

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53736; File No. SR-PCX-2006-22)

April 27, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Trading of the DB Commodity Index Tracking Fund Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 3, 2006, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (“Exchange”),<sup>3</sup> through its wholly owned subsidiary PCX Equities, Inc. (n/k/a NYSE Arca Equities, Inc.) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposed rule change on an accelerated basis.

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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> On March 6, 2006, the Pacific Exchange, Inc. (“PCX”), filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect Archipelago’s recent acquisition of PCX and the merger of the NYSE with Archipelago. See File No. SR-PCX-2006-24. All references herein have been changed to reflect these transactions. Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, on March 10, 2006.

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

The Exchange, through its wholly-owned subsidiary, NYSE Arca Equities, Inc., proposes to amend its rules governing the Archipelago Exchange (n/k/a NYSE Arca MarketPlace), the equities trading facility of NYSE Arca Equities Inc. The Exchange proposes new Commentary .02 to NYSE Arca Equities, Inc. Rule 8.200 in order to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”), shares of trust issued receipts (“TIRs”) where the trust holds shares or securities (“Investment Shares”) that are issued by a trust, partnership, commodity pool or other similar entity that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps,<sup>4</sup> or high credit quality short-term fixed income securities or other securities. The Exchange also proposes to trade, pursuant to UTP, shares (“Shares”) of the DB Commodity Index Tracking Fund (“Fund”) that invests in the securities of a commodity pool. The text of the proposed rule change is included below. Proposed new language is underlined.

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**Rules of PCX Equities, Inc.**

**Trust Issued Receipts**

**Rule 8.200 (a) through (f).** No Change

**Commentary .01.** No Change

**Commentary .02**

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<sup>4</sup> Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Florence E. Harmon, Senior Special Counsel, Division, Commission, on April 26, 2006 (adding “swaps” to description).

(a) The provisions of this Commentary apply only to Trust Issued Receipts that invest in “Investment Shares” as defined below. Rules that reference Trust Issued Receipts shall also apply to Trust Issued Receipts investing in Investment Shares.

(b) Definitions. The following terms as used in this Commentary shall, unless the context otherwise requires, have the meanings herein specified:

(1) Investment Shares. The term "Investment Shares" means a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests 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; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.

(2) Futures Contract. The term “futures contract” is commonly known as a “contract of sale of a commodity for future delivery” set forth in Section 2(a) of the Commodity Exchange Act.

(3) Forward Contract. A forward contract is a contract between two parties to purchase and sell a specific quantity of a commodity at a specified price with delivery and settlement at a future date. Forwards are traded over-the-counter (“OTC”) and not listed on a futures exchange.

(c) Designation. The Corporation may list and trade Trust Issued Receipts investing in Investment Shares. Each issue of a Trust Issued Receipt based on a particular Investment Share shall be designated as a separate series and shall be identified by a unique symbol.

(d) Initial and Continued Listing. Trust Issued Receipts based on Investment Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) Initial Listing--The Corporation will establish a minimum number of receipts required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Listing—The Corporation will consider removing from listing Trust Issued Receipts based on an Investment Share under any of the following circumstances:

(i) if following the initial twelve month period following the commencement of trading of the shares, (A) the Issuer has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (B) if the Issuer has fewer than 50,000 securities or shares issued and outstanding; or (C) if the market value of all securities or shares issued and outstanding is less than \$1,000,000;

(ii) if the value of an underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis or the Corporation stops providing a hyperlink on its website to any such asset or investment value;

(iii) if the Indicative Value is no longer made available on at least a 15-second delayed basis; or

(iv) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of the Trust, the Corporation requires that Trust Issued Receipts issued in connection with such Trust be removed from Corporation listing. A Trust may

terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

(3) Term -- The stated term of the Trust shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee--The following requirements apply:

(i) The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(ii) No change is to be made in the trustee of a listed issue without prior notice to and approval of the Corporation.

(5) Voting--Voting rights shall be as set forth in the applicable Trust prospectus.

(e) Market Maker Accounts.

