

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55489; File No. SR-NASDAQ-2007-023)

March 19, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade the Shares of the PowerShares DB US Dollar Index Bullish Fund and the PowerShares DB US Dollar Index Bearish 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 9, 2007, The NASDAQ Stock Market LLC (“Nasdaq” 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. This Order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

Nasdaq proposes to trade shares of the PowerShares DB US Dollar Index Bullish Fund (the “Bullish Fund”) and the PowerShares DB US Dollar Index Bearish Fund (the “Bearish Fund,” and together with the Bullish Fund, the “Funds”) pursuant to unlisted trading privileges (“UTP”). The text of the proposed rule change is available at Nasdaq, the Commission’s Public Reference Room, and [nasdaq.complinet.com](http://nasdaq.complinet.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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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

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

Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Pursuant to Nasdaq Rule 4630, which permits the Exchange to approve for UTP trading a “commodity-related security” that is issued by a trust, partnership, commodity pool, or similar entity that invests in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, the Exchange proposes to trade pursuant to UTP the shares of the Funds (the “Shares”). The Shares represent beneficial ownership interests in the corresponding common units of beneficial interests of the DB US Dollar Index Master Bullish Fund and the DB US Dollar Index Master Bearish Fund, respectively (collectively, the “Master Funds”). A proposal to list and trade the Shares by the American Stock Exchange LLC (“Amex”) has been approved by the Commission.<sup>3</sup>

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 seeks to track the “Long Index” by investing in long positions in futures contracts (“DX Contracts”) on the U.S. Dollar Index® (“USDx”), and the Bearish Fund seeks to track the “Short Index” by

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<sup>3</sup> See Securities Exchange Act Release No. 55292 (February 14, 2007), 72 FR 8406 (February 26, 2007) (SR-Amex-2006-86) (“Amex Order”); Securities Exchange Act Release No. 55110 (January 16, 2007), 72 FR 3171 (January 24, 2007) (SR-Amex-2006-86) (“Amex Notice”).

investing in short positions in DX Contracts on the USDX.<sup>4</sup> Both the Long Index and Short Index (collectively, the “Indexes”) are designed to reflect the return from investing in the first-to-expire DX Contract. DX Contracts are traded through the FINEX currency markets of the New York Board of Trade (“NYBOT”).

The use of a long position in a DX Contract in the construction of the Long Index causes the Long Index level to rise as a result of any upward price movement in the DX Contract. Conversely, the use of a short position in a DX Contract in the construction of the Short Index causes the Short Index level to rise as a result of any downward price movement in the DX Contract. As a result, the performance of the Long Index and Short Index would reflect any rise or fall of the USD versus the underlying basket of Index Currencies.<sup>5</sup>

Deutsche Bank AG London (the “Index Sponsor”) calculates the values of the Indexes during the trading day and such values are disseminated at least every 15 seconds through the facilities of the Consolidated Tape (“CT”), major market data vendors, the Web site of DB Commodity Services LLC, as operator of the Funds and Master Funds (the “Managing Owner”), and the Index Sponsor’s Web site. Amex also disseminates for each of the Funds on a per-Share basis an updated “Indicative Fund Value,” which reflects the cash required for creations and redemptions for each Fund, adjusted to reflect the price changes of the DX Contracts and the holdings of U.S. Treasury securities and other high-credit-quality, short-term fixed income

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<sup>4</sup> The USDX, which is composed of six underlying foreign currencies (Euro, Japanese Yen, British Pound, Canadian Dollar, Swedish Krona, and Swiss Franc, collectively, the “Index Currencies”), is composed of notional amounts of each Index Currency reflecting a geometric average of the change in the Index Currencies’ exchange rates against the U.S. Dollar (“USD”) relative to those as of March 1973. The value of the USDX reflects a general indication of the international value of the USD by averaging the exchange rates between the USD and the Index Currencies.

<sup>5</sup> The calculation methodologies of each Index, as well as the structure and operation of the Funds and the creation and redemption procedures for the Shares, are described in greater detail in the Amex Notice.

securities, at least every 15 seconds between 9:30 a.m. to 4:15 p.m. Eastern Time (“ET”). Shortly after 4:00 p.m. ET each business day, the Bank of New York (the “Administrator”), determines the net asset value (“NAV”) for each of the Funds and disseminates such NAV per Share to all market participants at the same time.<sup>6</sup>

On each business day, the Administrator makes available immediately prior to 9:30 a.m. ET the most recent Cash Deposit Amount<sup>7</sup> for the creation of a Basket,<sup>8</sup> and Amex disseminates the current value of the Cash Deposit Amount on a per-Share basis at least every 15 seconds throughout the trading day. The daily settlement prices of the DX Contracts, specific contract specifications, and delayed futures contract information on current and past trading sessions, including futures quotes and last sale information, are publicly available on NYBOT’s Web site and on the Web sites of various market data vendors, news publications, automated quotation systems, or other financial information services.

