

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56073; File No. SR-NYSEArca-2007-53)

July 13, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing and Trading Options on Commodity Pool Units

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 12, 2007, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to amend certain Exchange rules to permit the listing and trading of options on securities interest issued by trust issued receipts ("TIRs"), partnership units ("Partnership Units"), commodity based funds or trusts, and other entities (referred collectively herein as "Commodity Pool Units"). The Exchange also proposes to make minor technical changes to the numbering of certain rules. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nysearca.com](http://www.nysearca.com).

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

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

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

In its filing with the Commission, the NYSE Arca 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 IV below. The NYSE Arca 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

The NYSE Arca states that the proposed rule change is based on rule changes made by the American Stock Exchange LLC ("Amex") pursuant to SR-Amex-2006-110.<sup>3</sup>

The purpose of this proposed rule change is to enable the listing and trading on the Exchange of options on Commodity Pool Units that trade, directly or indirectly, in commodity futures products. Commodity Pool Units may hold or trade in one or more types of investments that may include any combination of securities, commodity futures contracts, options on commodity futures contracts, swaps and forward contracts. The shares of the Commodity Pool Units are securities registered with the Commission and the offer and sale of those shares are subject to the Commission's regulatory oversight. The investments held, directly or indirectly, within the Commodity Pool Units are subject to the Commodity Exchange Act ("CEA") due to their status as a "commodity pool."<sup>4</sup>

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<sup>3</sup> See Exchange Act Release No. 55547 (March 28, 2007), 72 FR 16388 (April 4, 2007) (approval order for SR-Amex-2006-110).

<sup>4</sup> The term "[commodity] pool means any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests." 17 CFR 4.10(d)(1). A commodity interest is "(1) Any contract for the purchase or

Therefore, the trading of the assets and/or investment (e.g., futures and options on futures) held within the Commodity Pool Units is regulated by the Commodity Futures Trading Commission ("CFTC").<sup>5</sup>

Currently, NYSE Arca Rule 5.3 provides that securities deemed appropriate for options trading shall include shares or other securities ("Units") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a NMS security, and that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities); or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust .

The Exchange proposes to amend Rule 5.3(g) to expand the type of options to include the listing and trading of options based on Commodity Pool Units that may hold

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sale of a commodity for future delivery; and (2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the [Commodity Exchange] Act." 17 CFR 4.10(a).

<sup>5</sup> The manager or operator of a "commodity pool" is required to register, unless applicable exclusions apply, as a commodity pool operator ("CPO") and as a commodity trading advisor ("CTA") with the CFTC and become a member of the National Futures Association ("NFA").

or invest, directly or indirectly, in commodity futures products, including, but not limited to, commodity futures contracts, options on commodity futures contracts, swaps and forward contracts. As part of this revision to Rule 5.3(g), the Exchange proposes to add paragraph (1)(C) requiring for Commodity Pool Units that a comprehensive surveillance sharing agreement be in place with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool Units are listed and traded.<sup>6</sup>

As set forth in the proposed changes to Rule 5.3, Commodity Pool Units must be traded on a national securities exchange or through the facilities of a national securities association and must be an “NMS stock” as defined under Rule 600 of Regulation NMS. In addition, Commodity Pool Units must meet either: (i) the criteria and guidelines under Rule 5.3; or (ii) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other issuer in cash or in kind at a price related to net asset value. In addition, the issuing trust, investment company, commodity pools or other issuer is obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the, the issuing trust, investment company, commodity pool or other issuer, subject to the condition that the person obligated to deposit the investment

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<sup>6</sup> For a list of the current members and affiliate members of ISG, [see www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all of the underlying securities may trade on exchanges that are members or affiliate members of the ISG. In addition, the Exchange has surveillance information sharing agreements in place with the ICE Futures, Board of Trade of Kansas City, Missouri, Inc., The London Metal Exchange Limited, and New York Mercantile Exchange, Inc. (“NYMEX”).

assets has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of Units which underlie the option as described in the Units' prospectus.

Under the applicable continued listing criteria presently contained in NYSE Arca Rule 5.6,<sup>7</sup> the Exchange shall not open for trading an additional series of option contracts on Units that were initially approved for options trading pursuant to Rule 5.3 if such Units either: (i) cease to be an "NMS stock" as provided in Rule 5.4 (an "NMS stock" is defined in Rule 600 of Regulation NMS of the Act); or (ii) are halted from trading in their primary market.

In addition, the Exchange, shall consider the suspension of opening transactions in any series of options of the class covering Units in the following circumstances: (1) following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange or through the facilities of a national securities association and are defined as an "NMS stock" under Rule 600 of Regulation NMS, there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; or (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities on which the Units are based is no longer calculated or available.

The Exchange is also proposing to amend the Commentary to its Rule 11.3 to require members to establish, maintain and enforce written policies and procedures to

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<sup>7</sup> Pursuant to a technical change proposed in this filing, existing NYSE Arca Rule 5.6 will be re-numbered as Rule 5.4.

prevent the misuse of material, nonpublic information it might have or receive in a related security, option or derivative or in the applicable related commodity, commodity futures or options on commodity futures or any other related commodity derivatives.

