

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55739; File No. SR-NASDAQ-2007-049)

May 10, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Shares of the PowerShares DB G10 Currency Harvest 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 May 7, 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 notice and order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

Nasdaq proposes to trade, pursuant to unlisted trading privileged (“UTP”), shares (“Shares”) of the PowerShares DB G10 Currency Harvest Fund (the “Trust” or “Fund”).

The text of the proposed rule change is available from Nasdaq’s Web site at [nasdaq.complinet.com](http://nasdaq.complinet.com), at Nasdaq’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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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

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

received on the proposed rule change. The text of these 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 aspects of such statements.

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

1. Purpose

Nasdaq is proposing to trade the Shares on a UTP basis. The Shares are currently trading on Nasdaq on a three-month pilot basis.<sup>3</sup> Approval of this filing will allow the Shares to continue to trade after the expiration of the pilot. The Commission previously approved the listing and trading of the Shares on the American Stock Exchange (“Amex”).<sup>4</sup> Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq’s existing rules governing the trading of equity securities, including Nasdaq Rule 4630. The trading hours for the Shares on Nasdaq will be 9:30 a.m. to 4:15 p.m. Eastern Time (“ET”).

The Shares represent beneficial ownership interests in the Fund's net assets, consisting solely of the common units of beneficial interests of the DB G10 Currency Harvest Master Fund (the “Master Fund”). The Master Fund is a statutory trust created under Delaware law whose investment portfolio consists primarily of futures contracts on the currencies comprising the Deutsche Bank G10 Currency Future Harvest Index<sup>TM</sup> (the “DBCHI” or “Index”) and includes cash and U.S. Treasury securities for margin purposes, and other high-credit-quality short-term fixed income securities. Both the Fund

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<sup>3</sup> See Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR-NASDAQ-2007-016) (the “Pilot Order”).

<sup>4</sup> See Securities Exchange Act Release No. 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (the “Amex Order”).

and the Master Fund are commodity pools operated by DB Commodity Services LLC (the “Managing Owner”).<sup>5</sup>

The investment objective of the Fund and the Master Fund is to reflect the performance of the Index, over time, less the expenses of the operation of the Fund and the Master Fund. The Fund pursues its investment objective by investing substantially all of its assets in the Master Fund. Each Share correlates with a Master Fund share issued by the Master Fund and held by the Fund. The Master Fund pursues its investment objective by taking futures positions in currencies represented in the Index and adjusts its holdings quarterly as the Index is adjusted. The Master Fund also holds cash and U.S. Treasury securities for deposit with futures commission merchants as margin, and other high-credit-quality short-term fixed income securities. The Fund is not managed on a discretionary basis but instead seeks to track the Index pursuant to established rules and procedures.

The Index, at any time, is comprised of six currencies from The Group of Ten (“G10”) countries,<sup>6</sup> futures contracts on which are traded on the Chicago Mercantile Exchange (“CME”). The notional amounts of each currency included in the Index (“Index Currency”) are based on the Index closing level as of the period in which the

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<sup>5</sup> The Managing Owner is registered as a commodity pool operator (“CPO”) and commodity trading advisor (“CTA”) with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”). The Managing Owner serves as the CPO and CTA of the Fund and the Master Fund.

<sup>6</sup> The G10 currencies are the U.S. Dollar, the Euro, the Japanese Yen, the Canadian Dollar, the Swiss Franc, the British Pound, the Australian Dollar, the New Zealand Dollar, the Norwegian Krone, and the Swedish Krona (the “Eligible Index Currencies”).

Index is re-weighted.<sup>7</sup> The Index closing level reflects an arithmetic weighted average of the change in the futures positions on the Index Currencies' exchange rates against the U.S. dollar since March 12, 1993. On such date, the Index closing level was \$100. The sponsor of the Index is Deutsche Bank AG London ("DB London" or the "Index Sponsor").

Issuances of Shares are made only in one or more blocks of 200,000 Shares ("Basket Aggregation" or "Basket") or multiples thereof. The Fund issues and redeems the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an "Authorized Participant")<sup>8</sup> with the Managing Owner.

A Basket will be issued in exchange for an amount of cash equal to the Fund's net asset value ("NAV") per Share times 200,000 Shares ("Basket Amount"). The Basket Amount will be determined on each business day by The Bank of New York ("Administrator").<sup>9</sup> An Authorized Participant that wishes to purchase a Basket must transfer the Basket Amount to the Administrator (the "Cash Deposit Amount"). A Basket

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<sup>7</sup> The Index Sponsor reviews and re-weights the Index on a quarterly basis.

<sup>8</sup> An "Authorized Participant" is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets: (i) is a registered broker-dealer; (ii) is a Depository Trust Company Participant; and (iii) has in effect a valid Participant Agreement.