(1) An ETP Holder acting as a registered Market Maker in Trust Issued Receipts is obligated to comply with PCXE Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Trust Issued Receipts only, Other Business Activities shall include trading in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. However, an approved person of an ETP Holder acting as a registered Market Maker in Trust Issued Receipts that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the

ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a Market Maker in the Trust Issued Receipts on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

(2) The ETP Holder acting as a registered Market Maker in Trust Issued Receipts must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Trust Issued Receipts shall trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Corporation as required by this Rule.

(3) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Trust Issued Receipts shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(4) In connection with trading the underlying physical asset or commodity, related

futures or options on futures or any other related derivative (including Trust Issued Receipts), the ETP Holder acting as a registered Market Maker in Trust Issued Receipts shall not use 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 physical asset or commodity, futures or options on futures, or any other related derivatives.

(f) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the Trust in connection with issuance of Trust Issued Receipts; net asset value; or other information relating to the purchase, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying asset or commodity.

(g) The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading Trust Issued Receipts based on separate Investment Shares.

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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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange proposes to add new Commentary .02 to NYSE Arca Equities, Inc. Rule 8.200 in order to permit trading, either by listing or pursuant to UTP, shares of TIRs that invest in Investment Shares. The Exchange also proposes to trade Shares of the Fund pursuant to UTP. The Commission previously approved the original listing and trading of the Shares by the American Stock Exchange LLC ("Amex").<sup>5</sup>

The Shares of the Fund represent beneficial ownership interests in the Fund's net assets, consisting solely of the common units of beneficial interests of the DB Commodity Index Tracking Master Fund ("Master Fund"). Each Share of the Fund will correlate with a Master Fund share issued by the Master Fund and held by the Fund. The investment objective of each of the Fund and the Master Fund is to reflect the performance of the Deutsche Bank Liquid Commodity Index™ - Excess Return ("DBLCI" or "Index"), less the expenses of the operations of the Fund and the Master Fund. The Fund will pursue its investment objective by investing

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<sup>5</sup> See Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (order granting accelerated approval to SR-Amex-2005-059) ("Amex Order").



substantially all of its assets in the Master Fund. The Fund will hold no investment assets other than Master Fund Units.<sup>6</sup> The Master Fund will pursue its investment objective by investing primarily in a portfolio of futures contracts on the commodities comprising the Index, which are crude oil, heating oil, aluminum, gold, corn and wheat (“Index commodities”). The Master Fund will also hold cash and U.S. Treasury securities for deposit with futures commission merchants for margin purposes and other high credit quality short-term fixed income securities.

(a) **TIRs That Invest in Investment Shares and the Shares**

Commentary .02 to NYSE Arca Equities, Inc. Rule 8.200 is intended to accommodate possible future listing and trading of TIRs that invest in Investment Shares. Any new listing or trading of an issue of such TIRs will be subject to the approval of a proposed rule change by the Commission pursuant to Section 19(b)(2) of the Act and Rule 19b-4 thereunder.<sup>7</sup>

A description of the DBLCI, commodity futures contracts and related options, operation of the Fund, and the Shares is set forth in the Amex Order. To summarize, issuances of Shares will be made only in baskets of 200,000 Shares or multiples thereof (“Basket Aggregation” or “Basket”). The Fund will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an “Authorized Participant”)<sup>8</sup> with the Fund and its Managing Owner<sup>9</sup>, at the net asset value (“NAV”) per Share determined

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<sup>6</sup> See Pre-Effective Amendment No. 4 to the Fund’s Form S-1, Registration No. 333-125325, dated October 26, 2005.

<sup>7</sup> 17 CFR 240-19b-4.

<sup>8</sup> An “Authorized Participant” is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets: (i) is a registered broker-dealer; (ii) is a Depository Trust Company Participant or an Indirect Participant; and (iii) has in effect a valid Participant Agreement with the Fund issuer.

