

such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to the following e-mail address: [FR0606@ustr.eop.gov](mailto:FR0606@ustr.eop.gov), with "China Special Provincial Review" in the subject line, or (ii) by fax, to (202) 395-9458, with a confirmation copy sent electronically to the e-mail address above.

**Public Inspection of Submissions:** Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395-6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55110; File No. SR-Amex-2006-86]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to the Listing and Trading of Shares of the PowerShares DB U.S. Dollar Index Bullish Fund and the PowerShares DB U.S. Dollar Index Bearish Fund

January 16, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 13, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Amex. On November 17, 2006, Amex filed Amendment No. 1 to the proposed rule change. On December 19, 2006, Amex filed Amendment No. 2 to the proposed rule change. On January 12, 2007, Amex filed Amendment No. 3 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Pursuant to Commentary .07 to Amex Rule 1202, which permits the listing and trading of shares of trust-issued receipts ("TIRs") that invest in shares or securities (the "Investment Shares") issued by 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 Exchange seeks to list and trade shares of the PowerShares DB U.S. Dollar Index Bullish Fund (the "Bullish Fund") and the PowerShares DB U.S. Dollar Index Bearish Fund (the "Bearish Fund," and together with the Bullish Fund, collectively, the "Funds").

The text of the proposal is available at Amex, at the Commission's Public Reference Room, and on Amex's Web site at <http://www.amex.com>.

<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, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

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

###### 1. Purpose

Pursuant to Commentary .07 to Amex Rule 1202, the Exchange may approve for listing and trading TIRs investing in Investment Shares that hold investments in any combination of securities, futures contracts, options on futures contracts, swaps, forward contracts, commodities, or portfolios of investments. Amex proposes to list for trading the shares of the Bullish Fund and the Bearish Fund (the "Shares"), which represent beneficial ownership interests in the corresponding common units of beneficial interests of the DB U.S. Dollar Index Master Bullish Fund (the "Master Bullish Fund") and the DB U.S. Dollar Index Master Bearish Fund (the "Master Bearish Fund," and together with the Master Bullish Fund, collectively, the "Master Funds"), respectively.

The PowerShares DB U.S. Dollar Index Trust (the "Trust") is organized as a Delaware statutory trust with each of the Funds representing a series of the Trust. The DB U.S. Dollar Index Master Trust (the "Master Trust") is also organized as a Delaware statutory trust with each of the Master Funds representing a series of the Master Trust.

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<sup>®</sup> (USD<sup>®</sup>). The Bearish Fund will seek to track the "Short Index" by investing in short positions in DX Contracts on the USD<sup>®</sup>.

Both the Long and Short Indexes (collectively, the "Indexes") are designed to reflect the performance of the nearest expiration month DX Contract on the USD<sup>®</sup>. The Long Index is created by taking a long position in a DX Contract. As a result, the Long Index will reflect the performance of the DX Contract, *i.e.*, the percentage gain or loss sustained by the DX Contract. Conversely, the Short Index is created by taking a short position in a DX Contract. The Short Index will reflect the inverse of the performance of the DX Contract, *i.e.*, the inverse of the percentage gain or loss sustained by the DX Contract. The Master Bullish Fund will invest in long positions in DX Contracts, while the Master Bearish Fund will invest in short positions in DX Contracts. Each of the Funds and each of the Master Funds are commodity pools operated by DB Commodity Services LLC (the "Managing Owner"). The Managing Owner is registered as a commodity pool operator ("CPO") and commodity trading advisor ("CTA") with the Commodity Futures Trading Commission ("CFTC") and a member of the National Futures Association ("NFA").

The Master Funds will include U.S. Treasury securities for margin purposes and other high-credit-quality, short-term fixed income securities. The Exchange states that the Master Funds are not "actively managed," which typically means effecting changes in the composition of a portfolio on the basis of judgment relating to economic, financial, and market considerations with a view to obtaining positive results under all market conditions. Rather, the Master Funds seek to track the performance of their respective Indexes. The Exchange submits that Commentary .07 to Amex Rule 1202 accommodates the listing and trading of the Shares.

#### Introduction

In January 2006, the Commission approved Commentary .07 to Amex Rule 1202, which expanded the ability of the Exchange to list and trade TIRs based on a portfolio of underlying investments.<sup>3</sup> The Exchange recently commenced the trading of shares of both the PowerShares DB Commodity Index Tracking Fund<sup>4</sup> and the PowerShares DB G10 Currency Harvest Fund (formerly known as the DB Currency Index Value Fund)<sup>5</sup> pursuant to this

<sup>3</sup> See Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006).

<sup>4</sup> See *id.* (approving the listing and trading of the DB Commodity Index Tracking Fund).

