

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54351; File No. SR-Amex-2006-44)

August 23, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of the DB Currency Index Value Fund

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On July 31, 2006, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 18, 2006, Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Pursuant to Commentary .07 to Amex Rule 1202, which permits the listing and trading of shares of trust issued receipts (“TIRs”) that invest in shares or securities (the “Investment Shares”) of a trust, partnership, commodity pool or other similar entity that holds investments

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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> In Amendment No. 1, Amex made clarifying changes to the proposal regarding the index methodology, the structure of the Fund, and the dissemination of information relating to the Index and Fund. In Amendment No. 1, the Exchange also amended Commentary .02 to Amex Rule 1200 to conform to Amex’s current trading hours.

<sup>4</sup> In Amendment No. 2, Amex made additional clarifying changes to the proposal, including among others, details regarding the dissemination of the Index value, intraday indicative value, and net asset value of the Investment Shares.

comprising, or otherwise based on, any combination of securities, futures contracts, swaps, forward contracts, options on futures contracts, commodities or portfolios of investments, the Exchange seeks to list and trade the DB Currency Index Value Fund (the “Trust” or “Fund”). In connection with the proposal, Amex also seeks to amend Commentary .02 to Amex Rule 1200. The text of the proposed rule change, as amended, is below. Proposed new language is underlined.

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### **Rules of General Applicability**

#### **Amex Rule 1200.**

- (a) No Change.
- (b) No Change.

#### **••• Commentary -----**

**.01** No Change.

**.02** Transactions in Trust Issues Receipts may be effected until 4:00 p.m. or 4:15 p.m. each business day.

**.03** No Change.

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#### **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 Amex 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, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

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

1. Purpose

Introduction

Pursuant to Commentary .07 to Amex Rule 1202, the Exchange may approve for listing and trading TIRs investing in Investment Shares that hold investments in any combination of securities, futures contracts, options on futures contracts, swaps, forward contracts, commodities, or portfolios of investments. The Amex proposes to list for trading the shares of the Fund (the “Shares”), which represent beneficial ownership interests in the Fund’s net assets, consisting solely of the common units of beneficial interests of DB Currency Index Value 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<sup>TM</sup> – Excess Return (the “DBCHI” or Index”) and securities for margin purposes. Both the Fund and the Master Fund will be commodity pools operated by DB Commodity Services LLC (the “Managing Owner”). 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. For the Master Fund, the Managing Owner will manage the futures contracts with the investment objective of tracking the performance of the Index over time.<sup>5</sup> The Master Fund will hold a

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<sup>5</sup> Telephone conversation between Jeffery Burns, Associate General Counsel, Amex, and Brian Trackman, Special Counsel, Division of Market Regulation (“Division”), Commission, on August 22, 2006 (“August 22 Conference”).

portfolio of both long and short futures contracts with a notional value to equity ratio of approximately two to one (2:1)<sup>6</sup> on the currencies that comprise the Index (the “Index Currencies”) and will include cash and U.S. Treasury securities for margin purposes and other high credit quality short-term fixed income securities. The Master Fund will not engage in borrowing. The Managing Owner will manage the Master Fund by making adjustments to the portfolio on a quarterly basis to conform to periodic changes in the composition and relative weightings of the Index Currencies. The Managing Owner may also make certain adjustments or changes to the portfolio more frequently in the case of significant changes in the foreign currency markets due to volatility.

The Exchange submits that Commentary .07 to Amex Rule 1202 accommodates the listing and trading of the Shares.

Under Commentary .07(c) to Amex Rule 1202, the Exchange may list and trade TIRs investing in Investment Shares such as the Shares. The Shares will conform to the initial and continued listing criteria under Commentary .07(d) to Amex Rule 1202. The Exchange notes that the Commission has permitted the listing and trading of products linked to the performance of underlying currencies and commodities.<sup>7</sup>

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<sup>6</sup> Such ratio is generally intended to be comparable to the limits imposed on registered investment companies pursuant to the asset coverage requirements of Section 18(a) of the Investment Company Act of 1940 (“1940 Act”). Even though the Master Fund is not registered or regulated as an investment company under the 1940 Act, the Exchange represents that it is structured in a manner that is sensitive to the capital structure limitations imposed on registered investment companies by the 1940 Act.

<sup>7</sup> See Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53059 (January 5, 2006), 71 FR 2072 (January 12, 2006) (approving the listing and trading of the Euro Currency Trust); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares COMEX Gold Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving the listing and trading of streetTRACKS Gold Shares); 36885 (February 26, 1996), 61 FR

## Index Description

The Index is structured to provide a return that assumes an asset coverage ratio of 2:1.<sup>8</sup> DBCHI is intended to reflect the return from investing assets in long currency futures positions for certain currencies associated with relatively high yielding interest rates and an equal amount in short currency futures positions for certain currencies associated with relatively low yielding interest rates. The Index is designed to exploit the trend of currencies associated with relatively high interest rates, on average, tending to rise in value relative to currencies associated with relatively low interest rates. The Index exploits this trend using both long and short futures positions, which is expected to provide more consistent and less volatile returns than could be obtained by taking long positions only or short positions only. This is known as the “Interest Rate Parity” or “Covered Interest Arbitrage” formula. In particular, the Fund, which is not managed on a discretionary basis but instead seeks to track the Index pursuant to established rules and procedures, will reflect the composition and weightings of the Index Currencies with adjustments made by the Managing Owner on a quarterly basis to conform to the changes in the Index. The Managing Owner will not otherwise effect changes to the portfolio that deviate from the Index except in extraordinary circumstances (e.g., if the Managing Owner is unable to enter

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8315 (March 4, 1996) (approving the listing and trading of commodity indexed preferred or debt securities linked to the value of single commodity); and 35518 (March 21, 1995), 60 FR 15804 (March 27, 1995) (approving the listing and trading of commodity linked notes or COINS). See also Central Fund of Canada Limited (Registration No. 033-15180) (closed-end fund listed and traded on the Amex that invests in gold) and Salmon Phibro Oil Trust (Registration No. 033-33823) (trust units listed and traded on the Amex that held the right to a forward contract for the delivery of crude oil).

