

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54450; File No. SR-Amex-2006-44)

September 14, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval 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

I. Introduction

On May 2, 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 Currency Index Value Fund under Commentary .07 to Amex Rule 1202. On July 31, 2006, Amex filed Amendment No. 1 to the proposed rule change. On August 18, 2006, Amex filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on August 29, 2006 for a 15-day comment period, which ended on September 13, 2006.<sup>3</sup> The Commission received no comments on the proposal. This order grants accelerated approval of the proposed rule change, as amended.

II. Description of the Proposal

The Exchange seeks to list and trade shares (“Shares”) of the DB Currency Index Value Fund (“Trust” or “Fund”).<sup>4</sup> Pursuant to Commentary .07 to Amex Rule 1202, the Exchange may

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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. 54351 (August 23, 2006), 71 FR 51245, as corrected by 71 FR 53492 (September 11, 2006).

<sup>4</sup> 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 DB Commodity Services LLC as managing owner, and the holders of the

approve the listing and trading of trust issued receipts (“TIRs”) that represent beneficial ownership of shares or securities (“Investment Shares”) of a trust, partnership, commodity pool or other similar entity that holds investments comprising, or otherwise based on, any combination of securities, futures contracts, swaps, forward contracts, options on futures contracts, commodities or portfolios of investments.

The Shares 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”).

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, less the expenses of the operations of the Fund and the Master Fund.<sup>5</sup> The Master Fund will hold a portfolio of both long and short futures contracts with a notional value to equity ratio of approximately two to one

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Shares. The Exchange states that the Fund will not be subject to registration and regulation under the Investment Company Act of 1940 (“1940 Act”).

<sup>5</sup> The Exchange stated that the Wilmington Trust Company is the trustee of the Fund and the Master Fund and has delegated to the Managing Owner the power and authority to manage and operate the day-to-day affairs of both.

(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. In seeking to cause the NAV (as defined herein)<sup>7</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, 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 Exchange represented that Amex Rule 1202 accommodates the listing and trading of the Shares and that the Shares will conform to the initial and continued listing criteria under Commentary .07(d) to Amex Rule 1202.

In connection with the proposal, Amex also seeks to amend Commentary .02 to Amex Rule 1200 to conform to Amex’s current trading hours to permit the Shares to trade until 4:15 p.m. Eastern Time (“ET”).

### Index Description

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.<sup>8</sup> The Index is designed to exploit the trend of currencies associated with

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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 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 *infra* note 15 (defining net asset value or “NAV”).

<sup>8</sup> This is known as the “Interest Rate Parity” or “Covered Interest Arbitrage” formula.

relatively high interest rates, on average, tending to rise in value relative to currencies associated with relatively low interest rates.

The Index, at any time, is comprised of futures positions on six (6) currencies from The Group Ten (“G10”) countries,<sup>9</sup> each of which is traded on the Chicago Mercantile Exchange (the “CME”). The sponsor of the Index is Deutsche Bank AG London (“DB London” or “Index Sponsor”).

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 during the time the Shares are traded on the Exchange. DB London calculates the closing level of the Index on the basis of closing prices on CME for the applicable futures contracts relating to the Index Currencies<sup>10</sup> and applies a set of rules to these values to calculate the closing level of the Index.<sup>11</sup> 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

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<sup>9</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>10</sup> The Index Sponsor calculates the level of the Index intraday and at the end of the day. The intraday calculation is based on feeds of real-time data relating to the underlying futures contracts and updates intermittently approximately every 15 seconds. The Index Sponsor uses independent feeds from Reuters to verify all prices. A number of currency market participants independently verify the correctness of the disseminated intraday Index value and closing Index value. Telephone conversation between Sudhir C. Bhattacharyya, Assistant General Counsel, Amex, and Edward Cho, Special Counsel, Division of Market Regulation, Commission, on September 14, 2006.

<sup>11</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). 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. On such date, the closing Index level was \$100.

the period in which the Index is re-weighted (the “Index Re-Weighting Period”).<sup>12</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.

### Investment Objective and Strategy

The Exchange states that 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.

The Master Fund’s portfolio is managed with a view to reflect the performance of the Index over time. The Exchange stated 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. 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

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<sup>12</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”). 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 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.

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>13</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 Exchange states that 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, 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>14</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

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<sup>13</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 (as a result of the long positions), and likewise, to rise as a result of any downward price movement of Index Currencies expected to lose relative to the USD (as a result of the short positions).

<sup>14</sup> See supra note 6.

Fund's NAV<sup>15</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.

### 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>16</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 Bank of New York, the Fund administrator.<sup>17</sup> Authorized Participants that

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<sup>15</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.