<sup>5</sup> See Securities Exchange Act Release No. 54450 (September 14, 2006), 71 FR 55230 (September 21,

Commentary .07 to Amex Rule 1202. The Exchange notes that the Commission has permitted Amex to list and trade other products linked to the performance of underlying currencies and commodities.<sup>6</sup> In the instant proposal, the Exchange proposes to list and trade the Shares pursuant to such rule.

Under Commentary .07(c) to Amex Rule 1202, the Exchange may list and trade TIRs investing in Investment Shares such as the Shares. The Shares will conform to the initial and continued listing criteria under Commentary .07(d) to Amex Rule 1202. Each of the Funds will be formed as a separate series of a Delaware statutory trust pursuant to a Certificate of Trust and a Declaration of Trust and Trust Agreement among Wilmington Trust Company, as trustee, the Managing Owner, and the holders of the Shares.<sup>7</sup>

#### Description of the Indexes

Both the Long Index and Short Index are designed to reflect the return from investing in the first-to-expire (*i.e.*, nearest-expiration-month) DX Contract, whose performance is tied to the USD<sup>®</sup>. The first-to-expire DX Contract is the futures contract that expires in March, June, September, or December. DX Contracts are traded through the FINEX currency markets of the New York Board of Trade ("NYBOT").<sup>8</sup>

2006) (approving the listing and trading of shares of the PowerShares DB G10 Currency Harvest Fund, formerly known as the DB Currency Index Value Fund).

<sup>6</sup> See, *e.g.*, Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (approving the listing and trading of shares of the United States Oil Fund, LP); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (approving the listing and trading of shares of the iShares Silver Trust); 53059 (January 5, 2006), 71 FR 2072 (January 12, 2006) (approving the listing and trading of shares of the Euro Currency Trust); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of shares of the iShares COMEX Gold Trust); and 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving the listing and trading of shares of the streetTRACKS Gold Shares).

<sup>7</sup> The Trust and the Funds will not be subject to registration and regulation under the Investment Company Act of 1940 (the "1940 Act").

<sup>8</sup> The DX Contract is a futures contract tied to the USD<sup>®</sup> that is traded on NYBOT. The DX Contracts have been trading on NYBOT since 1985. The contract calls for the receipt/delivery of the underlying six component currencies, or "Index Currencies" (as defined herein), of the USD<sup>®</sup>. The trading session for the DX Contract on NYBOT is from 8:05 a.m. to 3 p.m. Eastern time ("ET"). Futures contracts on the USD<sup>®</sup> are also traded in Dublin, Ireland, through the FINEX Europe market from 7 p.m. to 10 p.m. ET and from 2 a.m. to 8:05 a.m. ET. Liquidity of the DX Contract is derived from the underlying foreign exchange market with respect to each Index Currency. The daily average volume of the foreign currency exchange market as calculated by the Bank for International Settlements (BIS) is approximately \$1.2 trillion (for the three-

The Long Index is created by taking a long position in a DX Contract. As a result, the Long Index will reflect the performance of the DX Contract, *i.e.*, the percentage gain or loss sustained by the DX Contract. The use of long positions in DX Contracts in the construction of the Long Index will cause the Long Index level to rise as a result of any upward price movement in the DX Contracts. This would reflect any rise of the U.S. Dollar ("USD") versus the underlying basket of Index Currencies (as defined herein). An example of the Long Index methodology is as follows: Assume that the USD<sup>®</sup> index level is 100, and the price of the DX Contract is currently \$2. The notional DX Contract amount (or number of DX contracts bought for the Long Index) would be 50. The DX Contract value would be 50 multiplied by \$2 and equal to the USD<sup>®</sup> level. In the case of the Long Index, 50 DX Contracts would be purchased in order to be fully invested. The Long Index would accordingly be adjusted to account for the long position in the additional DX Contracts. The calculation of the Long Index level each trading day would be as follows: Long Index level = Number of DX Contracts<sub>t-1</sub> × (DX Contract Price<sub>t</sub> - DX Contract Price<sub>t-1</sub>) + Long Index level<sub>t-1</sub>. For purposes of the example, the Long Index level would be calculated to be 125, where the number of DX Contracts<sub>t-1</sub> is 50 (Long Index level<sub>t-1</sub>/DX Contract Price<sub>t-1</sub>), the DX Contract Price<sub>t</sub> is 2.5, the DX Contract Price<sub>t-1</sub> is 2, and the Long Index level<sub>t-1</sub> is 100.<sup>9</sup>