<sup>8</sup> See supra note 6.

into or close out a futures position because of a market disruption event).<sup>9</sup> Therefore, if positions in any of the one or more Index Currencies are declining in value, the Fund will not close out such positions, except in connection with a mandated change in the composition or weighting of the Index. The Managing Owner will seek to cause the NAV (as defined herein)<sup>10</sup> of the Fund to track the Index during periods in which the Index is flat or declining, as well as when the Index is rising. In this manner, the Managing Owner believes that the Index and the Fund will provide the advantages of market diversification and the reduction of country-specific foreign exchange risk (i.e., volatility).

The Index, at any time, is comprised of futures positions on six (6) currencies from The Group Ten (“G10”) countries,<sup>11</sup> each of which is traded on the Chicago Mercantile Exchange (the “CME”).<sup>12</sup> The notional amounts of each Index Currency included in the Index are based on the Index closing level as of the Index Re-Weighting Period (as defined herein).<sup>13</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 (“USD”) since March 12, 1993.<sup>14</sup> On

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<sup>9</sup> See discussion infra at “Events Requiring Notice to and/or Approval by the Commission” and “Criteria for Initial and Continued Listing” (describing the Exchange’s obligations in the event of a disruption in connection with the trading of the futures contracts comprising the Index).

<sup>10</sup> See infra note 23 (defining net asset value or “NAV”).

<sup>11</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 (collectively, the “Eligible Index Currencies”).

<sup>12</sup> August 22 Conference (clarifying that the Index is comprised of futures positions).

<sup>13</sup> See infra note 15 and accompanying text (defining and discussing the “Index Re-Weighting Period”).

<sup>14</sup> August 22 Conference (clarifying the Index calculation methodology).

such date, the closing Index level was \$100. The sponsor of the Index is Deutsche Bank AG London (“DB London” or “Index Sponsor”).

The Index is calculated by DB London on both an excess return basis and a total return basis. The excess return index reflects the return of the applicable underlying currencies. The total return is the sum of the return of the applicable underlying currencies, plus the return of three-month U.S. Treasury Bills. The Exchange states that the Fund will trade in a manner consistent with the excess return calculation of the Index. As described below, the Index will be calculated and disseminated every fifteen (15) seconds on the Consolidated Tape (“CT”) and through major market data vendors. The closing level of the Index is calculated by DB London on the basis of closing prices on the CME for the applicable futures contracts relating to the Index Currencies and applying a set of rules to these values to calculate the closing level of the Index. The CME-traded futures contract of each applicable Index Currency that is closest to expiration is used in the Index calculation. The futures contracts on the Index Currencies are rolled during the period in which the Index is re-weighted (the “Index Re-Weighting Period”).<sup>15</sup> The new futures contract on an Index Currency that has the next closest expiration date is selected. The calculation of the Index on an excess-return basis is the weighted average return on the change in price of the futures contracts relating to the Index Currencies.<sup>16</sup>

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<sup>15</sup> The Index Sponsor reviews and re-weights the Index on a quarterly basis, in accordance with its rules. The futures contracts held by the Fund are, therefore, three (3) months in duration. The Index Re-Weighting Period takes place just prior to the third Wednesday in each of March, June, September, and December months, which are traditional settlement dates in the International Money Market (the “IMM Dates”). The futures contracts on the Index Currencies are rolled during the Index Re-Weighting Period, which will occur over the fourth and third business days prior to each of the IMM Dates.

<sup>16</sup> August 22 Conference (clarifying the Index calculation methodology).

In order to determine which Eligible Index Currencies to include in the Index from time to time, the Sponsor will review the composition of the Index on a quarterly basis. The Sponsor will review the three-month LIBOR rate for each Eligible Index Currency, other than the Swedish Krona and Norwegian Krone, and will review the three-month STIBOR rate and the three-month NIBOR rate for the Swedish Krona and Norwegian Krone, respectively.<sup>17</sup> The Eligible Index Currencies are then ranked according to yield. The three highest yielding and three lowest yielding are selected as Index Currencies for inclusion in calculating the Index. If two Index Currencies have the same yield, then the previous quarter's ranking will be used. Upon re-weighting, the high yielding Index Currencies are allocated a base weight of 33 1/3%, and the low yielding Index Currencies are allocated a base weight of -33 1/3%. These new weights are applied during the Index Re-Weighting Period.

The Managing Owner represents that it will seek to arrange to have the Index calculated and disseminated on a daily basis through a third party if DB London ceases to calculate and disseminate the Index. If, however, the Managing Owner is unable to arrange for the calculation and dissemination of the Index (or another index which succeeds the Index), the Exchange will undertake to delist the Shares.<sup>18</sup>

The composition of the Index may be adjusted in the event that the Index Sponsor is not able to obtain information from the relevant futures exchanges to calculate the closing prices of

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<sup>17</sup> The LIBOR, STIBOR, and NIBOR rates for the Eligible Index Currencies, as applicable, mean the London, Stockholm, and Norway inter-bank offered rates for overnight deposits, respectively.

