

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58993; File No. SR-NYSEArca-2008-128]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing of PowerShares DB Funds

November 21, 2008.

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 November 5, 2008, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposed rule change on an accelerated basis.

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

Pursuant to the provisions of Section 19(b)(1) of the Act,<sup>3</sup> the Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to list and trade shares of the PowerShares DB Commodity Index Tracking Fund (symbol: DBC); PowerShares DB Energy Fund (DBE); PowerShares DB Oil Fund (DBO); PowerShares DB Precious Metals Fund (DBP); PowerShares DB Gold Fund (DGL); PowerShares DB Silver Fund (DBS); PowerShares DB Base Metals Fund (DBB); PowerShares DB Agriculture Fund (DBA); PowerShares DB G10 Currency Harvest Fund (DBV); PowerShares DB U.S. Dollar Index Bullish Fund (UUP); and PowerShares DB U.S. Dollar Index Bearish Fund (UDN) (collectively the “Funds”) under Commentary .02 to NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office and at the Commission’s Public Reference Room.

#### 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 self-regulatory organization 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 those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust issued receipts (“TIRs”) investing in shares or securities (“Investment Shares”) that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities.<sup>4</sup> The Exchange proposes to list and trade the shares of each of the Funds (the “Shares”), which represent beneficial ownership interests in the corresponding Master Fund’s net assets, as described in the Registration Statements for the Funds.<sup>5</sup>

The Funds are currently listed on NYSE Alternext U.S. LLC (NYSE Alternext U.S. (formerly, the American Stock Exchange LLC (“Amex”))<sup>6</sup> and

are traded on the Exchange pursuant to unlisted trading privileges (“UTP”).<sup>7</sup> Prior to listing on the Exchange, the Funds would be required to satisfy the applicable delisting procedures of NYSE Alternext U.S. and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>8</sup> relating to listing the Shares on the Exchange.<sup>9</sup>

Descriptions of the Funds and their underlying indexes (“Indexes”) are included in the Amex Filings, the UTP Filings, and the respective Registration Statements for the Funds.<sup>10</sup> The Exchange represents that the Funds satisfy the requirements of Rule 8.200, Commentary .02 and thereby qualify for listing on the Exchange. The Exchange states that all of the facts describing the Funds and the Shares contained in the Amex Filings are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Filings relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange.<sup>11</sup> To the extent

the PowerShares DB U.S. Dollar Index Bullish Fund and PowerShares DB U.S. Dollar Index Bearish Fund; 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR-Amex-2006-44) (approving listing of DB Currency Index Value Fund (now known as PowerShares DB G10 Currency Harvest Fund)); 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (approving listing of PowerShares DB Energy Fund, the PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund) (collectively, “Amex Filings”).

<sup>7</sup> See Securities Exchange Act Release Nos. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22) (order approving UTP trading of DB Commodity Index Tracking Fund (now known as PowerShares DB Commodity Index Tracking Fund); 54569 (October 4, 2006), 71 FR 60594 (October 13, 2006) (SR-NYSEArca-2006-64) (order approving UTP trading of PowerShares DB G10 Currency Harvest Fund); 55484 (March 16, 2007), 72 FR 13847 (March 23, 2007) (SR-NYSEArca-2006-67) (order approving UTP trading of PowerShares DB U.S. Dollar Index Bullish Fund and PowerShares DB U.S. Dollar Index Bearish Fund); 55453 (March 13, 2007), 72 FR 13333 (March 21, 2007) (SR-NYSEArca-2006-62) (order approving UTP trading of PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund) (collectively, “UTP Filings”).

<sup>8</sup> 15 U.S.C. 78(l).

<sup>9</sup> The Exchange will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext U.S. and listed on the Exchange. The Exchange notes that its approval of the Funds’ listing applications would be required prior to listing.

<sup>10</sup> See notes 5-7, *supra*.

<sup>11</sup> The Exchange notes that the Funds’ Web site is <http://www.DBFunds.DB.com>. The Exchange’s

<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)(1).

<sup>4</sup> In April 2006, the Commission approved Commentary .02 to NYSE Arca Equities Rule 8.200, which sets forth the rules related to listing and trading criteria for Investment Shares. See Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22).

<sup>5</sup> See Registration Statements on Form S-1 o Form S-1A for PowerShares DB Commodity Index Tracking Fund (No. 333-150217, dated April 11, 2008); PowerShares DB G10 Currency Harvest Fund (No. 132484, May 16, 2008); PowerShares DB U.S. Dollar Index Bullish Fund and PowerShares DB U.S. Dollar Index Bearish Fund (No. 333-150588, dated May 2, 2008); PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund (No. 333-150501, dated June 25, 2008).

<sup>6</sup> See Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-59) (approving listing of DB Commodity Index Tracking Fund (now known as PowerShares DB Commodity Index Tracking Fund )); 55292 (February 14, 2007), 72 FR 8406 (February 26, 2007) (SR-Amex-2006-86) (approving listing of

NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange represents that it would take the place of NYSE Alternext US in such role and discharge such obligations.

The Funds will comply with the requirements of Rule 10A-3<sup>12</sup> under the Act.

#### *Trading Rules*

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

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

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule<sup>13</sup> or by the halt or suspension of trading of the underlying futures contracts.

#### *Surveillance*

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and

detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities included in, or options, futures or options on futures on, the Indexes or any other derivatives based on the Indexes, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the InterContinental Exchange and the London Metal Exchange, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group ("ISG") and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. A list of ISG members is available at <http://www.isgportal.org>.

In addition, not more than 10% of the weight of the applicable Index in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### *Information Bulletin*

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3)

how information regarding the IFVs is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) the risks involved in trading the Shares in the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated.<sup>14</sup>

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

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

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

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>15</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>16</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. The Exchange believes that the proposed rule change will permit the

Web site (<http://www.nyse.com>) will contain a link to the Funds' Web site. Additional information relating to the Funds is available on <http://www.invescopowershares.com>.