Conversely, the Short Index is created by taking a short position in a DX Contract. The Short Index will reflect the inverse of the performance of the DX Contract, *i.e.*, the inverse of the percentage gain or loss sustained by the DX Contract. The use of short positions in DX Contracts in the construction of the Short Index causes the Short Index level to rise as a result of any downward price movement in the DX Contracts. This would reflect any fall of the USD versus the underlying basket of Index Currencies. Using the example above, 50 DX Contracts would be sold to maintain

year period from 1999–2001). The Index Currencies account for approximately 94.5% of that daily volume. The minimum price movement of a DX Contract is .01 of an USD<sup>®</sup> point, or \$10.00 per DX Contract. The settlement value of the underlying USD<sup>®</sup> is computed using a trade-weighted geometric average of the six component currencies (as described in more detail herein). The Exchange states that NYBOT's Web site contains additional information regarding the DX Contracts at <http://www.nybot.com>.

<sup>9</sup> The Exchange notes that the example applies if <sub>t-1</sub> is an Index Roll Day (as defined herein). For all other days the number of DX Contracts held is equal to the number of contracts held on the previous business day.

the appropriate short position in the DX Contract. The calculation of the Short Index level each trading day would similarly be as follows: Short Index level = Number of DX Contracts<sub>t-1</sub> × (DX Contract Price<sub>t</sub> – DX Contract Price<sub>t-1</sub>) + / – Short Index level<sub>t-1</sub>. The only difference in the case of the Short Index is that the DX Contract value would be negative due to the short position in the DX Contract. For purposes of the example, the Short Index level would be calculated to be 75, where the number of DX Contracts<sub>t-1</sub> is – 50 (Short Index level<sub>t-1</sub>/DX Contract Price<sub>t-1</sub>), the DX Contract Price<sub>t</sub> is 2.5, the DX Contract Price<sub>t-1</sub> is 2, and the Short Index level<sub>t-1</sub> is 100.<sup>10</sup> Due to the “rolling” characteristic of the Long and Short Indexes (as described in more detail herein), the potential returns will be compounded, unlike a traditional futures contract, which would expire at the end of its term.

The performance of the DX Contracts is related to the six underlying currencies (the “Index Currencies”) of the USD<sup>®</sup>. The Index Currencies are the Euro, Japanese Yen, British Pound, Canadian Dollar, Swedish Krona, and Swiss Franc. These currencies represent the currencies of the major trading partners of the United States. The USD<sup>®</sup> is composed of notional amounts of each Index Currency reflecting a geometric average of the change in the Index Currencies’ exchange rates against the USD relative to those as of March 1973.<sup>11</sup> The USD<sup>®</sup> provides a general indication of the international value of the USD by averaging the exchange rates between the USD and the Index Currencies. The USD<sup>®</sup> is calculated 24 hours a day based on exchange rates supplied to Reuters by 500 banks worldwide.

The sponsor of the Indexes is Deutsche Bank AG London (the “Index Sponsor”). The Indexes are calculated by the Index Sponsor during the trading day on the basis of the most recently reported trade price for the DX Contract.<sup>12</sup> The market value of the

Indexes during the trading day will be equal to the number of DX Contracts represented in the Indexes, multiplied by the real-time DX Contract price. As described below, the Index levels will be calculated and disseminated at least every 15 seconds.<sup>13</sup> The closing level of the Indexes is calculated by the Index Sponsor on the basis of the closing price for the DX Contract and applying such price to the relevant notional amount. The Indexes include provisions for the replacement of expiring DX Contracts. The DX Contracts will be rolled quarterly on the Index Roll Day, which is defined as the Wednesday prior to the applicable IMM Date.<sup>14</sup> The procedure for replacing expiring DX Contracts occurs as follows: (1) The DX Contract that expires on the next IMM Date is sold, and (2) a position in the DX Contract that expires on the IMM Date following the next IMM Date is purchased.

The following table reflects the base weights for each Index Currency as of March 1973 with respect to the USD<sup>®</sup>:

| Index currency        | Base weight (%) |
|-----------------------|-----------------|
| Euro .....            | 57.60           |
| Japanese Yen .....    | 13.60           |
| British Pound .....   | 11.90           |
| Canadian Dollar ..... | 9.10            |
| Swedish Krona .....   | 4.20            |
| Swiss Franc .....     | 3.60            |

If prices for the DX Contract are not available, the Index Sponsor will typically use the prior day’s DX Contract price. In exceptional cases (such as when a daily price limit is reached), the Index Sponsor may employ a “fair value” price (*i.e.*, the price for unwinding the futures position by over-the-counter or “OTC” dealers). This is similar to the case of index options whose prices are unavailable or unreliable.<sup>15</sup>

to the Indexes, in order to prevent the improper sharing of information relating to the composition and calculation of the Indexes.

