

the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2009-80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-ISE-2009-80. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR-ISE-2009-80 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60819; File No. SR-NYSEArca-2009-89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Replacement Indexes for PowerShares DB Commodity Index Tracking Fund and PowerShares DB Agriculture Fund

October 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 8, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 is 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,³ the Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to describe a replacement to the indexes underlying the PowerShares DB Commodity Index Tracking Fund and the PowerShares DB Agriculture Fund, which are listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200.

¹² 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³⁵ U.S.C. 78s(b)(1).

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 IV 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

The PowerShares DB Commodity Index Tracking Fund ("DBC") and the PowerShares DB Agriculture Fund ("DBA" and together with DBC, the "Funds")⁴ are currently listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 ("Trust Issued Receipts").⁵ Deutsche Bank AG

⁴ See Registration Statement on Form S-3 for PowerShares DB Commodity Index Tracking Fund (No. 333-158733, dated April 23, 2009) ("DBC Registration Statement") and the Post-Effective Amendment No. 1 to Form S-1 for PowerShares DB Agriculture Fund (No. 333-150501, dated April 15, 2009) ("DBA Registration Statement"). In addition, the issuer has filed Current Reports on Forms 8-K with respect to DBC (No. 001-32726, filed Sept. 30, 2009) ("DBC Current Report") and DBA (No. 001-33238, filed Sept. 30, 2009) ("DBA Current Report") regarding replacement of the indexes underlying the Funds.

⁵ See Securities Exchange Act Release No. 58993 (November 21, 2008), 73 FR 72548 (November 28, 2008) (SR-NYSEArca-2008-128) (order approving listing on the Exchange of the Funds) ("NYSE Arca Order"). The Funds were previously traded on the Exchange pursuant to unlisted trading privileges ("UTP"). 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); 55453 (March 13, 2007), 72 FR 13333 (March 21, 2007) (SR-NYSEArca-2006-62) (order approving UTP trading of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds). The Funds were originally approved for listing on the American Stock Exchange LLC (the "Amex", now known as NYSE Amex LLC). 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)) ("Amex DBC Order"); 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (approving listing of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds) ("Amex DBA Order"). See also, Securities Exchange Act Release No. 53858 (May 24, 2006), 71 FR 31232 (June 1, 2006) (SR-Amex-2006-53) ("Supplemental Amex DBC Filing", in which the Amex clarified the manner in which the index underlying DBC is maintained by providing that the replacement of expiring futures contracts would be based on

¹⁰ 15 U.S.C. 78s(b)(3)(A) [sic].

¹¹ 17 CFR 240.19b-4(f)(2).

London, the "Index Sponsor" for the Funds, has determined to replace the commodities indexes underlying these securities from those previously approved by the Commission in the NYSE Arca Order, Amex DBC Order, and Amex DBA Order (collectively, the "DBC/DBA Orders").

With the exception of the description of the replacement indexes underlying DBC and DBA, as described below, the descriptions of the Funds and the Shares provided in the DBC/DBA Orders and the Supplemental Amex DBC Filing, as applicable, remain unchanged. In addition, each of the representations that applied to the current indexes underlying DBC and DBA set forth in the DBC/DBA Orders, as applicable, will continue to apply to the proposed replacement indexes, including, without limitation, with respect to the calculation and dissemination of index and commodity-related information.⁶ Further, other representations relating to the listing and trading of shares of DBC and DBA ("DBC Shares" and "DBA Shares", respectively) on the Exchange, including, without limitation, dissemination of certain values, trading rules governing the trading of the DBC Shares and DBA Shares, and surveillance procedures for the DBC Shares and DBA Shares and the underlying commodities and commodity-related derivatives, will continue to apply. As a result of the proposed change, the Exchange represents that the Funds satisfy the requirements of Rule 8.200, Commentary .02, and therefore qualify for continued listing on the Exchange. In addition, the Funds will continue to satisfy Rule 10A-3 under the Act.

PowerShares DB Commodity Index Tracking Fund

The investment objective of DBC and the Master Fund is to seek to track changes, whether positive or negative, in the level of the Deutsche Bank Liquid Commodity Index Optimum Yield—

"Optimum Yield" roll rules for such index, as described in SR-Amex-2006-53).

