

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55484; File No. SR-NYSEArca-2006-67)

March 16, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto to Trade Shares of the PowerShares DB US Dollar Index Funds Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 6, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

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

The Exchange is proposing to trade shares ("Shares") of the PowerShares DB US Dollar Index Bullish Fund and the PowerShares DB US Dollar Index Bearish Fund (collectively the “Funds”) pursuant to unlisted trading privileges (“UTP”) under Commentary .02 to NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://nysearca.com>.

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

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

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

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

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

1. Purpose

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust issued receipts (“TIRs”) investing in shares or securities (“Investment Shares”) that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities.<sup>3</sup> The Commission previously approved a proposal to list and trade the Shares by the American Stock Exchange LLC (the “Amex”).<sup>4</sup>

The Exchange proposes to trade pursuant to UTP the Shares of the Funds under Commentary .02 to NYSE Arca Equities Rules 8.200. The Shares represent beneficial ownership interests in the corresponding common units of beneficial interests of the DB US

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<sup>3</sup> In April 2006, the Commission approved Commentary .02 to NYSE Arca Equities Rule 8.200, which sets forth the rules related to listing and trading criteria for Investment Shares, and approved trading pursuant to UTP the shares of the DB Commodity Index Tracking Fund. *See* Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22).

<sup>4</sup> See Securities Exchange Act Release No. 55292 (February 14, 2007), 72 FR 8406 (February 26, 2007) (the “Amex Order”).

Dollar Index Master Bullish Fund and the DB US Dollar Index Master Bearish Fund, respectively (collectively, the “Master Funds”).

The overall investment objective of each of the Funds and the Master Funds is to reflect the performance of their respective benchmark index, less expenses, plus the excess, if any, of the corresponding Master Fund’s interest income from its holdings of U.S. Treasury and other high credit quality short-term fixed income securities over its expenses. The Bullish Fund will seek to track the “Long Index” by investing in long positions in futures contracts (“DX Contracts”) on the U.S. Dollar Index® (USD<sup>®</sup>X) while the Bearish Fund will seek to track the “Short Index” by investing in short positions in DX Contracts on the USD<sup>®</sup>X (collectively, the “Indexes”). Both the Long Index and Short Index (collectively, the “Indexes”) are designed to reflect the return from investing in the first-to-expire DX Contract. DX Contracts are traded through the FINEX currency markets of the New York Board of Trade (“NYBOT”). As discussed more fully in the Amex Notice, the USD<sup>®</sup>X is composed of six underlying foreign currencies (the “Index Currencies”), and the value of the USD<sup>®</sup>X reflects a general indication of the international value of the U.S. Dollar (“USD”) by averaging the exchange rates between the USD and the Index Currencies.

The use of a long position in a DX Contract in the construction of the Long Index would cause the Long Index level to rise as a result of any upward price movement in the DX Contract. Conversely, the use of a short position in a DX Contract in the construction of the Short Index would cause the Short Index level to rise as a result of any downward price movement in the DX Contract. As a result, the performance of the Long Index and Short Index would reflect any rise or fall of the USD versus the underlying basket of Index Currencies.

## The Shares

Issuances of the Shares will be made only in one or more blocks of 200,000 Shares (each such block, a “Basket”). Each of the Funds will issue and redeem Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an “Authorized Participant”) with the Managing Owner at the net asset value (“NAV”) per Share next determined after an order to purchase a Basket is received in proper form. A Basket will be issued in exchange for a cash amount equal to the NAV per Share times 200,000 Shares (the “Cash Deposit Amount”). The Bank of New York (the “Administrator”) will determine the Cash Deposit Amount on each business day. An Authorized Participant that wishes to purchase a Basket must transfer the Cash Deposit Amount to the Administrator. 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.<sup>5</sup>

## Availability of Information About the Indexes, the Underlying DX Contracts and the Shares

As set forth in the Amex Order, information regarding the Shares will be available through the Amex, Deutsche Bank AG London (the “Index Sponsor”), and various independent sources. The Index Sponsor will calculate the values of the Indexes during the trading day and such values will be disseminated at least every 15 seconds through major market data vendors and the Index Sponsor’s website.<sup>6</sup> The Amex will also disseminate for each of the Funds on a

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<sup>5</sup> Pursuant to a telephone conversation between Andrew Stevens, Assistant General Counsel, NYSE and Ronesha A. Butler, Special Counsel, Division of Market Regulation (“Division”), Commission, on March 14, 2007, this paragraph was added to clarify the creation and redemption process for the Shares.

<sup>6</sup> Amex has represented that the Managing Owner would seek to arrange to have each Index calculated and disseminated at least every 15 seconds on a daily basis through a third party if the Index Sponsor ceases to calculate and disseminate an Index. If, however, the Managing Owner is unable to arrange the calculation and dissemination of any Index

per-Share basis an updated “Indicative Fund Value” (or “IFV”), which reflects the cash required for creations and redemptions for each Fund, adjusted to reflect the price changes of the DX Contracts and the holdings of U.S. Treasury securities and other high-credit-quality, short-term fixed income securities, at least every 15 seconds from 9:30 a.m. to 4:15 p.m. Eastern Time (“ET”). Shortly after 4:00 p.m. ET each business day, the Administrator will determine the NAV for each of the Funds, and the NAV per Share for each of the Funds will be disseminated to all market participants at the same time.<sup>7</sup>

According to the Amex Order, on each business day, the Administrator will make available immediately prior to the opening of trading on the Amex the most recent Cash Deposit Amount for the creation of a Basket, and the Amex will disseminate the current value of the Cash Deposit Amount on a per-Share basis at least every 15 seconds throughout the trading day. The daily settlement prices of the DX Contracts, specific contract specifications, and delayed futures contract information on current and past trading sessions, including futures quotes and last sale information, are publicly available on NYBOT’s website and on the websites of various market data vendors, news publications, automated quotation systems, or other financial information services.