<sup>18</sup> If the Index is discontinued or suspended, the Managing Owner, in its sole discretion, may substitute the Index with an index substantially similar to the discontinued or suspended Index (the "Successor Index"). The Successor Index may be calculated and/or published by any other third party. See discussion infra at "Events Requiring Notice to and/or Approval by the Commission."

the futures contracts related to the Index Currencies.<sup>19</sup> In such an event, the Index Sponsor may use a currency futures contract on the same Index Currency from a different futures exchange, provided that, if such use is more than of a temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b-4 seeking Commission approval to continue to trade the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings.

If futures prices are not available as a result of a temporary disruption of futures contracts on the Index Currencies, the Managing Owner will typically use the prior day's futures price. In exceptional cases (such as when a daily price limit is reached on a futures exchange), the Managing Owner may employ a "fair value" price (*i.e.*, the price for unwinding the futures position by dealers over-the-counter ("OTC")). The Exchange states that this is similar to the case for index options when prices are unavailable or unreliable. The Options Clearing Corporation ("OCC"), pursuant to Article XVII, Section 4 of its By-Laws, permits options exchanges to use the prior day's closing price to fix an index options exercise settlement value. In addition, OCC may also use the next day's opening price, a price or value at such other times as determined by OCC, or an average of prices or values as determined by OCC. The Exchange represents that if the use of a prior day's price or "fair value" price for an Index Currency or Currencies is more than of a temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act seeking Commission approval for the continued trading of the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings.

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<sup>19</sup> See id. (describing the Exchange's obligations if substantial changes are made by the Index Sponsor to the Index component selection or weighting methodology). See also supra note 14.

## Investment Objective and Strategy

The Master Fund's portfolio is managed with a view to reflect the performance of the Index over time. The Exchange states that the Master Fund is not traditionally "managed," which typically involves effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial, and market considerations. Instead, the Managing Owner seeks to maintain the relationship between the composition and weightings of the CME futures positions in the Index Currencies to the Master Fund's long and short currency futures positions from time to time.<sup>20</sup> The Managing Owner adjusts the portfolio on a quarterly basis to conform to periodic changes in the composition and relative weightings of the Index Currencies and may make certain adjustments or changes to the portfolio more frequently in the case of significant changes in the foreign currency markets due to volatility.

The Fund will pursue its investment objective by investing substantially all of its assets in the Master Fund. To track the Index, the Master Fund generally will establish long futures positions in the three Index Currencies associated with the highest interest rates and short futures positions in the three Index Currencies associated with the lowest interest rates<sup>21</sup> and will adjust its holdings quarterly as the Index is adjusted. However, if the USD is among the Index Currencies, the Master Fund will not establish a long or short futures position (as the case may be) in USD because USD is the Fund's home currency and, as a consequence, the Master Fund never can enjoy profit or suffer loss from long or short futures positions in USD. When the USD is not associated with the highest or lowest interest rates among the Eligible Index Currencies,

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<sup>20</sup> August 22 Conference, supra note 12.

<sup>21</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 USD and to rise as a result of any downward price movement of Index Currencies expected to lose relative to the USD.

the aggregate notional value of the Master Fund's futures contracts at the time they are established will be double the value of the Master Fund's holdings of U.S. Treasury Bills and other high credit quality short term fixed income securities, (i.e., a ratio of 2:1).<sup>22</sup>

If the USD is associated with the highest or lowest interest rates among the Eligible Index Currencies, the aggregate notional value of the Master Fund's futures contracts at the time they are established will be approximately 1.66 times the value of the Master Fund's holdings of U.S. Treasury Bills and other high credit quality short-term fixed income securities (i.e., a ratio of 1.66:1). Holding futures positions with a notional amount in excess of the Master Fund's NAV<sup>23</sup> increases the potential for both trading profits and losses, depending on the performance of the Index. The Master Fund's ability to track the Index will not be affected by the presence or absence of the USD among the Index Currencies. Because the notional value of the Master Fund's futures positions can rise or fall over time, the ratio of long and short futures positions could be higher or lower between quarterly adjustments of the Index Currencies.

### Foreign Currency Futures

The Exchange states that the advent of financial futures began in the early 1970s because some commodity traders at CME established the International Monetary Market (now a division of CME), which launched trading in seven currency futures contracts on May 16, 1972 creating the world's first financial futures. Whether the trading venue is open outcry or electronic, the Exchange submits that prices for exchange traded foreign currency products are disseminated

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<sup>22</sup> See supra note 6.

<sup>23</sup> NAV is the total assets of the Master Fund, less total liabilities of the Master Fund, determined on the basis of generally accepted accounting principles. NAV per Master Fund share is the NAV of the Master Fund divided by the number of outstanding Master Fund shares. This will be the same for the Shares of the Fund because of a one-to-one correlation between the Shares and the shares of the Master Fund.

worldwide via major quote vendors such as Reuters, Bloomberg, and others. Electronic trading on computerized trading systems (e.g., GLOBEX® at CME) takes place on a nearly 24-hour basis.

The Exchange states that foreign exchange rates are influenced by national debt levels and trade deficits, domestic and foreign inflation rates and investors' expectations concerning inflation rates, domestic and foreign interest rates and investors' expectations concerning interest rates, currency exchange rates, investment and trading activities of mutual funds, hedge funds and currency funds, and global or regional political, economic, or financial events and situations. Additionally, foreign exchange rates on the Index Currencies may also be influenced by changing supply and demand for a particular Index Currency, monetary policies of governments (including exchange control programs, restrictions on local exchanges or markets and limitations on foreign investment in a country or on investment by residents of a country in other countries), changes in balances of payments and trade, trade restrictions, currency devaluations, and currency revaluations. Also, the Exchange states that governments from time to time intervene in the currency markets, directly and by regulation, in order to influence prices directly. Additionally, expectations among market participants that a currency's value soon will change may also affect exchange rates on the Index Currencies.