⁶ The Index Sponsor has in place procedures to prevent the improper sharing of information between different affiliates and departments. Specifically, an information barrier exists between the personnel within the Index Sponsor that calculate and reconstitute the replacement indexes (the Calculation Group) and other Deutsche Bank personnel, including but not limited to the Managing Owner, sales and trading, external or internal fund managers, and bank personnel who are involved in hedging the bank's exposure to instruments linked to the replacement indexes, in order to prevent the improper sharing of information relating to the reconstitution of such indexes. The replacement indexes are not calculated by a broker-dealer.

Excess Return™ ("DBLCI-OYER"), less the expenses of the operations of DBC and the DBC Master Fund. A description of the DBLCI-OYER, commodity futures contracts and related options, operation of DBC, creation and redemption procedures, and the Shares is set forth in the NYSE Arca Order, the Amex DBC Order, and the Supplemental Amex DBC Filing.⁷

As described in the DBC Current Report ("DBC Index Description"), the Index Sponsor has made the determination that changes in regulatory circumstances (the "DBC Changes") affecting the DBLCI-OYER have arisen, and, in the view of the Index Sponsor, such DBC Changes necessitate the replacement of the DBLCI-OYER.⁸

Because of such DBC Changes, the Index Sponsor has determined that the replacement index should include additional commodities that are not currently part of the DBLCI-OYER in order to permit the replacement index to reflect, broadly and in proportion to historical levels, the world's production and supplies of certain commodities. The DBC Index Description will reflect the replacement of the DBLCI-OYER with the Deutsche Bank Liquid Commodity Index—Optimum Yield Diversified Excess Return™ ("DBLCI-OY Diversified ER").

According to the DBC Index Description, the DBLCI-OY Diversified ER is intended to reflect, broadly and in proportion to historical levels, the world's production and supplies of certain commodities. The commodities

⁷ E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Daniel Gien, Staff Attorney, Division of Trading and Markets, Commission, dated Oct. 13, 2009.

⁸ The action by the Funds to replace the commodity indexes currently underlying the Funds is in response to an announcement by the Commodity Futures Trading Commission ("CFTC") in Release 5695-09 (August 19, 2009) ("CFTC Release"), that the CFTC is withdrawing two no-action letters that provided relief from federal agricultural speculative positions limits set forth in CFTC regulations (17 CFR 150.2). The CFTC Release stated, in part, as follows: "In CFTC Letter 06-09 (May 5, 2006), the agency's Division of Market Oversight (DMO) granted no-action relief to DB Commodity Services LLC, a commodity pool operator (CPO) and commodity trading advisor (CTA), permitting the DB Commodity Index Tracking Master Fund to take positions in corn and wheat futures that exceed federal speculative position limits set forth in CFTC Regulation 150.2. Subsequently, in CFTC Letter 06-19 (September 6, 2006), DMO granted similar no-action relief to a CPO/CTA employing a proprietary commodity investment strategy that includes positions in Chicago Board of Trade corn, soybeans and wheat futures contracts. Among other things, DMO's no-action position in both cases stated that any change in circumstances or conditions could result in a different conclusion. DMO has previously stated that the trading strategies employed by these entities would not qualify for a bona fide hedge exemption under the Commission's regulations."

of the DBLCI-OY Diversified ER are (1) Light, Sweet Crude Oil (WTI), (2) Heating Oil, (3) RBOB Gasoline, (4) Natural Gas, (5) Brent Crude, (6) Gold, (7) Silver, (8) Aluminum, (9) Zinc, (10) Copper Grade A, (11) Corn, (12) Wheat, (13) Soybeans, and (14) Sugar.⁹ Each commodity is represented in the DBLCI-OY Diversified ER™ as an index with respect to that specific commodity ("Single Commodity Index"). Each Single Commodity Index is assigned a weight (the "DBC Index Base Weight") which is intended to reflect the world's production and supplies of each such index commodity.