<sup>16</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.

<sup>17</sup> As described in the Notice, the Bank of New York is the administrator for both the Fund and the Master Fund. The Administrator will perform or supervise the performance of

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 Commodity Broker will be the custodian for the Master Fund and responsible for safekeeping the Master Fund’s assets.<sup>18</sup>

B. Net Asset Value (NAV)

As stated in the proposal, shortly after 4:00 p.m. ET each business day, the Administrator will determine the NAV for the Fund, utilizing the current settlement value of the futures contracts on the Index Currencies. Also 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 NAV and Basket Amount will be communicated by the 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>). The Exchange represented that the NAV would be made available to all market participants at the same time.

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

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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.

<sup>18</sup> The Commodity Broker is Deutsche Bank Securities, Inc., an affiliate of the Managing Owner and registered with the CFTC as a futures commission merchant.

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 generally the Shares will not trade at a material discount or premium to the NAV of the Shares based on potential arbitrage opportunities. Nevertheless, 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 stated 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. 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>19</sup>

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<sup>19</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 associated with 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 foreign currency futures contracts comprising the Index and held by the Master Fund are publicly available on the Internet Web sites of the futures exchanges trading the particular contracts, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Internet Web site to the Index Sponsor's Internet Web site. All of the foreign currency futures contracts in which the Master Fund currently expects to invest are traded on the CME, although currency futures contracts on the Eligible Index Currencies also trade on other futures exchanges in the United States and the Master Fund may invest in such contracts.<sup>20</sup>

In addition, various data vendors and news publications publish futures prices and data. The Exchange represented 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 noted 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 CME on its Internet Web site, 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

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<sup>20</sup> Other futures exchanges may include, for example, the New York Board of Trade and other futures exchanges which have a Comprehensive Surveillance Sharing Agreement ("CSSA") with Amex or is an Intermarket Surveillance Group ("ISG") member. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on September 13, 2006.

relation to the NAV as of the time the NAV is calculated (the “Bid-Ask Price”);<sup>21</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 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.

E. Foreign Currency Pricing

In its proposal, the Exchange stated that investors may also obtain, on a 24-hour basis, currency pricing information from various financial information service providers. The Exchange stated 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.

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<sup>21</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.

F. 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., Basket Amount), adjusted to reflect the price changes of the Index Currencies through investments held by the Master Fund, i.e., futures contracts and options on futures and/or forwards.<sup>22</sup>

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. 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

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<sup>22</sup> 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 the most recent Basket Amount for the creation of a Basket.

trading hours between the Amex and the various futures exchanges on which the futures contracts based on the Index Currencies are traded. Accordingly, the Exchange cautioned that 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.

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

The Exchange represented 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.

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

In the case of a temporary disruption in connection with the trading of the futures contracts comprising the Index, the Index Sponsor may use a currency futures contract on the same Index Currency from a different futures exchange than CME or use the prior day's price for such Index Currency contract. 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 represented that if the use of such alternative pricing methods 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 represented 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,<sup>23</sup> (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>24</sup>

#### 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;

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<sup>23</sup> 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. 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. Such successor Index may be calculated and/or published by any other third party.

<sup>24</sup> The Exchange further represents that it would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

- 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>25</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>26</sup>
- The calculation or dissemination of the NAV is disrupted such that the NAV is no longer disseminated to all market participants at the same time;<sup>27</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.

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<sup>25</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>26</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.

<sup>27</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.

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. The Exchange submitted that the anticipated minimum number of Shares outstanding at the start of trading would be 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 also represented 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>28</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>28</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>29</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>30</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. If exemptive or no-action relief is provided, the Exchange will issue a 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.

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<sup>29</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>30</sup> See Commentary .05 to Amex Rule 190.

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(g)(1) and (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. 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.<sup>31</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 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>32</sup>

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<sup>31</sup> All applicable provisions of Amex Rule 1202 and Commentaries thereto will govern the trading of the Shares. Telephone conversation between Sudhir C. Bhattacharyya, Assistant General Counsel, Amex, and Edward Cho, Special Counsel, Division of Market Regulation, Commission, on September 14, 2006.

<sup>32</sup> See supra notes 25-27 and accompanying text.

### 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 noted 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 that are described in the prospectus, and that Shares are not individually redeemable but are redeemable only in one or more Baskets only through an Authorized Participant. 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 noted 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.