The Exchange is further proposing to amend Rule 6.39 to require that Market-Makers for options in Commodity Pool Units file with the Exchange upon request a list identifying all accounts for, among other things, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity in which the Market-Maker may have directly or indirectly, engaged in trading activities or over which he exercises investment discretion. The Exchange is proposing to add the phrase "for options on" in two places in Rule 6.39(a) to clarify that Rule 6.39(a) governs Market-Makers in options on Units (versus Market-Markets in the Unit underlying the option). In addition, the proposed revision to Rule 6.39 further requires that no Market-Maker shall engage in trading in, among other things, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity in an account which has not been reported in a manner prescribed by the Exchange. The Exchange is proposing to add the phrase "trading in" to the last sentence of Rule 6.39(a) to clarify the conduct governed by the rule.

In addition, the Exchange proposes to amend Rule 9.17 to require Market-Makers to make available to the Exchange such books and records or other information pertaining to transactions in the applicable physical commodity, physical commodity

options, commodity futures contracts, options on commodity futures contracts, or any other derivatives on such commodity, as may be requested by the Exchange.

The Exchange represents that it has an adequate surveillance program in place for options based on Commodity Pool Units. The Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG and has entered into numerous comprehensive surveillance-sharing agreements with various commodity futures exchanges worldwide.<sup>8</sup> Prior to listing and trading options on Commodity Pool Units, the Exchange represents that it would either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the primary exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded.

The addition of Commodity Pool Units would not have any effect on the rules pertaining to position and exercise limits.<sup>9</sup> The Exchange also represents that the margin requirements for options on Commodity Pools Units would be evaluated for each product the Exchange anticipates listing. Any new margin rules deemed necessary will be filed separately with the Commission.

This proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool Units that the Commission has previously approved for trading.<sup>10</sup>

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<sup>8</sup> See footnote 6, *supra*.

<sup>9</sup> See NYSE Arca Rules 6.6 and 6.8.

<sup>10</sup> See Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (approving the listing and trading of Units of the United States Oil Fund, L.P.);

The Exchange believes that it is reasonable to expect that other types of Commodity Pool Units will be introduced for trading in the near future. The proposed amendment to the Exchange's listing criteria for options on Commodity TIRs and Partnership Units is necessary to ensure that the Exchange will be able to list options on Commodity Pool Units that have been recently launched as well as any other similar Commodity Pool Units that may be listed and traded in the future.

As part of this filing, the Exchange proposes correcting a typographical error in existing Rule 5.6(1).<sup>11</sup> When the exchange originally proposed this rule, the word "not" was inadvertently omitted from the first sentence of the rule text. The Exchange now proposes to correct this omission.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> of the Act 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.

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and 54450 (September 14, 2006), 71 FR 51245 (September 21, 2006) (approving the listing and trading of the PowerShares DB G10 Currency Harvest Fund).

<sup>11</sup> Rule 5.6(1) will be renumbered as Rule 5.4(1) as part of this proposal.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).



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

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

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

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

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-NYSEArca-2007-53 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-NYSEArca-2007-53. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-NYSEArca-2007-53 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Commission Findings and Accelerated Approval

After careful consideration, 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>14</sup> and, in particular, the requirements of Section 6 of the Act.<sup>15</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and

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<sup>14</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

### Surveillance

The Commission notes that Exchange has represented that it has an adequate surveillance program in place for options based on Commodity Pool Units. The Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG and has entered into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool Units, the Exchange represented that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded. In addition, the Exchange represented that the addition of Commodity Pool Unit options will not have any effect on the rules pertaining to position and exercise limits<sup>17</sup> or margin.

### Listing and Trading of Options on Commodity Pool Units

The Commission notes that, pursuant to the proposed rule change, a Commodity Pool Unit will be subject to the provisions of NYSE Arca Rule 5.3 and 5.4, as applicable. These provisions include requirements regarding initial and continued listing standards, the creation/redemption process for Commodity Pool Units, and trading halts. All Commodity Pool Units must be traded through a national securities exchange or through

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<sup>17</sup> See NYSE Arca Rules 6.8 and 6.9.

the facilities of a national securities association, and must be “NMS stock” as defined under Rule 600 of Regulation NMS.<sup>18</sup>

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool Units currently approved for trading and that it is reasonable to expect other types of Commodity Pool Units to be introduced for trading in the future. This proposal would help ensure that the Exchange will be able to list options on Commodity Pool Units that have been recently launched as well as any other similar Commodity Pool Units that may be listed and traded in the future<sup>19</sup> thereby offering investors greater option choices.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes that the proposal is consistent with the Exchange’s listing and trading standards in NYSE Arca Rules 5.3 and 5.4 and the Commission has recently approved a similar proposal, after publishing it for a full comment period and receiving no comments.<sup>21</sup> The Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible.

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<sup>18</sup> 17 CFR 242.600(b)(47).

<sup>19</sup> 17 CFR 240.19b-4(e).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> See Securities Exchange Act Release Nos. 55547 (March 28, 2007), 72 FR 16388 (April 4, 2007) (SR-Amex-2006-110) (approval order); and 55187 (January 29, 2007), 72 FR 5467 (February 6, 2007) (SR-Amex-2006-110) (proposing release).

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>22</sup> to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NYSEArca-2007-53), as amended, be, and is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

Florence E. Harmon  
Deputy Secretary

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

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).