According to the DBC Index Description, the DBLCI-OY Diversified ER has been calculated back to a base date (the "DBC Base Date") of September 3, 1997. On the DBC Base Date, the closing level of the DBLCI-OY Diversified ER™ was 100.

Single Commodity Index	DBC Index Base Weight (%)	Exchange ¹⁰
Light, Sweet Crude Oil (WTI).	12.375	NYMEX
Heating Oil	12.375	NYMEX
RBOB Gasoline.	12.375	NYMEX
Natural Gas	5.500	NYMEX
Brent Crude	12.375	ICE-UK
Gold	8.000	COMEX
Silver	2.000	COMEX
Aluminum	4.167	LME
Zinc	4.167	LME
Copper Grade A.	4.167	LME
Corn	5.625	CBOT
Wheat	5.625	CBOT
Soybeans	5.625	CBOT
Sugar	5.625	ICE-US

According to the DBC Current Report, each Single Commodity Index of the DBLCI-OY Diversified ER™ employs a rules-based approach when it "rolls" from one futures contract to another for each commodity. Rather than select a new futures contract based on a predetermined schedule (e.g., monthly), each Single Commodity Index rolls to the futures contract which generates the

⁹ The DBLCI-OY Diversified ER includes all of the commodities in the previous DBLCI-OYER, and, in addition to such commodities, includes Brent Crude, RBOB Gasoline, Natural Gas, Silver, Zinc, Copper Grade A, Soybeans, and Sugar.

¹⁰ The referenced exchanges with respect to the commodities for DBC and DBA, as applicable, are as follows: NYMEX (New York Mercantile Exchange); ICE-UK (ICE Futures Europe); COMEX (Commodity Exchange Inc.); LME (The London Metal Exchange Limited); CBOT (Chicago Board of Trade); CME (Chicago Mercantile Exchange); ICE-US (ICE Futures U.S.); KCB (Kansas City Board of Trade).

maximum “implied roll yield.” The futures contract having a delivery month within the next thirteen months which generates the highest implied roll yield will be included in each Single Commodity Index.

DBLCI–OY Diversified ER™ is calculated in U.S. dollars on both an excess return (unfunded) and total return (funded) index levels.

PowerShares DB Agriculture Fund

DBA is designed to track the Deutsche Bank Liquid Commodity Index—Optimum Yield Agriculture Excess Return™ (“DBLCI–OY Agriculture ER”), which is intended to reflect the agricultural sector. A description of the DBLCI–OY Agriculture ER, commodity futures contracts and related options, operation of DBA, creation and redemption procedures, and the DBA Shares is set forth in the NYSE Arca Order and the Amex DBA Order.

As is the case with respect to DBC, as discussed above, the Index Sponsor has made the determination that changes in regulatory circumstances (“DBA Changes”) affecting the DBLCI–OY Agriculture ER have arisen, and, in the view of the Index Sponsor, such DBA Changes necessitate replacement of the DBLCI–OY Agriculture ER.¹¹

As described in the DBA Current Report (“DBA Index Description”),¹² because of the DBA Changes, the Index Sponsor has determined that the replacement index should include additional commodities that are not currently part of the DBLCI–OY Agriculture ER in order to permit the replacement index to reflect the performance of the agricultural sector. The DBA Index Description will reflect the replacement of the DBLCI–OY Agriculture ER with the Deutsche Bank Liquid Commodity Index Diversified Agriculture Excess Return™ (“DBLCI Diversified Agriculture ER”).

The DBLCI Diversified Agriculture ER is intended to reflect the performance of the agricultural commodities sector and is calculated on an excess return, or unfunded basis. The DBLCI Diversified Agriculture ER methodology provides that the replacement of expiring futures contracts in part would be based on “Optimum Yield” roll rules for such index, as described in the DBA Current Report. In addition, the DBLCI Diversified Agriculture ER, in part, is rolled on a non-Optimum Yield basis. Each commodity in the DBLCI Diversified Agriculture ER is assigned a weight (the “DBA Index Base Weight”) which is intended to reflect the

proportion of such commodity relative to such index.¹³

The DBLCI Diversified Agriculture ER has been calculated back to a base date of January 18, 1989 (the “Base Date”). On the Base Date, the closing level of the DBLCI Diversified Agriculture ER™ was 100.