The Exchange submits that the foreign currency market is the largest and most liquid financial market in the world. As of April 2004, the Exchange states that the foreign currency exchange market experienced average daily turnover of approximately \$1.88 trillion, which was a 57% increase (at current exchange rates) from 2001 daily averages.<sup>24</sup> The foreign currency

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<sup>24</sup> The Exchange, however, did not specify the foreign currencies or types of transactions that underlie the statistics.

market is predominantly an OTC market, with no fixed location, and it operates 24 hours a day, seven days a week. London, New York, and Tokyo are the principal geographic centers of the world-wide foreign currency market, with approximately 58% of all foreign currency business executed in the United Kingdom, United States, and Japan. Other, smaller markets include Singapore, Zurich, and Frankfurt. The Exchange states that the primary market participants in foreign currencies are banks (including government-controlled central banks), investment banks, money managers, multinational corporations, and institutional investors.

The Exchange states that there are three major kinds of transactions in the traditional foreign currency markets: spot transactions, outright forwards, and foreign exchange swaps. “Spot” trades are foreign currency transactions that settle typically within two business days with the counterparty to the trade. Spot transactions account for approximately 35% of reported daily volume in the traditional foreign currency markets. “Forward” trades, which are transactions that settle on a date beyond spot, account for 12% of the reported daily volume, and “swap” transactions, in which two parties exchange two currencies on one or more specified dates over an agreed period and exchange them again when the period ends, account for the remaining 53% of volume. There also are transactions in currency options, which trade both OTC and, in the United States, on the Philadelphia Stock Exchange, Inc. (“Phlx”). Foreign currency futures are transactions in which an institution buys or sells a standardized amount of foreign currency on an organized exchange for delivery on one of several specified dates. Currency futures are traded on a number of regulated markets, including the CME, the Singapore Exchange Derivatives

Trading Limited (“SGX”), and the London International Financial Futures Exchange (“LIFFE”). Over 85% of currency derivative products (swaps, options, and futures) are traded OTC.<sup>25</sup>

### Futures Regulation

The Exchange states that the CEA governs the regulation of commodity interest transactions, markets, and intermediaries. The Exchange states that the CFTC administers the CEA, which requires commodity futures exchanges, such as the CME, to have rules and procedures to prevent market manipulation, abusive trade practices, and fraud. The CEA provides for varying degrees of regulation of commodity interest transactions depending upon the variables of the transaction. In general, these variables include (1) the type of instrument being traded (e.g., contracts for future delivery, options, swaps, or spot contracts), (2) the type of commodity underlying the instrument (distinctions are made between instruments based on agricultural commodities, energy and metals commodities, and financial commodities), (3) the nature of the parties to the transaction (retail, eligible contract participant, or eligible commercial entity), (4) whether the transaction is entered into on a principal-to-principal or intermediated basis, (5) the type of market on which the transaction occurs, and (6) whether the transaction is subject to clearing through a clearing organization.

Among other things, the Exchange states that the CEA provides that the trading of commodity interest contracts generally must be upon exchanges designated as contract markets or Derivatives Transaction Execution Facilities and that all trading on those exchanges must be done by or through exchange members. Commodity interest trading between sophisticated persons may be traded on a trading facility not regulated by the CFTC. As a general matter, the

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<sup>25</sup> See Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004, September 2004 (Tables 2 and 6).

Exchange states that trading in spot contracts, forward contracts, options on forward contracts or commodities, or swap contracts between eligible contract participants is not within the jurisdiction of the CFTC and may therefore be effectively unregulated.

The Exchange submits that trading on non-U.S. exchanges may differ from trading on U.S. exchanges in a variety of ways and, accordingly, may subject the Fund to additional risks. Non-U.S. futures exchanges are not subject to regulation by the CFTC, but rather are regulated by their home country regulator. In contrast to U.S. designated contract markets, some non-U.S. exchanges are principals' markets, where trades remain the liability of the traders involved, and the exchange or an affiliated clearing organization, if any, does not become substituted for any party. Due to the absence of a clearing system, the Exchange states that such exchanges are significantly more susceptible to disruptions. Further, participants in such markets must often satisfy themselves as to the individual creditworthiness of each entity with which they enter into a trade. Trading on non-U.S. exchanges is often in the currency of the exchange's home jurisdiction. Consequently, the Fund may be subject to the additional risk of fluctuations in the exchange rate between such currencies and USD and the possibility that exchange controls could be imposed in the future.

The Exchange states that CFTC and U.S. designated contract markets have established limits or position accountability rules (i.e., speculative position limits or position limits) on the maximum net long or net short speculative position that any person or group of persons under common trading control (other than a hedger) may hold, own, or control in commodity interests. Among the purposes of speculative position limits is to prevent a corner or squeeze on a market or undue influence on prices by any single trader or group of traders.

The Exchange also states that most U.S. futures exchanges limit the amount of fluctuation in some futures contract or options on futures contract prices during a single trading session. These regulations specify what are referred to as daily price fluctuation limits (i.e., daily limits). The daily limits establish the maximum amount that the price of a futures contract or options on futures contract may vary either up or down from the previous day's settlement price. Once the daily limit has been reached in a particular futures contract or options on futures contract, no trades may be made at a price beyond the limit.

#### Foreign Currency Regulation

Most trading in the global OTC foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued guidelines for foreign exchange trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the "Model Code."

In addition, in the United States, the Commission regulates the trading of options on foreign currencies on Phlx, and the CFTC regulates trading of futures, options, and options on futures on foreign currencies on regulated futures exchanges.<sup>26</sup>

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<sup>26</sup> In addition to its oversight of regulated futures exchanges, the Exchange states that the CFTC has jurisdiction over certain foreign currency futures, options, and options on futures transactions occurring other than on a regulated exchange and involving retail customers.