#### Surveillance

The Exchange represented 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 noted that the CME is a member of the ISG. As a result, the Exchange asserted that market surveillance information is available from the CME, if necessary, due to regulatory concerns that may arise in connection with the CME futures contracts that are used in connection with the Index calculation and held by the Fund. In addition, the Exchange represented that, to the extent the Master Fund invests in foreign currency futures contracts traded on futures exchanges other than CME, the Exchange must have a CSSA with that futures exchange or the futures exchange must be an ISG member.

### III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>33</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,<sup>34</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

#### A. Surveillance

Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Exchange represents that the CME, where the futures contract for each of the current Index components is traded, is a member of the ISG, and that the Exchange has access to all relevant trading information with respect to those contracts without any further action. In addition, the Exchange represents that, in the event that a successor or substitute index is used by the Managing Owner, 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. The Exchange also represents that, to the extent the Master Fund invests in foreign currency futures contracts traded on futures exchanges

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<sup>33</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

other than CME, the Exchange must have a CSSA with that futures exchange or the futures exchange must be an ISG member.

Moreover, Amex Rule 1202 requires Exchange specialists, upon the Exchange's request, to provide Amex with information that the specialist uses in connection with pricing and trading the Shares on the Exchange. In 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 Index relative to the Indicative Value of their Shares. There is a considerable amount of information about the Index and its components and related futures contracts and the Shares available through public Web sites and professional subscription services, including Reuters and Bloomberg.

Real time information about the trading of the component currency futures contracts trading on CME related to the Index components and their daily settlement prices of such futures contracts is available from one or more major market data vendors. Delayed information is often available from futures exchanges trading futures contracts on the underlying Index components. The Exchange stated that daily settlement prices for the futures contracts comprising the Index and held by the Master Fund are publicly available on the Internet Web sites of the futures

exchanges trading the particular contracts.<sup>35</sup> The Exchange has further represented that the Index Sponsor, DB London, will publish the value of the Index at least every 15 seconds during Amex trading hours to the CT, Bloomberg, Reuters, and the Index Sponsor's Internet Web site, <http://index.db.com>.<sup>36</sup> While the Index is calculated and disseminated by the Index Sponsor, an affiliate of a registered broker-dealer,<sup>37</sup> the Commission notes that a number of independent sources may verify both the intraday and closing Index values and the Index Sponsor uses independent feeds from Reuters to verify all CME pricing information used to calculate the Index.

Likewise, information about the Shares will also be widely available. The Indicative Fund Value will be disseminated every 15 seconds during Amex regular trading hours through the facilities of the CT and will be displayed on the Exchange's Internet Web site (<http://www.amex.com>).<sup>38</sup> The Commission believes that dissemination of the Indicative Fund Value based on the cash amount required for a Basket provides additional information that is not

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<sup>35</sup> 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, such as the New York Board of Trade, which is a member of ISG.

<sup>36</sup> 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>37</sup> Telephone conversation between Sudhir C. Bhattacharyya, Assistant General Counsel, Amex, and Edward Cho, Special Counsel, Division of Market Regulation, Commission, on September 14, 2006.

<sup>38</sup> The Commission notes that the Indicative Fund Value will not reflect price changes of an underlying currency between the close of trading of the relevant futures contract at the futures exchange and the close of trading on the Amex at 4:15 p.m. ET, and should not be viewed as a real-time update of the Fund's NAV.

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.

In addition, the Internet Web sites for the Fund and/or the Exchange will disseminate the NAV, Basket Amount, trading volume of the Shares, and other quantitative information related to the operation of the Fund and trading of the Shares. The Exchange has represented that the NAV and Basket Amount will be disseminated shortly after 4:00 p.m. ET each business day. The NAV will be made available to all market participants at the same time. The Commission notes that, if the NAV is not disseminated to all market participants at the same time, the Exchange has agreed to halt trading of the Shares.

In sum, the Commission believes that the availability of information about the underlying futures contracts, the Index, and the Shares should facilitate transparency with respect to the proposed Shares.

### 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,<sup>39</sup> and account opening and customer suitability requirements. Finally, the Commission notes that the Information Circular the Exchange will

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<sup>39</sup> For example, Commentary .07(e) to Amex Rule 1202 prohibits the specialist in the Shares from 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)(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.

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 Amended by Amendments No. 1 and 2 Thereto

The Commission finds good cause for approving the proposed rule change, as amended by Amendments No. 1 and 2, prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. The Exchange has requested the Commission to approve the proposal, as amended, on an accelerated basis, after a 15-day comment period, to enable investors to begin trading the Shares promptly. The Commission notes that the proposed rule change, as amended, was noticed for a 15-day comment period and no comments were received. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>40</sup> to approve the proposal, as amended, on an accelerated basis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-Amex-2006-44), as amended by Amendments No. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

Nancy M. Morris  
Secretary

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<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).