The Amex also intends to disseminate on a daily basis for each of the Funds information with respect to the daily trading volume of each of the Shares, the number of Shares outstanding,

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value, the Amex has represented that it will undertake to delist the Shares related to such Index. In such case, the Exchange would halt trading such Shares. See Amex Order, supra note 4.

<sup>7</sup> The Amex has represented that if the NAV per Share for any Fund is not disseminated to all market participants at the same time, it would halt trading in the Shares of such Fund. See Amex Order, supra note 4.

the closing prices of each Fund's Shares, the corresponding NAV, and a hyperlink on its website to the Index Sponsor's website.

The Web site for the Funds is <http://www.dbfunds.db.com>. The Web site for the Funds and/or Amex, which is publicly accessible at no charge, will contain the following information: (1) the current NAV per Share daily, the prior business day's NAV, and the reported closing price; (2) 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"); (3) the calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus; and (6) other applicable quantitative information.

#### UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund if: (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or halt trading because the IFV or the value of the Index is no longer available at least every 15 seconds<sup>8</sup>; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. UTP trading in the Shares is also governed by the trading halts provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value (which would encompass the IFV) or the value of the underlying index.

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<sup>8</sup> The Exchange clarified and represented that, in addition to the requirements contained in NYSE Arca Equities Rule 7.12, the Exchange will halt trading if the IFV or the value of the Index is not longer available at least every 15 seconds. Telephone conversation between Andrew Stevens, Assistant General Counsel, NYSE and Ronesha A. Butler, Special Counsel, Division, Commission, on March 14, 2007.

## Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. until 4:15 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during this trading session. The minimum trading increment for Shares on the Exchange will be \$0.01.

The trading of the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. See “Surveillance” below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the DX Contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule<sup>9</sup> or by the halt or suspension of trading of the DX Contract. See “UTP Trading Criteria” above for specific instances when the Exchange will cease trading the Shares.

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<sup>9</sup> See NYSE Arca Equities Rule 7.12.

The Shares will not be subject to the short sale rule pursuant to a letter issued in response to a request for no-action advice under Rule 10a-1 under the Act.<sup>10</sup>

### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Further, trading in the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. Commentary .02(e)(4) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying physical asset or

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<sup>10</sup> See Letter to George T. Simon, Esq., Foley & Lardner LLP, from Racquel L. Russell, Branch Chief, Office of Trading Practices and Processing, Commission, dated June 21, 2006.

commodity, related futures or options on futures or any other related derivative (including the Shares). In addition, Commentary .02(e)(1) to NYSE Arca Equities Rule 8.200 prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying physical asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26. Commentary .02(e)(2)-(3) to NYSE Arca Equities Rule 8.200 requires that Market Makers handling the Shares provide the Exchange with all the necessary information relating to their trading in the underlying physical assets or commodities, related futures contracts and options thereon or any other derivative.

The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG, including NYBOT.<sup>11</sup>

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),<sup>12</sup> which imposes a duty of due diligence on its ETP Holders to

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<sup>11</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>12</sup> The Exchange recently amended NYSE Arca Equities Rule 9.2(a) (“Diligence as to Accounts”) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation.

learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IFV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from a Fund (by delivery of the corresponding Cash Deposit Amount) will receive a prospectus. ETP Holders purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day. The Bulletin will disclose that information about the Shares of each Fund and the corresponding Indexes will be publicly available on the Funds' Web site.

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See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>13</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>14</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, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the proposed rule change is consistent with Rule 12f-5<sup>15</sup> under the Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

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

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

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

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

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act.

Comments may be submitted by any of the following methods:

### Electronic comments:

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 17 CFR 240.12f-5.

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2006-67 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2006-67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2006-67 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>18</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>19</sup> The Commission notes that it previously approved the listing and trading of the Shares on the Amex.<sup>20</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>21</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented

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<sup>16</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78l(f).

<sup>19</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>20</sup> See Amex Order, supra note 4.

<sup>21</sup> 17 CFR 240.12f-5.

that it meets this requirement because it deems the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>22</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Finally, the Commission notes that, if the Shares should be delisted by the Amex, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in this session.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange. The Exchange may obtain information via the ISG from other exchanges who are members or affiliates of the ISG, including NYBOT. In addition, to facilitate surveillance, the Exchange represents that trading in the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200.

3. The Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

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<sup>22</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

4. The Exchange will require its ETP Holders to deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading the Shares of a Fund if: (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IFV or the value of the applicable Index is no longer available at least every 15 seconds; or (b) the listing market delists the Shares.

6. The Exchange will halt trading as provided in NYSE Arca Equities Rule 7.34.

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

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of the Shares on the Amex is consistent with the Act.<sup>23</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

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<sup>23</sup> See Amex Order, supra note 4.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NYSEArca-2006-67), as modified by Amendment No. 1 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).