## Structure of the Fund

Fund. The Fund will be formed as a Delaware statutory trust pursuant to a Certificate of Trust and a Declaration of Trust and Trust Agreement among Wilmington Trust Company, as trustee, the Managing Owner, and the holders of the Shares.<sup>27</sup> The Fund will issue common units of beneficial interest or shares that represent units of fractional undivided beneficial interest in and ownership of the Fund. The term of the Fund is perpetual (unless terminated earlier in certain circumstances). The investment objective of the Fund is to reflect the performance of the DBCHI, 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.

Master Fund. The Master Fund is a statutory trust formed pursuant to the Delaware Statutory Trust Act and will issue common units of beneficial interest or shares that represent units of fractional undivided beneficial interest in and ownership of the Master Fund. The term of the Master Fund is perpetual (unless terminated earlier in certain circumstances). The investment objective of the Master Fund is to reflect the performance of the DBCHI, less the expenses of the operations of the Fund and the Master Fund. The Master Fund will pursue its investment objective by taking long positions in the three (3) highest-yielding Index Currencies and, as reflected in the Index, will take three (3) short positions in the lowest yielding Index Currencies. In addition, the Master Fund will also hold cash and U.S. Treasury securities for

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<sup>27</sup> The Exchange states that the Fund will not be subject to registration and regulation under the 1940 Act.

deposit with futures commission merchants (“FCMs”) as margin and other high credit quality short-term fixed income securities.

Trustee. The Wilmington Trust Company is the trustee of the Fund and the Master Fund. The Trustee has delegated to the Managing Owner the power and authority to manage and operate the day-to-day affairs of the Fund and the Master Fund.

Managing Owner. The Managing Owner is a Delaware limited liability company which is registered with the CFTC as a CPO and CTA and is an affiliate of DB London. The Managing Owner will serve as the CPO and CTA of the Fund and the Master Fund and will manage and control all aspects of the business of both.

Commodity Broker. Deutsche Bank Securities, Inc., the Commodity Broker, is an affiliate of the Managing Owner and is registered with the CFTC as a FCM. The Commodity Broker will execute and clear each of the Master Fund’s futures contract transactions and will perform certain administrative services for the Master Fund.

Administrator. The Bank of New York is the administrator for both the Fund and the Master Fund (the “Administrator”). The Administrator will perform or supervise the performance of services necessary for the operation and administration of the Fund and the Master Fund (other than making investment decisions), including NAV calculations, accounting, and other administrative services. The Administrator will retain certain financial books and records, including: financial accounting records, ledgers with respect to assets, liabilities, capital, income and expenses, the register, transfer journals and related details, and trading and related documents received from FCMs.

Distributor. ALPS Distributors, Inc. is the distributor for both the Fund and the Master Fund (the “Distributor”). The Distributor will assist the Managing Owner and the Administrator

with certain functions and duties relating to the creation and redemption of Baskets (as defined below), including receiving and processing orders from Authorized Participants (as defined below) to create and redeem Baskets, coordinating the processing of such orders and related functions and duties. The Distributor will also retain all marketing materials and Basket creation and redemption books and records.

### Product Description

#### A. Creation and Redemption of Shares

Issuances of the Shares will be made only in one or more blocks of 200,000 Shares (the “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>28</sup> with the Managing Owner at the NAV per Share next determined after an order to purchase the Shares in a Basket is received in proper form. Following issuance, the Shares will be traded on the Exchange similar to other equity securities. The Shares will be registered in book entry form through DTC.

Baskets will be issued in exchange for a cash amount equal to the NAV per Share times 200,000 Shares (the “Basket Amount”). The Basket Amount will be determined on each business day by the Administrator. Authorized Participants that wish to purchase a Basket must transfer the Basket Amount to the Administrator (the “Cash Deposit Amount”). 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”). The

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<sup>28</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 (“DTC”) participant and (iii) has in effect a valid participant agreement.

Commodity Broker will be the custodian for the Master Fund and responsible for safekeeping the Master Fund's assets.

All purchase orders received by the Administrator prior to 1:00 p.m. ET will be settled by depositing with the Commodity Broker the Cash Deposit Amount disseminated by the Administrator shortly after 10:00 a.m. ET on the next business day. The Basket Amount necessary for the creation of a Basket will change from day to day. On each day that the Amex is open for regular trading, the Administrator will adjust the Cash Deposit Amount as appropriate to reflect the prior day Fund NAV (as described below) and accrued expenses. The Administrator will determine the Cash Deposit Amount for a given business day by multiplying the NAV for each Share by the number of Shares in each Basket (200,000).

Likewise, all redemption orders received by the Administrator prior to 1:00 p.m. ET will be settled by the Commodity Broker's payment of the Cash Redemption Amount shortly after 10:00 a.m. ET on the next business day.<sup>29</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). 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.

On each business day, the Administrator will make available immediately prior to the opening of trading on the Amex via the facilities of the CT,<sup>30</sup> the most recent Basket Amount for

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<sup>29</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 26, 2006.

<sup>30</sup> Id.

the creation of a Basket. The Amex will disseminate every fifteen (15) seconds throughout the trading day, via the CT, an amount representing on a per Share basis, the current value of the Basket Amount. It is anticipated that the deposit of the Cash Deposit Amount in exchange for a Basket will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Baskets are then separable upon issuance into identical Shares that will be listed and traded on the Amex.<sup>31</sup> The Shares are expected to be traded on the Exchange by professionals, as well as institutional and retail investors. Thus, the Shares may be acquired in two (2) ways: (1) through a deposit of the Cash Deposit Amount with the Administrator during normal business hours by Authorized Participants, or (2) through a purchase on the Exchange by investors.