<sup>9</sup> The Managing Owner is DB Commodity Services LLC, a Delaware limited liability company that will be registered with the Commodity Futures Trading Commission as a

shortly after 4:00 p.m. Eastern time (“ET”) or the last to close futures exchanges on which the Index commodities are traded, whichever is later, on the business day on which an order to purchase the Shares in one or more Baskets is received in proper form.

Shortly after 4:00 p.m. ET each business day, The Bank of New York (“Administrator”) will determine the NAV for the Fund and Master Fund, utilizing the current day’s settlement value of the particular commodity futures contracts in the Master Fund’s portfolio and the value of the Master Fund’s cash and high-credit quality, short-term fixed income securities. However, if a futures contract on a trading day cannot be liquidated due to the operation of daily limits or other rules of an exchange upon which such futures contract is traded, the settlement price on the most recent trading day on which the futures contract could have been liquidated will be used in determining the Fund’s and the Master Fund’s NAV. Accordingly, for both U.S. and non-U.S. futures contracts, the Administrator will typically use that day’s futures settlement price for determining NAV. The calculation methodology for the NAV is described in more detail in the Amex Order.

Baskets will be issued in exchange for an amount of cash equal to the NAV per Share times 200,000 Shares (“Basket Amount”) on the purchase order date. The Basket Amount and NAV usually will be determined on each business day by the Administrator shortly after 4:00 p.m. ET. Baskets are issued as of 12:00 noon ET, on the business day immediately following the purchase order date (T+1) at NAV per Share on the purchase order date if the required payment

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commodity pool operator and commodity trading advisor. The Managing Owner is an affiliate of Deutsche Bank AG, the sponsor of the Fund and Master Fund. The Managing Owner will serve as the commodity pool operator and commodity trading advisor of the Fund and the Master Fund and will manage and control all aspects of the business of the Funds.

has been timely received. Authorized Participants that wish to purchase a Basket must transfer the Basket Amount to the Fund in exchange for a Basket. Baskets are then separable upon issuance into the Shares that will be traded on NYSE Arca MarketPlace on a UTP basis.<sup>10</sup>

The Shares will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (i.e., 200,000 Shares). Authorized Participants that wish to redeem a Basket will receive the Basket Amount in exchange for each Basket surrendered. The operation of the Fund and creation and redemption process is described in more detail in the Amex Order.

**(b) Dissemination of Information About the Shares and Underlying Futures Contracts**

The value of the Index will be calculated and published by its sponsor, Deutsche Bank AG London (“DB London”), at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET through Bloomberg, Reuters, and other market data vendors. In addition, the Index value will be available on DB London’s Web site at <http://index.db.com> and on the Fund’s Web site at <http://www.dbcfund.db.com> on a 20 minute delayed basis.<sup>11</sup> The closing Index level will

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<sup>10</sup> Shares are separate and distinct from the shares of the Master Fund. The Master Fund’s assets will consist of long positions in the futures contracts on the commodities comprising the DBLCI. The Exchange expects that the number of outstanding Shares will increase and decrease from time to time as a result of creations and redemptions of Baskets.

<sup>11</sup> The Exchange will provide a hyperlink from its Web site at <http://www.archipelago.com> to the Fund’s Web site <http://www.dbcfund.db.com> and the DB London Web site <http://www.index.db.com>.

similarly be provided by DB London and the Fund. In addition, any adjustments or changes to the Index will also be provided by DB London and the Fund on their respective Web sites.<sup>12</sup>

The closing prices and daily settlement prices for the futures contracts held by the Master Fund are publicly available on the Web sites of the futures exchanges trading the particular contracts. The particular futures exchange for each futures contract with Web site information is as follows: (i) aluminum – London Metal Exchange (“LME”) at <http://www.lme.com>; (ii) corn and wheat – Board of Trade of the City of Chicago, Inc. (“CBOT”) at <http://www.cbot.com>; and (iii) crude oil, heating oil and gold – New York Mercantile Exchange (“NYMEX”) at <http://www.nymex.com>. The Exchange on its Web site at <http://www.archipelago.com><sup>13</sup> will include a hyperlink to DB London’s Web site at <https://index.db.com>, which will contain hyperlinks to each of the futures exchanges Web sites for the purpose of disclosing futures contract pricing. 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 commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange represents that complete real-time data for such futures is available by subscription from Reuters and

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<sup>12</sup> According to the Amex Order, DB London, the sponsor of the Index, 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 DB London, 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 recomposition of the Index. The Index is not calculated by a broker-dealer.