<sup>13</sup> While the Indexes are calculated and disseminated by the Index Sponsor, an affiliate of a registered broker-dealer, a number of independent sources verify both the intraday and closing Index values, and the Index Sponsor uses independent feeds from Reuters to verify all NYBOT pricing information used to calculate the Indexes.

<sup>14</sup> The third Wednesday of each month of March, June, September, and December are the traditional settlement dates in the International Money Market (“IMM Dates”). Due to the “rolling” characteristic of the Long and Short Indexes, the potential returns will be compounded, unlike a traditional futures contract, which would expire at the end of its term.

<sup>15</sup> The Exchange represents that The Options Clearing Corporation (“OCC”), pursuant to Article XVII, Section 4 of its By-Laws, is permitted to use the prior day’s closing price to fix an index options exercise settlement value. In addition, the Exchange submits that OCC may also use the next day’s

The Managing Owner represents that it will 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 value, the Exchange will undertake to delist the Shares related to such Index.

#### Structure of the Funds

**Funds.** The Bullish and Bearish Funds are separate series of a statutory trust formed pursuant to the Delaware Statutory Trust Act and will issue units of beneficial interests or shares that represent units of fractional undivided beneficial interests in and ownership of the respective Fund. Unless terminated earlier, each of the Funds is of a perpetual duration. The investment objective of each of the Bullish and Bearish Funds is to reflect the performance of the corresponding Long Index and Short Index, respectively, less the expenses of the operations of such Fund and the related Master Fund. Each of the Funds will pursue its investment objective by investing substantially all of its assets in the respective Master Funds. Each of the Shares will correlate with a corresponding Master Fund unit issued by the relevant Master Fund and held by the respective Funds.

**Master Funds.** Each of the Master Funds is a separate series of a statutory trust formed pursuant to the Delaware Statutory Trust Act and will issue units of beneficial interests or shares that represent units of fractional undivided beneficial interests in and ownership of the respective Master Fund. Unless terminated earlier, each of the Master Funds is of a perpetual duration. The investment objective of each of the Bullish and Bearish Master Funds is to reflect the performance of the corresponding Long Index and Short Index, respectively, less the expenses of the operations of the relevant Fund and Master Fund. Each of the Master Funds will pursue its investment objective by investing primarily in DX Contracts. In addition, the Master Funds will also hold cash and U.S. Treasury securities for deposit with futures commission merchants (“FCM”) as margin and other high-credit-quality, short-term fixed income securities.

**Trustee.** Wilmington Trust Company is the trustee (the “Trustee”) of the Trust and the Master Trust. The Trustee

opening price, a price or value at such other time as determined by OCC, or an average of prices or values as determined by OCC.

<sup>10</sup> *Id.*

<sup>11</sup> The Exchange states that March 1973 was chosen as the base period of the USD<sup>®</sup> because it represents a significant milestone in foreign exchange history when the world’s major trading nations allowed their currencies to float freely against each other.

<sup>12</sup> The Index Sponsor has in place procedures to prevent the improper sharing of information between different affiliates and departments. Specifically, an information barrier exists between the personnel of the Index Sponsor that calculate and reconstitute the Indexes and other personnel of the Index Sponsor, including, without limitation, the Managing Owner, employees involved in sales and trading activities, external or internal fund managers, and bank personnel who are involved in hedging the bank’s exposure to instruments linked

has delegated to the Managing Owner the power and authority to manage and operate the day-to-day affairs of each of the Funds and the Master Funds.

**Managing Owner.** The Managing Owner is a Delaware limited liability company which is registered with the CFTC as a CPO and CTA and is wholly-owned by the Index Sponsor. The Managing Owner will serve as the CPO and CTA of each Fund and each Master Fund and will manage and control all aspects of the business of the Funds. The Exchange states that the Managing Owner, as a registered CPO and CTA, is required to comply with various regulatory requirements under the Commodity Exchange Act and the rules and regulations of the CFTC and the NFA, including investor protection requirements, anti-fraud prohibitions, disclosure requirements, and reporting and recordkeeping requirements, and is subject to periodic inspections and audits by the CFTC and NFA.

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

**Administrator.** The Bank of New York is the administrator for all of the Funds and the Master Funds (the "Administrator"). The Administrator will perform or supervise the performance of services necessary for the operation and administration of each Fund and each Master Fund. These services include, but are not limited to, receiving and processing orders from Authorized Participants (as defined herein) to create and redeem Baskets (as defined herein), accounting, net asset value ("NAV")<sup>16</sup> calculations, and other fund administrative services.