Single Commodity Index ¹⁴	DBA Index Base Weight (%)	Exchange
Corn	12.50	CBOT
Soybeans	12.50	CBOT
Wheat	6.25	CBOT
Kansas Wheat	6.25	KCB
Sugar	12.50	ICE–US
Cocoa	11.11	ICE–US
Coffee	11.11	ICE–US
Cotton	2.78	ICE–US
Live Cattle	12.50	CME
Feeder Cattle	4.17	CME
Lean Hogs	8.33	CME

DBLCI Diversified Agriculture ER is calculated in U.S. dollars on both an excess return (unfunded) and total return (funded) index levels.

Dissemination of Information About the Underlying Futures Contracts

The closing prices and daily settlement prices for the futures contracts held by the applicable Master Funds are publicly available on the Web sites of the futures exchanges trading the particular contracts. The particular futures exchange for each futures contract in the DBLCI–OY Diversified ER, with Web site information, is as follows: (i) Aluminum, zinc and copper—LME at www.lme.com; (ii) corn, wheat and soybeans—CBOT at www.cmegroup.com; (iii) Brent Crude—ICE–UK at www.theice.com; (iv) sugar—ICE–US at www.theice.com; and (v) light, sweet crude oil (WTI), heating oil, RBOB gasoline, natural gas, gold and silver—NYMEX at www.nymex.com.

The particular futures exchange for each futures contract in the DBLCI Diversified Agriculture ER with Web site information is as follows: (i) Corn, soybeans and wheat—CBOT at www.cmegroup.com; (ii) Kansas wheat—KCB at www.kcbt.com; (iii) sugar, coffee, cocoa and cotton—ICE–US at www.theice.com; and (iv) live cattle,

¹³ The DBLCI Diversified Agriculture ER includes all of the commodities in the previous DBLCI–OY Agriculture ER, and, in addition to such commodities, includes Kansas Wheat, Cocoa, Coffee, Cotton, Live Cattle, Feeder Cattle, and Lean Hogs.

¹⁴ Futures contracts on Corn, Soybeans, Wheat, Kansas Wheat, and Sugar are rolled on an Optimum Yield basis. Futures contracts on Cocoa, Coffee, Cotton, Live Cattle, Feeder Cattle and Lean Hogs are rolled on a Non-Optimum Yield basis.

feeder cattle and lean hogs—CME at www.cmegroup.com.

The Exchange will issue an Information Bulletin regarding the replacement indexes for DBC and DBA in connection with trading of DBC and DBA based on such indexes.

All terms relating to the Funds that are referred to, but not defined, in this proposed rule change are defined in the DBC Registration Statement, the DBC Current Report, the DBA Registration Statement, and the DBA Current Report, as applicable.

Surveillance

The Exchange currently has in place an Information Sharing Agreement with the ICE Futures U.S., ICE Futures Europe, LME, and KCB, for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Indexes. The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members of the ISG, including CME, CBOT and NYMEX.¹⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁶ in general and Section 6(b)(5) of the Act¹⁷ in particular in that it is designed 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 and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change accommodates an expansion of the commodities included in the indexes underlying the Funds, which has been undertaken in response to action by the CFTC referred to above,¹⁸ 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.

¹⁵ For a list of the current members of ISG, see www.isgportal.org.

¹⁶ 15 U.S.C. 78s(b).

¹⁷ 15 U.S.C. 78s(b)(5).

¹⁸ See note 8, *supra*.

¹¹ See note 8, *supra*.

¹² See note 4, *supra*.

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. 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 the 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 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. Please include File Number SR-NYSEArca-2009-89 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2009-89. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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-2009-89 and should be submitted on or before November 9, 2009.

V. 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.¹⁹ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,²⁰ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission notes that the new replacement indexes, DBLCI-OY Diversified ER and DBLCI Diversified Agriculture ER, reflect more commodity components and are more diversified than the current indexes underlying DBC and DBA, respectively.²¹ In addition, with the exception of the description of the replacement indexes underlying DBC and DBA, the Commission notes that the descriptions of the Funds and the Shares provided in the DBC/DBA Orders and the Supplemental Amex DBC Filing, as applicable, remain unchanged. The

¹⁹ In approving the proposed 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).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See *supra* notes 9 and 13.

