission believes that, as a whole, Amendments No. 3 and 4 strengthen the proposed rule change and do not raise any new regulatory issues. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>27</sup> to approve the proposal, as amended, on an accelerated basis.

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<sup>25</sup> The Commission notes that these Funds are substantially similar to other Funds recently approved by the Commission, the share of which shares are trading pursuant to this Commentary .07 to Amex Rule 1202. See Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-059) (DB Commodity Index Tracking Fund); 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR-Amex-2006-44) (PowerShares DB G10 Harvest Fund (formerly the DB Currency Index Value Fund).

<sup>26</sup> See Commentaries .07(e), 07(g)(3), and .07(g)(1)-(2) to Amex Rule 1202.

<sup>27</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-Amex-2006-76), as modified by Amendments No. 1, 2, 3, and 4 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

Nancy M. Morris  
Secretary

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<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).