Information regarding the Shares is available through Amex, the Index Sponsor, and various independent sources. Specifically, Amex disseminates on a daily basis for each of the Funds information with respect to the daily trading volume of each of the Shares, the number of Shares outstanding, the closing prices of each Fund’s Shares, the corresponding NAV, and a hyperlink on its Web site to the Index Sponsor’s Web site. In addition, the Web site for the

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<sup>6</sup> The Exchange represents that if Amex halts trading in the Shares of any Fund because the NAV per Share for such Fund is no longer disseminated to all market participants at the same time, it would also halt trading such Shares. E-mail from Jonathan Cayne, Associate General Counsel, Nasdaq, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated March 14, 2007 (clarifying that the Exchange would also halt trading the Shares in such an event).

<sup>7</sup> The Cash Deposit Amount is the amount of cash equal to the NAV per Share times 200,000 Shares to be transferred to the Administrator for the purchase of one or more Baskets (as defined below).

<sup>8</sup> A Basket is a single block of 200,000 Shares; issuances of the Shares can be made only in one or more Baskets.

Funds contains the following information: (1) the current NAV per Share daily, the prior business day's NAV, and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (3) the calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus; and (6) other applicable quantitative information.

Nasdaq states that it will halt trading in the Shares of a Fund under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a trading halt include a regulatory halt by the original listing market. Nasdaq will also halt trading in the Shares if the original listing market delists them. UTP trading in the Shares will be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Indicative Fund Value or the value of the Indexes.<sup>9</sup> Additionally, the Exchange may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of the Exchange, make further dealings on the Exchange detrimental to the maintenance of a fair and orderly market. The Exchange represents that it would follow any procedures with respect to initiating any trading halts as set forth in Nasdaq Rule 4120(c).

Nasdaq deems the Shares of the Funds to be equity securities, and therefore, trading in the Shares would be subject to Nasdaq's existing rules governing the trading of equity securities. Trading in the Shares will also be subject to Nasdaq Rule 4630 (Trading in Commodity-Related Securities). The trading hours for the Shares on Nasdaq will be 9:30 a.m. to 4:00 p.m. ET.

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<sup>9</sup> See Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-050) (setting forth trading halt requirements when the Exchange is trading a product pursuant to UTP). See also *supra* note 6.

In connection with the trading of the Shares, Nasdaq will inform its members in an Information Circular, prior to the commencement of trading, of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Indicative Fund Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction;<sup>10</sup> (5) other relevant trading information; (6) any exemptive, no-action, and/or interpretive relief granted by the Commission from any rules under the Act; (7) the various fees and expenses to which the Funds are subject; and (8) the fact that the Commodity Futures Trading Commission has regulatory jurisdiction over the trading of futures contracts. The Information Circular will also disclose the trading hours of the Shares of the Funds, when the NAV for the Shares will be calculated each trading day, information about the Shares of each Fund, and the public availability of the corresponding Index values on the Funds' Web site.

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq will be subject to NASD's surveillance procedures for equity securities, in general, and exchange-traded funds,

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<sup>10</sup> Specifically, the Information Circular will also note that (1) investors purchasing Shares directly from a Fund (by delivery of the corresponding Cash Deposit Amount) will receive a prospectus and (2) members purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors.

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

## 2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general and Section 6(b)(5) of the Act<sup>13</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 remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In addition, the proposal is consistent with Rule 12f-5 under the Act<sup>14</sup> because Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities.

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

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Solicitation of Comments

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<sup>11</sup> NASD surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for NASD’s performance under this regulatory services agreement.

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

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

<sup>14</sup> 17 CFR 240.12f-5.

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-NASDAQ-2007-023 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-NASDAQ-2007-023. 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-



NASDAQ-2007-023 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

After careful review, 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>15</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>17</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>18</sup> The Commission notes that it previously approved the listing and trading of the Shares on Amex.<sup>19</sup> The Commission also finds that the proposal is consistent

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

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

<sup>18</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>19</sup> See supra note 3.

with Rule 12f-5 under the Act,<sup>20</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>21</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are publicly available on the Web site of the Funds and Amex. Such Web sites also disseminate information about the current and most recent NAV per Share, the Bid-Ask Price of the Shares, and discount and premium information of the Bid-Ask Price against the NAV. The Index Sponsor calculates and publishes through the facilities of the CT and major market data vendors the intra-day values of each Index at least every 15 seconds during regular trading hours and the closing levels of each Index. In addition, Amex disseminates through the CT for each of the Funds on a per-Share basis an updated Indicative Fund Value, which generally reflects the cash required for creations and redemptions of Shares, at least every 15 seconds during the trading day. The Administrator calculates and simultaneously disseminates once each business day to all market participants the NAV per Share and publishes the most recent Cash Deposit Amount on a per-Share basis. Also, the daily settlement prices of and other applicable information regarding the DX Contracts, including futures quotes and last sale information, are publicly available on

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<sup>20</sup> 17 CFR 240.12f-5.

<sup>21</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

NYBOT's Web site and on the Web sites of various market data vendors, automated quotation systems, and other financial information services.

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

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

- (1) The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Shares on a UTP basis.
- (2) The Exchange would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares, including suitability recommendation requirements.
- (3) The Exchange would require its members to deliver a prospectus to investors purchasing Shares prior to or concurrently with a transaction in such Shares and will note this prospectus delivery requirement in the Information Circular.

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

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

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-NASDAQ-2007-023) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).