**Distributor.** ALPS Distributors, Inc. is the distributor for both the Funds and the Master Funds (the "Distributor"). The Distributor will assist the Managing Owner and the Administrator with certain functions and duties relating to distribution of the funds, including reviewing and filing marketing materials with NASD, fielding investor calls, and distributing prospectuses.

<sup>16</sup> NAV is the total assets of each Master Fund, less total liabilities of such Master Fund, determined on the basis of generally accepted accounting principles. NAV per Master Fund share is the NAV of the relevant Master Fund, divided by the number of outstanding Master Fund units. This will be the same for the Shares because of the one-to-one correlation between the Shares and the units of the corresponding Master Fund.

## 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 (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")<sup>17</sup> with the Managing Owner at the NAV per Share next determined after an order to purchase the Shares in a Basket is received in proper form. Following issuance, the Shares will be traded on the Exchange similar to other equity securities. The Shares will be registered in book entry form through DTC.

Baskets will be issued in exchange for a cash amount equal to the NAV per Share times 200,000 Shares (the "Basket Amount"). The Basket Amount will be determined on each business day by the Administrator. Authorized Participants that wish to purchase a Basket must transfer the Basket Amount to the Administrator (the "Cash Deposit Amount"). Authorized Participants that wish to redeem a Basket will receive cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the "Cash Redemption Amount"). The Commodity Broker will be the custodian for the Master Funds and responsible for safekeeping the Master Funds' assets.

All purchase orders received by the Administrator prior to 1 p.m. ET will be settled by depositing with the Commodity Broker the Cash Deposit Amount disseminated by the Administrator shortly after 10 a.m. ET on the next business day. The Basket will be issued at noon on such business day (T+1) at the NAV as of the later of the closing time on the Exchange or the last to close futures exchange on which a Master Fund's assets are traded.<sup>18</sup> The Basket Amount necessary for the creation of a Basket will change from day to day. On each day that the Exchange is open for regular trading, the Administrator will adjust the Cash Deposit Amount as appropriate to reflect the prior day's NAV and accrued expenses. The Administrator will

<sup>17</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, (1) is a registered broker-dealer, (2) is a Depository Trust Company ("DTC") participant or an indirect participant, and (3) has in effect a valid participant agreement.

<sup>18</sup> Each Master Fund is permitted to invest its assets in those futures contracts (DX Contracts) traded on futures exchanges that either have a comprehensive surveillance sharing agreement with the Exchange or are members of the Intermarket Surveillance Group ("ISG").

determine the Cash Deposit Amount for a given business day by multiplying the NAV for each Share by the number of Shares in each Basket (200,000).

Likewise, all redemption orders received by the Administrator prior to 1 p.m. ET will be settled by the Commodity Broker's payment of the Cash Redemption Amount shortly after 10 a.m. ET on the next business day. The Shares will not be individually redeemable, but will be redeemable only in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 200,000 shares). Upon the surrender of the Shares and payment of applicable redemption transaction fees, taxes, or charges, the Administrator will deliver to the redeeming Authorized Participant the Cash Redemption Amount.

On each business day, the Administrator will make available immediately prior to the opening of trading on Amex via the facilities of the Consolidated Tape ("CT"), the most recent Basket Amount for the creation of a Basket. The Exchange will disseminate at least every 15 seconds throughout the trading day, via the CT, an amount representing on a per-Share basis, the current value of the Basket Amount. It is anticipated that the deposit of the Cash Deposit Amount in exchange for a Basket will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Baskets are then separable upon issuance into identical Shares that will be listed and traded on the Exchange.<sup>19</sup> The Exchange states that the Shares are expected to be traded on the Exchange by professionals, as well as institutional and retail investors. Thus, the Shares may be acquired in two ways: (1) Through a deposit of the Cash Deposit Amount with the Administrator during normal business hours by Authorized Participants, or (2) through a purchase on the Exchange by investors. Trading in the Shares on the Exchange will be effected until 4:15 p.m. ET each business day. The minimum trading increment for such shares will be \$0.01.

Deutsche Bank Securities Inc., as the initial purchaser (the "Initial Purchaser"), will initially purchase and take delivery of 200,000 Shares of each Fund, which comprises the initial Basket of each Fund, at a purchase price of \$25 per share (\$5 million per Basket) pursuant to an Initial Purchaser

<sup>19</sup> The Shares are separate and distinct from the shares of the Master Funds consisting primarily of DX Contracts. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of creations and redemptions of Baskets.