B. Net Asset Value (NAV)

Shortly after 4:00 p.m. Eastern time (“ET”) each business day, the Administrator will determine the NAV for the Fund, utilizing the current settlement value of the particular long and short exchange-traded futures contracts on the Index Currencies. At or about 4:00 p.m. ET each business day, the Administrator will determine the Basket Amount for orders placed by Authorized Participants received before 1:00 p.m. ET that day. Thus, although Authorized Participants place orders to purchase Shares throughout the trading day until 1:00 p.m. ET, the actual Basket Amount is determined at 4:00 p.m. ET or shortly thereafter.

Shortly after 4:00 p.m. ET each business day, the Administrator, Amex, and the 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

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<sup>31</sup> The 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.

Administrator to all Authorized Participants via facsimile or electronic mail message and will be available on the Index Sponsor's Internet Web site at <http://index.db.com>. The Amex will also disclose the NAV and Basket Amount on its Internet Web site (<http://www.amex.com>). Amex represents that the NAV 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 Exchange will halt trading of the Shares.<sup>32</sup>

When calculating NAV for the Fund and Master Fund, the Administrator will value U.S. futures contracts held by the 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. Forward contracts will be calculated based on the mean of the bid-ask as provided by the counterparty.

The NAV for the Fund is 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.

The Exchange believes that the Shares will not trade at a material discount or premium to the NAV of the Shares based on potential arbitrage opportunities. Due to the fact that the Shares can be created and redeemed only in Baskets at NAV, the Exchange submits that arbitrage

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<sup>32</sup> However, if the Fund temporarily does not disseminate the NAV to all market participants at the same time, the Exchange will immediately contact the Commission to discuss measures that may be appropriate under the circumstances. See discussion infra at "Events Requiring Notice to and/or Approval by the Commission" and "Criteria for Initial and Continued Listing" (discussing delisting procedures in the event of a disruption to the dissemination of the NAV); see also discussion infra at "Trading Halts"

opportunities should provide a mechanism to mitigate the effect of any premiums or discounts to or from NAV per Share that may exist from time to time. The value of a Share may be influenced by non-concurrent trading hours between the Amex and the various futures exchanges on which the Index Currencies are traded. As a result, during periods when the Amex is open and the futures exchanges on which the Index Currencies are traded are closed, trading spreads and the resulting premium or discount on the Shares may widen, and, therefore, increase the difference between the price of the Shares and the NAV of the Shares.

C. Dissemination of the Index and Underlying Futures Contracts Information

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 Internet Web site at <http://index.db.com>. The Exchange states that the disseminated value of the Index will not reflect changes to the prices of the Index Currencies between the close of trading of each respective futures contract on the relevant futures exchange, *i.e.*, 3:00 p.m. ET (close of trading on the CME futures market), and the close of trading on the Amex at 4:15 p.m. ET.<sup>33</sup> The closing Index level will similarly be provided by DB London. In addition, any adjustments or changes to the Index will also be provided by DB London and the Exchange on their respective Internet Web sites.<sup>34</sup>

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(noting that the Exchange would halt trading in the Shares if the NAV is no longer calculated or disseminated for the benefit of market participants at the same time).

<sup>33</sup> August 22 Conference.

<sup>34</sup> 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 composition of the Index.

The daily settlement prices for the futures contracts held by the Master Fund are publicly available on the Internet Web sites of the futures exchanges trading the particular contracts. All of the 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>35</sup> In addition, various data vendors and news publications publish futures prices and data. The Exchange represents that futures quotes and last sale information for the Index Currencies are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further notes that 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 futures exchanges on their Internet Web sites, as well as other financial informational sources.

D. Availability of Information Regarding the Shares

The Internet Web sites for the Fund and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) 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>36</sup> (c) the calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency of 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

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<sup>35</sup> Other futures exchanges may include, for example, the New York Board of Trade and HedgeStreet, Inc.

<sup>36</sup> The Bid-Ask Price of the Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

prospectus; and (f) other applicable quantitative information. The Exchange will also make available on its Internet Web site the daily trading volume of the Shares. The closing price and settlement prices of the futures contracts comprising the Index and held by the Master Fund 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. In addition, the Exchange will provide a hyperlink on its Internet Web site to the Index Sponsor's Internet Web site.

Investors may obtain, on a 24-hour basis, currency pricing information from various financial information service providers. The Exchange states that 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 CME and 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 Internet Web sites that provide information on currency, such as Bloomberg (<http://www.bloomberg.com/markets/currecies/eurafrcurrencies.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 Internet Web 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.

E. Dissemination of Indicative Fund Value

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. 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.

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 Exchange will disseminate through the facilities of the CT an updated Indicative Fund Value (the “Indicative Fund Value”). The Indicative Fund Value will be disseminated on a per Share basis every fifteen (15) seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Fund Value 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.

The Indicative Fund Value 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 the close of trading on the Amex at 4:15 p.m. ET. While the Shares will trade on the Amex from 9:30 a.m. to 4:15 p.m. ET, regular trading hours for each of the Index Currencies on the CME are 8:20 a.m. to 3:00 p.m. ET. Therefore, the value of a Share may be influenced by non-concurrent trading hours between the Amex 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 Indicative Fund Value can be expected to closely approximate the value per Share of the Basket Amount. However, during Amex trading hours and when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Shares and the NAV of the Shares. Indicative Fund Value on a per Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Fund Value based on the cash amount required for a Basket 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.