<sup>13</sup> NYSE Arca Inc.’s new Web site is <http://www.nysearca.com>. Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Florence E. Harmon, Senior Special Counsel, Division, Commission, on March 20, 2006.

Bloomberg. The CBOT, LME, and NYMEX also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

The Web site for the Fund <http://www.dbcfund.db.com> (to which the Exchange will link), which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price<sup>14</sup> in relation to the NAV as of the time the NAV is calculated ("Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the prospectus; and (f) other applicable quantitative information. Quotations for and last sale information regarding the Shares will be disseminated via the CTA/CQS.<sup>15</sup>

As described above, the NAV for the Fund will be calculated and disseminated daily. The Amex also intends to disseminate, from 9:30 a.m. to 4:15 p.m. ET, for the Fund on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Fund Value ("IFV"), recent NAV, and Shares outstanding. The Amex will also make available on its Web site daily trading volume, closing prices, and the NAV.

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<sup>14</sup> The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

<sup>15</sup> Telephone Conference between David Strandberg, Director, NYSE Arca Equities Inc., and Florence E. Harmon, Senior Special Counsel, Division ("Division"), Commission, on March 21, 2006.

As noted above, the Administrator calculates the NAV of the Fund once each trading day. In addition, the Administrator causes to be made available on a daily basis the amount of cash to be deposited in connection with the issuance of the Shares in Basket Aggregations. In addition, other investors can request such information directly from the Administrator.

In order to provide updated information relating to the Fund for use by investors, professionals, and persons, the Amex will disseminate through the facilities of CTA an updated IFV as noted above and in the Amex Order. The IFV will be disseminated on a per Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The IFV will be calculated based on the cash required for creations and redemptions (i.e., NAV x 200,000) adjusted to reflect the price changes of the Index commodities through investments held by the Master Fund, i.e., futures contracts.

The IFV will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the Exchange. The value of a Share may accordingly be influenced by non-concurrent trading hours between the Exchange and the various futures exchanges on which the futures contracts based on the Index commodities are traded.

While the market for futures trading for each of the Index commodities is open, the IFV can be expected to closely approximate the value per Share of the Basket Amount. However, during Exchange trading hours 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. IFV on a per Share basis should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the IFV based on the cash amount required for a Basket Aggregation 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.

(c) **Continued Listing and UTP Criteria**

While the Exchange immediately seeks to UTP the Shares, the Exchange is also adopting general initial and continued listing standards applicable to all TIRs that invest in Investment Shares in the event the Exchange were to list such TIRs. In such an event, the Exchange would still file a Form 19b-4 to list such TIRs. However, such continued listing standards include the following items. When the Exchange is the primary listing exchange for a trust that issues TIRs that invest in Investment Shares, the trust will be subject to the continued trading criteria under proposed Commentary .02(d) to NYSE Arca Equities, Inc. Rule 8.200. In particular, the proposed continued listing criteria provide that the Exchange may consider delisting or removal from listing of such TIRs under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the TIRs: (a) if the fund has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the TIRs for 30 or more consecutive trading days; (b) if the fund has fewer than 50,000 TIRs issued and outstanding; or (c) if the market value of all TIRs is less than \$1,000,000.
- If the value of the underlying index or portfolio is no longer calculated or available on at least a 15-second basis through one or more major market data vendors during the time the TIRs trade on the Exchange.

- The IFV is no longer made available on at least a 15-second basis.
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove TIRs from listing and trading upon termination of the fund.