Commission further notes that each of the representations that applied to the current indexes underlying DBC and DBA set forth in the DBC/DBA Orders, as applicable, will continue to apply to the proposed replacement indexes, including, without limitation, with respect to the calculation and dissemination of index and commodity-related information. In addition, other representations relating to the listing and trading of the DBC Shares and DBA Shares on the Exchange, including, without limitation, dissemination of certain values, trading rules governing the trading of the DBC Shares and DBA Shares, and surveillance procedures for the DBC Shares and DBA Shares and the underlying commodities and commodity-related derivatives, will continue to apply. As a result of the proposed change, the Exchange represents that the Funds will continue to satisfy the requirements of Commentary .02 to NYSE Arca Equities Rule 8.200 and therefore qualify for listing on the Exchange. This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²² for approving the proposed rule change prior to the 30th day after publication of notice in the **Federal Register**. The Commission notes that the DBC Shares and DBA Shares are currently listed and trading on the Exchange based on the DBLCI-OYER and the DBLCI-OY Agriculture ER, respectively. The Commission believes that the Exchange's proposal to replace such current indexes with the DBLCI-OY Diversified ER and DBLCI Diversified Agriculture ER, which are more broad-based than the current indexes, does not appear to present any novel issues or significant regulatory concerns. The Commission notes that, with the exception of the description of the replacement indexes underlying DBC and DBA, the descriptions of the Funds and the Shares, as provided in the DBC/DBA Orders and the Supplemental Amex DBC Filing, as applicable, and the representations previously made by the Exchange relating to the indexes and the trading of the DBC Shares and DBA Shares on the Exchange will continue to apply. The Commission also notes that the Exchange's proposal represents action in response to the CFTC Release. The Commission believes that accelerating approval of this proposal should benefit investors and the marketplace by providing, without undue delay, for certain commodity-based products

²² 15 U.S.C. 78s(b)(2).

currently listed and trading on an exchange to be based on an expanded and more diversified set of commodity components.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-NYSEArca-2009-89) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60809; File No. SR-NYSE-2009-104]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C(8)(a)(1) To Extend the Operation of the Extreme Order Imbalances Pilot

October 9, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 5, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 NYSE Rule 123C(8)(a)(1) to extend the operation of the pilot to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange until the earlier of Securities and Exchange Commission approval to make such pilot permanent or December 31, 2009. The text of the proposed rule change is available at the

Exchange, the Commission's Public Reference Room, and <http://www.nyse.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 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 IV 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

NYSE Rule 123C(8)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 ("Extreme Order Imbalances Pilot" or Pilot).⁴ Through this filing, NYSE proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or December 31, 2009.⁵

Background

Pursuant to NYSE Rule 123C(8)(a)(1), the Exchange may suspend NYSE Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.⁶ The provisions of NYSE Rule 123C(8)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure

Exchange systems to accept orders electronically after 4:00 p.m.

The Extreme Order Imbalance Pilot is scheduled to end operation on October 13, 2009. The Exchange is currently preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before October 13, 2009.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, invocation of the provisions of NYSE Rule 123C(8) to attract offsetting interest is intended to be used for extreme and likely rare circumstances where there exists such a large imbalance at the close that a DMM is unable to close the security without significantly dislocating the price of the security. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Rule 123C(8), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Rule 123C(8)(a)(1), in only one security on August 31, 2009.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous as previously believed to modify Exchange systems to accept orders electronically after 4 p.m. The Exchange anticipates that such system modifications could be completed by December 31, 2009.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4 p.m. The Exchange therefore request and [sic] extension from the current expiration date of October 13, 2009, until the earlier of Securities and Exchange

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities and Exchange Act Release No. 597755 [sic] (April 13, 2009) 74 FR 18009 (April 20, 2009)(SR-NYSE-2009-15).

⁵ The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. See SR-NYSE-Amex-2009-70.

⁶ See NYSE Rule 123C(8)(a)(1).