F. Events Requiring Notice to and/or Approval by the Commission

The Exchange represents that should the Index Sponsor substantially change either the Index component selection or weighting methodology, the Exchange would file a proposed rule change pursuant to Rule 19b-4 under the Act, which must be approved by the Commission for continued trading of the Shares.<sup>37</sup>

The Exchange represents that if a successor or substitute index is used by the Managing Owner, Amex will file with the Commission a proposed rule change pursuant to Rule 19b-4 under the Act to address, among other things, the listing and trading characteristics of the successor index and Amex's surveillance procedures applicable to the successor index, which

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<sup>37</sup> See supra note 19 and accompanying text (noting that the Index Sponsor may also use a currency futures contract on the same Index Currency from a different futures exchange, provided that, if such use is more than of a temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b-4 seeking Commission approval to continue

must be approved by the Commission to continue trading the Shares relating to the successor index.

Additionally, in the case of a temporary disruption in connection with the trading of the futures contracts comprising the Index, the Exchange believes that it is unnecessary for a filing pursuant to Rule 19b-4 under the Act to be filed with the Commission. The Exchange submits that for a temporary disruption of such futures contracts, the Index Sponsor would typically use the prior day's price for an Index Currency. In exceptional cases, the Index Sponsor may employ a "fair value" price (i.e., the price for unwinding the position by dealers in the OTC market). However, the Exchange represents that if the use of a prior day's price or "fair value" pricing for an Index Currency is more than of a temporary nature, the Exchange will file a proposed rule change with the Commission pursuant to Rule 19b-4 under the Act seeking Commission approval to continue trading the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings.

The Exchange represents that it would halt trading of the Shares if (a) the value of the Index is no longer calculated or available on at least a fifteen (15) second basis through the facilities of the CT or major market data vendors during the time the Shares trade on Amex, (b) if the Indicative Fund Value, updated at least every fifteen (15) seconds, is no longer calculated or available, or (c) the NAV is no longer disseminated to all market participants at the same time.<sup>38</sup> In any event, unless approval is received from the Commission to continue to list and trade the Shares after a proposed rule change filing is properly filed pursuant to Rule 19b-4

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to trade the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings.

<sup>38</sup> The Exchange further represents that it would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

under the Act, the Exchange represents that will commence delisting procedures for the Shares if: (i) the Index Sponsor substantially changes either the Index component selection or weighting methodology; (ii) more than a temporary disruption exists with trading of the futures contracts comprising the Index; or (iii) a Successor Index is used by the Managing Owner; or (iv) the calculation and/or dissemination of the NAV is more than temporarily disrupted.

#### Termination Events

The Exchange states that the Fund will be terminated if any of the following circumstances occur: (1) the filing of a certificate of dissolution or revocation of the Managing Owner's charter or upon the withdrawal, removal, adjudication, or admission of bankruptcy or insolvency of the Managing Owner, or an event of withdrawal unless (i) there is at least one remaining Managing Owner who carries on the business of the Fund or (ii) within 90 days of such event of withdrawal all the remaining shareholders agree in writing to continue the business of the Fund and to select one or more successor Managing Owners; (2) the occurrence of any event which would make unlawful the continued existence of the Fund; (3) the suspension, revocation, or termination of the Managing Owner's registration as a CPO, or membership as a CPO with the NFA; (4) the Fund becomes insolvent or bankrupt; (5) the holders of at least 50% of the outstanding Shares notify the Managing Owner that they elect to terminate the Fund; (6) the determination of the Managing Owner that the aggregate net assets of the Fund in relation to the operating expenses of the Fund make it unreasonable or imprudent to continue the business of the Fund, or the determination by the Managing Owner to dissolve the Fund because the aggregate NAV of the Fund as of the close of business on any business day declines below \$10 million; (7) the Commission finds that the Fund should be registered as an investment company under the 1940 Act; or (8) the DTC is unable or unwilling to continue to perform its functions,

and a comparable replacement is unavailable. Upon termination of the Fund, holders of the Shares will surrender their Shares and receive from the Administrator, in cash, their portion of the value of the Fund.

#### Criteria for Initial and Continued Listing

The Fund will be subject to the criteria in Commentary .07(d) of Amex Rule 1202 for initial and continued listing of the Shares. The proposed 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 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 is less than \$1,000,000;
- If the value of the underlying Index is no longer calculated or available on at least a 15-second delayed basis through one or more major market data vendors;<sup>39</sup>
- The Indicative Fund Value is no longer made available on at least a 15-second delayed basis through the facilities of the CT;<sup>40</sup>
- The calculation or dissemination of the NAV is disrupted such that the NAV is no

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<sup>39</sup> In the event the Index value is no longer calculated or disseminated by one or more major market data vendors, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

<sup>40</sup> In the event the Indicative Fund Value is no longer calculated or disseminated through the facilities of the CT, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

longer disseminated to all market participants at the same time;<sup>41</sup>

- Unless approval is received from the Commission to continue to list and trade the Shares after a proposed rule change pursuant to Rule 19b-4 under the Act is properly filed by the Exchange, (i) more than a temporary disruption exists in connection with the pricing of the futures contracts comprising the Index, (ii) a successor or substitute index is used by the Managing Owner in connection with the Shares, (iii) calculation or dissemination of the NAV is more than temporarily disrupted, or (iv) the Index Sponsor substantially changes either the Index component selection methodology or weighting methodology; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The initial purchaser (the “Initial Purchaser”) will initially purchase and take delivery of 200,000 Shares, which comprises the initial Basket, at a purchase price of \$25.00 per Share (\$5,000,000 per Basket) pursuant to an Initial Purchaser Agreement. The Initial Purchaser proposes to offer to the public these 200,000 Shares at a per-Share offering price that will vary depending on, among other factors, the trading price of the Shares on the Amex, the NAV per Share, and the supply of and demand for the Shares at the time of the offer. Shares offered by the Initial Purchaser at different times may have different offering prices. The Initial Purchaser will not receive from the Fund, the Managing Owner, or any of their affiliates, any fee or other compensation in connection with the sale of the Shares to the public. The Fund will not bear any

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<sup>41</sup> In the event the NAV is no longer calculated or disseminated to all market participants at the same time, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

expenses in connection with the offering or sales of the Shares composing the initial Baskets. The Managing Owner has agreed to indemnify the Initial Purchaser against certain liabilities, including liabilities under the Securities Act of 1933, and to contribute to payments that the Initial Purchaser may be required to make in respect thereof.