Since, in this case, the Exchange is trading the Shares pursuant to UTP, then the Exchange will cease trading in the Shares if: (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities, Inc. Rule 7.12 or a halt because the IFV or the underlying value of the Index is no longer available; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares pursuant to UTP if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

**(d) Trading Rules**

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund Shares subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities, Inc. Rule 7.34(a), except that the Shares will not be eligible to trade during the Opening Session (4:00 a.m. to 9:30 a.m. ET) or the Late Trading Session (4:15 p.m. to 8:00 p.m. ET). The minimum trading increment for Shares on the Exchange will be \$0.01.

Further, the Exchange has proposed new Commentary .02(e)(1)-(4) to NYSE Arca Equities, Inc. 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, Inc. Rule 8.200 will require 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, Inc. Rule 8.200 will prohibit the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying physical asset or commodity, related futures or options on futures or any other related derivative (including the Shares). In addition, as stated above, Commentary .02(e)(1) to NYSE Arca Equities, Inc. Rule 8.200 will prohibit 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, Inc. Rule 7.26.

Adoption of Commentary .02(e)(2)-(3) to NYSE Arca Equities, Inc. Rule 8.200 will also ensure that Market Makers 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 ETP Holders and their associated persons, which includes any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder 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.

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 on the Exchange in the Shares 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: (a) the extent to which trading is not occurring in the underlying futures contracts; or (b) 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>16</sup> or by the halt or suspension of the trading of the underlying related futures contracts.

If the Exchange is the listing market for TIRs that invest in Investment Shares, the Exchange will halt trading in the TIRs if: (a) the value of the underlying Index updated at least every 15 seconds from a source not affiliated with the sponsor, trust, or the Exchange is no longer available; (b) the IFV per Share updated at least every 15 seconds is no longer available; or (c) the Exchange stops providing on the Exchange's Web site, via a hyperlink to the fund's Web site, such Index value and IFV per Share.

As noted above, if the Exchange is trading the TIRs pursuant to UTP, such as the Shares, the Exchange will cease trading the TIRs if: (a) the listing market stops trading the TIRs because of a regulatory halt similar to NYSE Arca Equities, Inc. Rule 7.12 or a halt because the IFV or the underlying Index value is no longer available; or (b) the listing market delists the TIRs.

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<sup>16</sup> See NYSE Arca Equities, Inc. Rule 7.12.

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

The Commission exempted the Shares from the short sale rule, Rule 10a-1 and gave no-action relief from Rule 200(g) of Regulation SHO under the Act<sup>17</sup> and granted certain other exemptive and no-action relief.<sup>18</sup>

**(e) Surveillance**

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products and shares of the streetTRACKS Gold Trust<sup>19</sup> to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

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. The Exchange is able to obtain information regarding trading

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<sup>17</sup> 17 CFR 242.200(g).

<sup>18</sup> See letter dated January 19, 2006 from James A. Brigagliano, Division, Commission, to Michael Schmidtberger, Sidley Austin Brown & Wood LLP.

<sup>19</sup> See Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731-01 (March 4, 2005) (approving the trading of shares of the streetTRACKS Gold Trust pursuant to UTP). See also Securities Exchange Act Release No. 53261 (February 2, 2006), 71 FR 8328 (February 16, 2006) (proposing the trading of shares of the streetTRACKS Gold Trust pursuant to UTP during all ArcaEx trading sessions).

in the Shares and the underlying futures contracts through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including the CBOT. In addition, the Exchange has Information Sharing Agreements in place with NYMEX and LME.

**(f) Information Bulletin**

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (b) NYSE Arca Equities, Inc. Rule 9.2(a),<sup>20</sup> which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IFV is disseminated; (d) 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 (e) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund (by delivery of the Basket Amount) will receive a prospectus. ETP

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<sup>20</sup> The Exchange has proposed to amend NYSE Arca Equities, Inc. 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 that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. See Amendment No. 1 to SR-PCX-2005-115 (November 21, 2005).

Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn and wheat, or the futures contracts on which the value of the Shares is based.

The Information Bulletin will also disclose that the NAV for Shares will be calculated shortly after 4:00 p.m. ET each trading day and that other information will be publicly available about the Shares and underlying Index.

The Information Bulletin will also discuss any relief granted by the Commission or the staff from any rules under the Act.