Agreement. The Exchange states that the Initial Purchaser proposes to offer to the public these Shares at a per-share offering price that will vary depending on, among other factors, the respective trading price of the Shares on Amex, the NAV per Share, and the supply of and demand for the Shares at the time of the offer. Shares offered by the Initial Purchaser at different times may have different offering prices. The Initial Purchaser will not receive from any Fund, the Managing Owner, or any of their affiliates, any fee or other compensation in connection with the sale of these Shares to the public. The Initial Purchaser may charge a customary brokerage commission.

The Managing Owner has agreed to indemnify certain parties against certain liabilities, including liabilities under the Securities Act of 1933, and to contribute to payments that such parties may be required to make in respect thereof. The Exchange believes that the anticipated minimum number of Shares of each of the Funds outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of the respective Funds.

#### *B. Net Asset Value (NAV)*

Shortly after 4 p.m. ET each business day, the Administrator will determine the NAV for each of the Funds, utilizing the current settlement value of the long positions in the DX Contracts, in the case of the Bullish Funds, and short positions in the DX Contracts, in the case of the Bearish Funds. At or about 4 p.m. ET each business day, the Administrator will determine the Basket Amounts for orders placed by Authorized Participants received before 1 p.m. ET that day. Thus, although Authorized Participants may place valid orders to purchase Shares throughout the trading day until 1 p.m. ET, the actual Basket Amounts are determined at 4 p.m. ET or shortly thereafter.

Shortly after 4 p.m. ET each business day, the Administrator, Amex, and the Managing Owner will disseminate the NAV per Share and the Basket Amounts (for orders placed during the day). The Basket Amounts and the NAV are communicated by the Administrator to all Authorized Participants via facsimile or electronic mail message and will be available on the Index Sponsor's Web site at <http://www.index.db.com>.<sup>20</sup> Amex will also disclose the NAV and Basket Amounts on its own Web site at <http://www.amex.com>.

<sup>20</sup> If the NAV is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares of a Fund.

In calculating the NAV, the Administrator will value all futures contracts (e.g., the DX Contracts) based on that day's settlement price. 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,<sup>21</sup> the settlement price on the most recent trading day on which such futures contract could have been liquidated will be used in determining each Master Fund's NAV. Accordingly, the Administrator will typically use that day's futures settlement price for determining NAV. When calculating NAV for each of the Funds and each of the Master Funds, the Administrator will value the DX Contracts held by each Master Fund on the basis of their then current market value.

The NAV for the Funds is total assets of the corresponding Master Fund, less total liabilities of such Master Fund. The NAV is calculated by including any unrealized profit or loss on futures contracts and any other credit or debit accruing to such Master Fund but unpaid or not received by the Master Fund. The NAV is then used to compute all fees (including the management and administrative fees) that are calculated from the value of such Master Fund's assets. The Administrator will calculate the NAV per share by dividing the NAV by the corresponding number of Shares outstanding.

The Exchange believes that none of the Shares will trade at a material discount or premium to the Shares of the corresponding Master Fund held by the corresponding Fund based on potential arbitrage opportunities. Because Shares can be created and redeemed only in Basket Amounts at the relevant NAV, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time. The value of a Share may be influenced by non-concurrent trading hours between Amex and the various futures exchanges on which the Index Currencies are traded. As a result, during periods when 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 corresponding NAV.

<sup>21</sup> See *supra* note 18.

#### *Dissemination of the Indexes and Underlying DX Contract Information*

The values of the Long Index and Short Index will be disseminated at least every 15 seconds through CT/CQ High Speed Lines, Reuters, and/or Bloomberg, and on the Managing Owner's Web site at <http://www.dbfunds.db.com>. The Index Sponsor will similarly provide intra-day levels and the related closing levels for the Indexes at its Web site at <http://www.index.db.com>. The disseminated value of the Indexes will not reflect changes to the prices of the Index Currencies between the close of trading of the DX Contract on NYBOT at 3 p.m. ET and close of trading at Amex at 4:15 p.m. ET. In addition, the Index Sponsor<sup>22</sup> and the Exchange on their respective Web sites will also provide any adjustments or changes to any of the Indexes.

The daily settlement prices of the DX Contracts held by each of the Master Funds are publicly available on NYBOT's Web site (<http://www.nybot.com>). 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 DX Contracts are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures is available by subscription from Reuters and Bloomberg. NYBOT also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the DX Contracts are also available from NYBOT on its Web site, as well as other financial informational sources.

#### *Availability of Information Regarding the Shares*

The Web site for each of the Funds (<http://www.dbfunds.db.com>) and/or the Exchange, which are 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<sup>23</sup> 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

<sup>22</sup> See *supra* note 12.

<sup>23</sup> The bid-ask price of the Shares is determined by using the highest bid and lowest offer as of the time of calculation of the NAV.

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.