<sup>12</sup> 17 CFR 240.10A-3.

<sup>13</sup> See NYSE Arca Equities Rule 7.12.

<sup>14</sup> See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Mitra Mehr, Special Counsel and Brian O'Neill, Attorney, Division of Trading and Markets, Commission, dated November 20, 2008.

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

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

listing of the Shares on the Exchange, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

#### *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*

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-2008-128 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSEArca-2008-128. 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 a.m. and 3 p.m. 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-NYSEArca-2008-128 and should be submitted on or before December 19, 2008.

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

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>17</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the rules of a national securities exchange be designed 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 Exchange proposes to list and trade the Shares pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200. NYSE Arca represents that the Shares satisfy the requirements of Commentary .02 of Rule 8.200, which include initial and continued listing criteria to which the Shares will be subject. The Exchange deems the Shares to be equity securities, thus subjecting the Shares to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the Exchange from 4 a.m. to 8 p.m. Eastern Time. The Commission approved the listing and trading of the Shares on Amex,<sup>19</sup> now known as NYSE Alternext US, and trading of the Shares pursuant to UTP on NYSE Arca.<sup>20</sup>

The Commission believes that the proposal to list and trade the Shares on the Exchange 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. The Exchange states that: (1) The representations included in the Amex Filings relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange; and (2) to the extent NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange will assume the role of NYSE Alternext US and discharge such obligations. Accordingly, among other things:

1. Shortly after 4 p.m. each business day, the NAV of the Trust, (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Amount are disseminated;<sup>22</sup>

2. The IFV will be disseminated on a per Share basis at least every 15 seconds between 9:30 a.m. and 4:15 p.m. Eastern Time;<sup>23</sup>

3. The Trust's Web site is and will be publicly accessible at no charge and will contain, among other things, the NAV of the Shares and the underlying Basket Amount as of the prior business day, the Indicative Basket Amount, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV;<sup>24</sup>

4. The Trust's Web site, to which the NYSE Arca will link, will also provide 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, the Prospectus, and other applicable quantitative information;<sup>25</sup> and

5. The Exchange will provide a hyperlink on its Web site to the Funds' Web site (<http://www.DBFunds.DB.com>).<sup>26</sup>

The Commission also believes that the proposal to list and trade the Shares is

<sup>22</sup> See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55232; and *supra* note 6, 72 FR at 808.

<sup>23</sup> See *supra* note 6, 71 FR at 3132; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

<sup>24</sup> See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

<sup>25</sup> See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

<sup>26</sup> See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

<sup>17</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>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See Amex Filings, *supra* note 6.

<sup>20</sup> See UTP Filings, *supra* note 7.

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

reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under its continued listing standards, the Exchange will consider suspending trading in the Shares or removing them from listing if: (1) After the 12-month period following the commencement of trading on the Exchange, the issuer has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders for 30 or more consecutive days, the issuer has fewer than 50,000 Shares outstanding, or a market value less than \$1,000,000;<sup>27</sup> (2) the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis or if the sponsor or Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;<sup>28</sup> or (3) the IFV is no longer made available on at least a 15-second delayed basis.<sup>29</sup> With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.<sup>30</sup> In addition, the Commission notes that if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants pursuant to NYSE Arca Equities Rule 7.34(a)(5).<sup>31</sup>

The Commission also notes that Commentary .02 of Rule 8.200 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance.

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

(1) The Shares satisfy the requirements of Commentary .02 of Rule 8.200, which includes the initial and continued listing criteria for Trust Issued Receipts.

<sup>27</sup> See Commentary .02 (d)(2)(i) to NYSE Arca Equities Rule 8.200.

<sup>28</sup> See Commentary .02 (d)(2)(ii) to NYSE Arca Equities Rule 8.200.

<sup>29</sup> See Commentary .02 (d)(2)(iii) to NYSE Arca Equities Rule 8.200.

<sup>30</sup> Trading may be halted because of market conditions or for reasons that make trading in the Shares inadvisable, including: (1) The extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange will also halt trading pursuant to the Exchange's to NYSE Arca Equities Rule 7.12 during extraordinary market volatility or by the halt or suspension of trading in the underlying futures contracts.

<sup>31</sup> See NYSE Arca Equities Rule 7.34(a)(5).

(2) All of the facts describing the Funds and the Shares contained in the Amex filings are true and correct as of the date of this filing.

(3) The representations included in the Amex Filings relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange. To the extent NYSE Alternext U.S. has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange will take the place of NYSE Alternext U.S. in such role and discharge such obligations.

(4) The Exchange's surveillance procedures are adequate to properly monitor trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(5) With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the InterContinental Exchange and the London Metal Exchange, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the ISG and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(6) Not more than 10% of the weight of the applicable Index in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(7) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Previously, the Commission approved the listing and trading of the Shares on Amex,<sup>33</sup> and

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> See Amex Filings, *supra*, note 6.

the trading of the Shares pursuant to UTP on the Exchange.<sup>34</sup> The Exchange's proposal to list and trade the Shares does not appear to present any novel or significant regulatory issues. As such, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR–NYSEArca–2008–128) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–28241 Filed 11–26–08; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58992; File No. SR–NASDAQ–2008–088]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Its Obvious Errors Rule and the Adoption of a Catastrophic Error Provision

November 21, 2008.

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 November 19, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or the “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 prepared substantially by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,<sup>3</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.

<sup>34</sup> See UTP Filings, *supra*, note 7.

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

<sup>36</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> 17 C.F.R. 240.19b–4(f)(6).