## 2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>21</sup> in general and furthers the objectives of Section 6(b)(5)<sup>22</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

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<sup>21</sup> 15 U.S.C. 78s(b).

<sup>22</sup> 15 U.S.C. 78s(b)(5).

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act<sup>23</sup> because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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

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

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

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

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2006-22 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.

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<sup>23</sup> 17 CFR 240.12f-5.

All submissions should refer to File Number SR-PCX-2006-22. 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-PCX-2006-22 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>24</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>25</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

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<sup>24</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>25</sup> 15 U.S.C. 78f(b)(5).

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>26</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>27</sup> The Commission notes that it previously approved the listing and trading of the Shares on the Amex.<sup>28</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>29</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. NYSE Arca Equities, Inc. rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.<sup>30</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>31</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding Shares will

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

<sup>27</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>28</sup> See note 5, *supra*.

<sup>29</sup> 17 CFR 240.12f-5.

<sup>30</sup> See NYSE Arca Equities, Inc. Rule 7.34.

<sup>31</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).



be disseminated via the CTA/CQS. Furthermore, as noted by the Exchange, futures quotes and last sale information – both real-time and delayed -- for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. As described above, the NAV for the Fund will be calculated and disseminated daily. The Amex also intends to disseminate, from 9:30 a.m. to 4:15 p.m. ET, for the Fund on a daily basis by means of CTA/CQ High Speed Lines information with respect to the IFV, recent NAV, and Shares outstanding. The Amex will also make available on its Web site daily trading volume, closing prices, and the NAV. Additionally, in order to provide updated information relating to the Fund for use by investors, professionals, and persons, the Amex will disseminate through the facilities of CTA an updated IFV as noted above and in the Amex Order. The IFV will be disseminated on a per Share basis at least every 15 seconds from 9:30 a.m. to 4:15 p.m. ET.

In connection with the Exchange's UTP of the Shares, the Exchange will cease trading in the Shares if: (a) the listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities, Inc. Rule 7.12 or a halt because the ITV or the value of the underlying value of the Index is no longer available; or (b) if the primary market delists the Shares. The Commission notes that, if Shares were to be delisted by Amex, the Exchange would no longer have authority to trade the Shares pursuant to this order.

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

1. NYSE Arca, Inc. has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. NYSE Arca, Inc. surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. NYSE Arca, Inc. will distribute an Information Bulletin to its ETP Holders prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.

4. NYSE Arca, Inc. will require that investors purchasing newly-issued Shares will receive a prospectus and that ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

5. The Exchange will also cease trading in the Shares pursuant to UTP if: (a) the listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities, Inc. 7.12 or a halt because the ITV or the value of the underlying Index is no longer available as described in the Amex Order; or (b) if the primary market delists the Shares.<sup>32</sup>

With respect to the trading of these Shares pursuant to UTP, this approval order is conditioned on NYSE Arca, Inc.'s adherence to these representations.

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of these Shares on the Amex is consistent with the Act.<sup>33</sup> The Commission presently is not aware of any issue that would cause

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<sup>32</sup> If the Exchange is the listing market for TIRs that invest in Investment Shares, the Exchange will halt trading in the TIRs if: (1) the value of the underlying Index updated at least every 15 seconds from a source not affiliated with the sponsor, trust, or the Exchange is no longer available; (2) the IFV per Share updated at least every 15 seconds is no longer available; or (3) the Exchange stops providing on the Exchange's Web site, via a hyperlink to the fund's Web site, such Index value and IFV per Share.

<sup>33</sup> See Amex Order.

it to revisit that earlier finding or preclude the trading of these Shares on the Exchange pursuant to UTP. The Commission also notes that Commentary .02 to NYSE Arca Equities, Inc. Rule 8.200 is substantially similar to rules previously approved by the Commission for other SROs.<sup>34</sup> Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR-PCX-2006-22), is approved on an accelerated basis.

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

Nancy M. Morris  
Secretary

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<sup>34</sup> See Amex Rule 1200A *et seq.*

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

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