The respective NAV per Share for the Funds will be calculated and disseminated daily by the Administrator. Amex also intends to disseminate for each of the Funds on a daily basis by means of CT/CQ High Speed Lines information with respect to the corresponding Indicative Fund Value (as discussed below), recent NAV, and Shares outstanding. The Exchange will also make available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and the corresponding NAV. The closing price and settlement prices of the DX Contracts held by the Master Funds are also readily available from NYBOT, 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 Web site at <http://www.amex.com> to the Index Sponsor's Web site at <http://www.index.db.com>.

#### *Dissemination of Indicative Fund Value*

As noted above, the Administrator calculates the NAV of each of the Funds once each trading day and disseminates such NAV to market participants. The Exchange represents that it will obtain a representation prior to the listing of the Funds from the Trust that the NAV per Share for each of the Funds will be made available to all market participants at the same time. In addition, the Administrator causes to be made available on a daily basis the corresponding Cash Deposit Amounts to be deposited in connection with the issuance of the respective Shares in Baskets. Moreover, other investors can request such information directly from the Administrator.

In order to provide updated information relating to each of the Funds for use by investors, professionals, and persons wishing to create or redeem the Shares, the Exchange will disseminate through the facilities of CT, an updated Indicative Fund Value (the "Indicative Fund Value") for each of the Funds. The respective Indicative Fund Values will be disseminated on a per-Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Fund Value will be calculated based on the cash required for creations and redemptions (*i.e.*, NAV per Share  $\times$  200,000 Shares) 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.

The Indicative Fund Value will not reflect price changes to the DX Contracts between the close of trading on NYBOT at 3 p.m. ET and the close of trading on Amex at 4:15 p.m. ET. The value of a Share may accordingly be influenced by non-concurrent trading hours between Amex and NYBOT.

While NYBOT is open for trading of DX Contracts, the respective Indicative Fund Values can be expected to closely approximate the value per Share of the corresponding Basket Amount. However, during Amex trading hours, when the DX 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 such Shares. Any Indicative Fund Value on a per Share basis disseminated during Amex trading hours should not be viewed as a real-time update of its corresponding NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Fund Value based on the cash amount required for its corresponding Baskets provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

#### *Termination Events*

A Fund would be terminated if any of the following circumstances occur: (1) The filing of a certificate of dissolution or revocation of the Managing Owner's charter (subject to a 90-day notice period) or upon the withdrawal, removal, adjudication, or admission of bankruptcy or insolvency of the Managing Owner, or an event of withdrawal, subject to exceptions; (2) the occurrence of any event which would make unlawful the continued existence of the Trust or any Fund, as the case may be; (3) the event of the suspension, revocation, or termination of the Managing Owner's registration as a CPO, or membership as a CPO with the NFA, subject to certain conditions; (4) the Trust or any Fund, as the case may be, becomes insolvent or bankrupt; (5) shareholders holding Shares representing at least 50% of the NAV (excluding the Shares of the Managing Owner) notify the Managing Owner that they wish to dissolve the Trust; (6) the determination of the Managing Owner that the aggregate net assets of a Fund in relation to the operating expenses of

such Fund make it unreasonable or imprudent to continue the business of such Fund, or, in the exercise of its reasonable discretion, the determination by the Managing Owner to dissolve the Trust because the aggregate NAV of the Trust as of the close of business on any business day declines below \$10 million; (7) the Trust or any Fund becomes required to register as an investment company under the 1940 Act; or (8) DTC is unable or unwilling to continue to perform its functions, and a compatible replacement is unavailable.

If not terminated earlier, each Fund will endure perpetually. Upon termination of any Fund, holders of the relevant Shares will surrender their Shares and receive from the Administrator, in cash, their portion of the value of such Fund.

#### *Listing and Trading Rules*

Each of the Funds will be subject to the criteria in Commentary .07(d) of Amex Rule 1202 for initial and continued listing of their respective Shares. The Exchange represents that, for purposes of the initial and continued listing of the Shares, the Shares must be in compliance with Section 803 of the *Amex Company Guide* and Rule 10A-3 under the Act.<sup>24</sup> The Amex original listing fee applicable to the listing of the Shares of the Funds is \$5,000 per Fund. 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 the Funds outstanding at the end of each calendar year.

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 Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127. 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

<sup>24</sup> 17 CFR 240.10A-3.

