

each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that each quarterly payment or billing shall be reconciled against a Participant's cumulative year-to-date payment or billing received to date and adjusted accordingly, and further provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants a quarterly itemized statement setting forth the basis upon which net operating income was calculated, including a quarterly itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs and Plan revenues shall be adjusted annually based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55187; File No. SR-Amex-2006-110]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Options Based on Commodity Pool ETFs

January 29, 2007.

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 November 24, 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 substantially prepared by the Exchange. 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

The Exchange proposes to amend certain rules to permit the listing and trading of options on equity interests issued by trust issued receipts ("Commodity TIRs"), partnership units, and other entities (referred herein to as "Commodity Pool ETFs") that hold or invest in commodity futures products.

The text of the proposed rule change is available at the Amex, the Commission's Public Reference Room, and [www.amex.com](http://www.amex.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 Amex 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 Amex has substantially 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 Exchange states that the purpose of the proposed rule change is to enable

the listing and trading on the Exchange of options on interests in Commodity Pool ETFs that trade directly or indirectly commodity futures products. As a result, Commodity Pool ETFs are subject to the Commodity Exchange Act ("CEA") due to their status as a commodity pool,<sup>3</sup> and therefore, regulated by the Commodity Futures Trading Commission ("CFTC").<sup>4</sup> Commodity Pool ETFs 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. Currently, Commentary .06 to Amex Rule 915 provides securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as an NMS security, and that: (i) Represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities; or (ii) represent interest in a trust or other similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity 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 interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust.

The Exchange proposes to amend Commentary .06 to Rule 915 to expand the type of options to include the listing and trading of options based on shares of Commodity Pool ETFs (the "Shares") that may hold or invest directly or indirectly in commodity futures products, including but not limited to, commodity futures contracts, options on commodity futures contracts, swaps,

<sup>3</sup> A "commodity pool" is defined in CFTC Regulation 4.10(d)(1) as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests. CFTC regulations further provide that a "commodity interest" means a commodity futures contract and any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act. See CFTC Regulation 4.10(a).

<sup>4</sup> The manager or operator of a "commodity pool" is required to register, unless applicable exclusions apply, as a commodity pool operator ("CPO") and commodity trading advisor ("CTA") with the CFTC and become a member of the National Futures Association ("NFA").

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

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

and forward contracts. As part of this revision to Commentary .06 to Rule 915, the Exchange proposes to add paragraph (a)(v) requiring for Commodity Pool ETFs 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 ETFs are listed and traded.

As set forth in proposed amended Commentary .06 to Rule 915, Commodity Pool ETFs 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, shares of Commodity Pool ETFs must meet either: (i) The criteria and guidelines under Commentary .01 to Rule 915; or (ii) be available for creation or redemption each business day in cash or in kind from the commodity pool, trust, or similar entity at a price related to net asset value. In addition, the commodity pool, trust or other similar entity shall provide that shares may be created even though some or all of the securities needed to be deposited have not been received by the commodity pool, trust or other similar entity, provided the authorized creation participant has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the commodity pool, trust, or other similar entity which underlies the option as described in the prospectus.

Under the applicable continued listing criteria in Commentary .07 to Amex Rule 916, the Shares may be subject to delisting as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities, or portfolio of securities on which the Shares are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the

Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Shares, if the Shares are halted from trading on their primary market, or if the Shares are delisted in accordance with the terms of Amex Rule 916, or the value of the index or portfolio on which the Shares are based is no longer calculated or available.

The Exchange is also proposing to amend Amex Rule 3 to require members to establish, maintain, and enforce written policies and procedures to 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 further proposes to amend Amex Rule 957 to ensure that the specialist and Registered Traders handling the Shares provide the Exchange with all necessary information relating to their trading in the applicable, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity. In addition, the revision to Rule 957 will prohibit a specialist or Registered Trader engaging in physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity from trading in an account which has not been reported to the Exchange.

The Exchange represents that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. 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 ETFs, the Exchange represents 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.

The addition of Commodity Pool ETF options will not have any effect on the

rules pertaining to position and exercise limits<sup>5</sup> or margin.<sup>6</sup>

This proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading. The Exchange notes that The DB Commodity Index Tracking Fund (the "DBC Fund"), the United States Oil Fund, L.P. (the "Oil Fund"), and the PowerShares DB G10 Currency Harvest Fund (the "DBV Fund") are listed and traded on the Amex.<sup>7</sup> The DBC Fund is a Commodity TIR and tracks the performance of the Deutsche Bank Liquid Commodity Index™—Excess Return, while the Oil Fund is a Partnership Unit and tracks the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma.

The DBC Fund is a "feeder fund" that invests substantially all of its assets in the DB Commodity Index Tracking Master Fund, and the Master Fund in turn maintains a portfolio of exchange-traded futures on aluminum, gold, corn, wheat, heating oil and light, sweet crude oil. The Index is derived from the prices of those futures contracts. The Master Fund's portfolio is managed on an ongoing basis by DB Commodity Services LLC, a registered CPO and CTA, so that the value of the portfolio closely tracks the value of the Index over time.

The DBV Fund is a "feeder fund" that invests substantially all of its assets in the PowerShares DB G10 Currency Harvest Master Fund, and the Master Fund in turn maintains a portfolio of exchange-traded futures on foreign currencies that comprise the G-10 countries. The Index is derived from the prices of those futures contracts. The Master Fund's portfolio is managed on an ongoing basis by DB Commodity Services LLC, a registered CPO and CTA, so that the value of the portfolio closely tracks the value of the Index over time.

Unlike the DBC and DBV Funds, the Oil Fund does not invest through a master-feeder structure but rather trades directly in futures on crude and heating oil, natural gas, gasoline and other petroleum-based fuels, options on such

<sup>5</sup> See Amex Rules 904 and 905.

<sup>6</sup> See Amex Rule 462.

<sup>7</sup> See Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-059) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (approving the listing and trading of Units of the United States Oil Fund, L.P.); and 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR-Amex-2006-44) (approving the listing and trading of the PowerShares DB G10 Currency Harvest Fund).

futures contracts, forward contracts on oil and other over-the-counter derivatives based on the price of oil, other petroleum-based fuels, the futures contracts described above, and the indexes based on any of the foregoing. The Oil Fund's portfolio is managed by Victoria Bay Asset Management LLC with the aim of tracking the West Texas Intermediate light, sweet crude oil futures contract listed and traded on the New York Mercantile Exchange.

The Amex believes that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the near future. The Exchange states that 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 ETFs that have been recently launched as well as any other similar Commodity Pool ETFs that may be listed and traded in the future.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> of the Act in particular, in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of 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

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

## 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 the self-regulatory organization 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.

## 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 Exchange 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-Amex-2006-110 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-2006-110. 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 Amex. 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-2006-110 and should be submitted on or before February 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55195; File No. SR-Amex-2006-117]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Charges for Equities and ETFs

January 30, 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 20, 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 substantially prepared by the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) 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. On January 26, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>5</sup> 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

The Exchange proposes to revise the equities and Exchange Traded Fund Shares ("ETFs") Fee Schedules to establish new transaction charges and revise the cancellation fee charged for cancellations of orders in equities and ETFs.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com/atamex/>

<sup>10</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)(ii).

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

<sup>5</sup> In Amendment No. 1, the Exchange made clean-up changes to its proposed rule text.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).