The Initial Purchaser will not act as an Authorized Participant with respect to the initial Baskets, and its activities with respect to the initial Baskets will be distinct from those of an Authorized Participant. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Fund's objective to seek to provide a simple and cost effective means of accessing the currency futures markets. 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.<sup>42</sup>

The Amex original listing fee applicable to the listing of the Fund is \$5,000. In addition, the annual listing fee applicable under Section 141 of the Amex Company Guide will be based upon the year-end aggregate number of Shares in all series of the Fund outstanding at the end of each calendar year.

### Trading Rules

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 and 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 until 4:15 p.m. ET each business day and will trade in a minimum price variation of

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<sup>42</sup> See 17 CFR 240.10A-3.

\$0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c), provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i)-(v). The Exchange has designated the Shares as eligible for this treatment.<sup>43</sup>

The Shares will be deemed “Eligible Securities”, as defined in Amex Rule 230, for purposes of the Intermarket Trading System (“ITS”) plan and therefore will be subject to the trade-through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities.

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.<sup>44</sup> Unless exemptive or no-action relief is available, the Shares will be subject to the short sale rule, Rule 10a-1 and other rules under the Act.<sup>45</sup> If exemptive or no-action relief is provided, the Exchange will issue a

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<sup>43</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (noting the Exchange’s designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c)).

<sup>44</sup> See Commentary .05 to Amex Rule 190.

<sup>45</sup> 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 permitting sales without regard to the “tick” requirements of Rule 10a-1. Rule 10a-1(a)(1)(i) provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price or (ii) at such price unless such price is above the next preceding different price at which a sale was reported.

notice detailing the terms of the exemption or relief. 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 currency and/or futures contract price. Commentary .07(f) to Amex Rule 1202 sets forth this limited exception to Amex Rule 170.

The trading of the Shares will be subject to certain conflict of interest provisions set forth in Commentary .07(e) to Amex Rule 1202. Specifically, Commentary .07(e) provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Shares so that the specialist or affiliated person may not act or function as a market maker in an underlying asset, related futures contract or option, or any other related derivative. An affiliated person of the specialist consistent with Amex Rule 193 may be afforded an exemption to act in a market making capacity, other than as a specialist in the Shares on another market center, in the underlying asset, related futures, or options or any other related derivative. Commentary .07(e) further provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Shares on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

Commentary .07(e) 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. As a general matter, the Exchange has regulatory jurisdiction over its members, member

organizations, and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

### 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 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. The Exchange will halt trading in the Shares if the value of the 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 Amex, or if the Indicative Fund Value per Share updated at least every fifteen (15) seconds is no longer calculated or available the facilities of the

CT, or if the NAV is no longer calculated or disseminated for the benefit of all market participants at the same time.<sup>46</sup>

### Suitability

The Information Circular (described below) will inform members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

### Information Circular

The Amex will distribute an Information Circular to its members in connection with the trading of the Shares. The Circular, will discuss the special characteristics and risks of trading this type of security, such as currency fluctuation risk. Specifically, the Circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, applicable Amex rules, dissemination information, trading information, and applicable suitability rules. The Circular will also explain that the Fund is 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

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<sup>46</sup> See supra notes 39-41 and accompanying text.

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.

Additionally, the Circular will disclose that the NAV for Shares will be calculated shortly after 4:00 p.m. ET each trading day and that information about the Shares and the Index will be publicly available on the Internet Web site of Amex and the Fund. In the Information Circular, the Exchange will inform members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund (in exchange for cash) will receive a prospectus. Amex members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. Also, in the Information Circular, Amex will inform members and member organizations that procedures for purchases and redemptions of Shares in Baskets are described in the Prospectus and that Shares are not individually redeemable but are redeemable by Basket or multiples thereof and that individual shareholders may only redeem through an Authorized Participant, not from the Fund.

### 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 Amex rules. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. Amex represents that its surveillance procedures for the Shares will be similar to those used for other TIRs (such as the Currency Trust Shares and the DB Commodity Index Tracking Fund) and exchange-traded funds and will incorporate and rely upon existing Amex surveillance

procedures governing options and equities. The Exchange also notes that the CME is a member of the Intermarket Surveillance Group. As a result, the Exchange asserts that market surveillance information is available from the CME, if necessary, due to regulatory concerns that may arise in connection with the CME futures.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act,<sup>47</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>48</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange did not receive any written comments on the proposed rule change.

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

Within 35 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 90 days of such date if it finds

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<sup>47</sup> 15 U.S.C. 78f.

<sup>48</sup> 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change, as amended, at the end of a 15-day comment period.<sup>49</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-Amex-2006-44 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 Number SR-Amex-2006-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>49</sup> Amex has requested accelerated approval of this proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period.

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 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-Amex-2006-44 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>50</sup>

Nancy M. Morris  
Secretary

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<sup>50</sup> 17 CFR 200.30-3(a)(12).