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>25</sup>

The Shares will be deemed to be "Eligible Securities," as defined in Amex Rule 230,<sup>26</sup> for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade-through provisions of Amex Rule 236, which requires that Amex members avoid initiating traded through 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>27</sup> The Shares will not be subject to the short sale rule pursuant to no-action relief granted in petition to Rule 10a-1 under the Act.<sup>28</sup> The Shares will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on "plus ticks" and sell on "minus ticks," in order to bring the Shares into parity with the underlying commodity or commodities and/or futures contract price. Commentary .07(f) to Amex Rule 1202 sets forth this limited exception to Amex Rule 170. In addition, the trading of the Shares will be subject to certain conflict-of-interest provisions set forth in Commentary .07(e) to Amex Rule 1202.

#### *Suitability*

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

in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

#### *Information Circular*

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 risks. Specifically, the Circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, applicable Amex rules, dissemination information, and trading information. The Circular will also explain that the Funds are subject to various fees and expenses described in the registration statement. The Circular will also reference the fact that the CFTC has regulatory jurisdiction over the trading of futures contracts.

Moreover, the Information Circular will inform members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the respective Funds (by delivery of the corresponding Cash Deposit Amounts) will receive a prospectus. Amex members purchasing Shares from the corresponding Funds for resale to investors will deliver a prospectus to such investors.

In addition, the Information Circular will inform Exchange members and member organizations that the procedures for purchases and redemptions of Shares in Basket aggregations are described in the prospectus and that Shares are not individually redeemable, but are redeemable only in Basket aggregations or multiples thereof. The Circular also will advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The Circular will discuss any relief, if granted, by the Commission or its staff from any rules under the Act.

Finally, the Circular will disclose that the trading hours of the Shares of the Funds will be from 9:30 a.m. to 4:15 p.m. ET, and that the NAV for the Shares of the Funds will be calculated shortly after 4 p.m. ET each trading day. Information about the Shares of each Fund and the corresponding Indexes will be publicly available on Amex's

Web site and each Fund's Web site (<http://www.dbfunds.db.com>).

#### *Surveillance*

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of applicable rules. Specifically, the Exchange will rely on its existing surveillance procedures applicable to TIRs, Portfolio Depository Receipts, and Index Fund Shares and will incorporate and rely upon existing Amex surveillance procedures governing options and equities. The Exchange currently has in place an information sharing agreement with NYBOT for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. The Exchange also notes that NYBOT is a member of ISG. As a result, the Exchange asserts that market surveillance information is available from NYBOT, if necessary, due to regulatory concerns that may arise in connection with the DX Contracts.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act,<sup>29</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>30</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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

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

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

<sup>29</sup> 15 U.S.C. 78f.

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (SR-Amex-90-31) at note 9 (noting the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c)).

<sup>26</sup> The term "Eligible Security" means any security admitted to dealings on a participating market center which has been designated as eligible to be traded through the intermarket communications system. See Amex Rule 230.

<sup>27</sup> See Commentary .05 to Amex Rule 190.

<sup>28</sup> See Letter in Response to Request for No-Action from Racquel Russell, Branch Chief, Office of Trading Practices and Processing, Division, Commission, to George T. Simon, Esq., Foley & Lardner LLP, dated June 21, 2006 ("Simon Letter") (indicating that the staff of the Division will no longer respond to requests for relief from Rule 10a-1 under the Act relating to other similar commodity-based investment vehicles, unless they present novel or unusual issues). The Exchange submits that the Shares qualify for the relief set forth in the Simon Letter.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Amex has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

### IV. 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 ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-86 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-Amex-2006-86. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-86 and should be submitted on or before February 8, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

**Nancy M. Morris,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55119; File No. SR-NASDAQ-2006-059]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Application of Membership Fees

January 18, 2007.

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 December 19, 2006, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to clarify the application of periodic membership fees under Rule 7001. Nasdaq proposes to

implement the proposed rule change immediately. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and <http://www.nasdaq.com>.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Nasdaq is adding text to Rule 7001 to clarify the application of its membership fees. To simplify the administration of these fees, Nasdaq imposes the fees on all persons that are members as of a date determined by Nasdaq: In December of each year, in the case of the annual membership fee, and a date in the course of the month, in the case of the trading rights fee. Persons that become Nasdaq members after the date on which the fee for a particular period is assessed are not required to pay the fee for that period. Thus, for example, the annual fee for 2007 will be assessed on December 21, 2006; persons that become Nasdaq members after that date would not pay an annual fee for 2007, but would pay the annual fee for 2008 if they continue to be Nasdaq members on the fee assessment date in December 2007. The fees are non-refundable. Thus, if a firm ceased to be a Nasdaq member during the course of 2007, it would not receive a refund of all or any portion of the annual fee. This process is consistent with the long-standing procedures of NASD with respect to its periodic membership fees that have also been adopted by Nasdaq in its transition from NASD subsidiary to independent exchange.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(4) of the

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> 15 U.S.C. 78f.