<sup>9</sup> At or about 4:00 p.m. ET each business day, the Administrator determines the Basket Amount for orders placed by Authorized Participants received before 1:00 p.m. ET that day. Thus, although Authorized Participants place orders to purchase Shares throughout the trading day until 1:00 p.m. ET, the actual Basket Amount is determined at 4:00 p.m. ET or thereafter. On each business day, the Administrator makes available, immediately prior to 9:30 a.m. ET, the most recent Basket Amount for the creation of a Basket. According to the Amex Order, Amex disseminates every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape ("CT"), an amount representing, on a per-Share basis, the current value of the Basket Amount.

is then separable upon issuance into the Shares that can be traded on Nasdaq on a UTP basis.

The Shares are not individually redeemable may be redeemed only in Baskets. To redeem, an Authorized Participant is required to accumulate enough Shares to constitute a Basket (i.e., 200,000 shares). An Authorized Participant that wishes to redeem a Basket will receive cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the “Cash Redemption Amount”). Upon the surrender of the Shares and payment of applicable redemption transaction fee, taxes, or charges, the Administrator will deliver to the redeeming Authorized Participant the Cash Redemption Amount.

After 4:00 p.m. ET each business day, the Administrator determines the NAV<sup>10</sup> for the Fund, utilizing the current settlement value of exchange-traded futures contracts on the Index Currencies, and the Administrator, Amex, and Managing Owner will disseminate the NAV for the Shares and the Basket Amount (for orders placed during the day). The Basket Amount and the NAV are communicated by the Administrator to all Authorized Participants via facsimile or e-mail.<sup>11</sup> Nasdaq will provide a hyperlink to the Fund's Web site at <http://www.dbfunds.db.com> from its Web site at

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<sup>10</sup> The NAV for the Fund is the total assets of the Master Fund less total liabilities of the Master Fund. The NAV is calculated by including any unrealized profit or loss on futures contracts and any other credit or debit accruing to the Master Fund but unpaid or not received by the Master Fund. The NAV is then used to compute all fees (including the management and administrative fees) that are calculated from the value of Master Fund assets. The Administrator calculates the NAV per Share by dividing the NAV by the number of Shares outstanding.

<sup>11</sup> According to the Amex Order, Amex has represented that the NAV for the Fund will be made available to all market participants at the same time. If the NAV is not disseminated to all market participants at the same time, Amex will halt trading in the Shares.

<http://www.nasdaq.com>. The Web site for the Fund contains quantitative information about the Fund and the Fund's prospectus. Quotations for and last sale information regarding the Shares are disseminated via the CT and the Consolidated Quotation Service.

To provide updated information relating to the Fund for use by investors, professionals, and persons wishing to create or redeem the Shares, Amex disseminates through the facilities of the CT an updated Indicative Fund Value ("IFV"). The IFV is disseminated on a per-Share basis every 15 seconds from 9:30 a.m. to 4:15 p.m. ET. The IFV is calculated based on the cash required for creations and redemptions (i.e., NAV x 200,000) adjusted to reflect the price changes of the Index Currencies through investments held by the Master Fund (i.e., futures contracts and options on futures and/or forwards).

DB London, as the Index Sponsor, publishes the value of the Index at least once every 15 seconds throughout each trading day on the CT, Bloomberg, and Reuters, and on its Web site at <http://index.db.com> and the Fund's Web site at <http://www.dbfunds.db.com>. The closing Index level is similarly provided by DB London and the Fund. In addition, any adjustments or changes to the Index also are provided by DB London and the Fund on their respective Web sites.

The daily settlement prices for the foreign currency futures contracts comprising the Index and held by the Master Fund are publicly available on the Internet Web sites of the futures exchanges trading the particular contracts, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. All of the foreign currency futures contracts in which the Master

Fund currently expects to invest are traded on the CME, although currency futures contracts on the eligible Index Currencies also trade on other futures exchanges and the Master Fund may invest in such contracts.<sup>12</sup>

Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of the IFV or the value of the Index. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Shares if the listing market delists them.

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 facilities is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular.<sup>13</sup> Nasdaq is able to obtain information regarding trading in the Shares and the underlying currency futures through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the

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<sup>12</sup> Such other futures exchanges would be required to be members of the Intermarket Surveillance Group ("ISG") or to have comprehensive surveillance sharing agreements with Nasdaq.

<sup>13</sup> NASD surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

ISG, including the CME. Nasdaq has issued an Information Circular to inform its members of the special characteristics and risks associated with trading the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general and Section 6(b)(5) of the Act<sup>15</sup> in particular, in that in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act<sup>16</sup> because it deems the Shares to be an equity securities, thus rendering trading in the Shares subject to Nasdaq'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 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

Written comments on the proposed rule change were neither solicited nor received.

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 17 CFR 240.12f-5.



### 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-NASDAQ-2007-049 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-2007-049. 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 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-NASDAQ-2007-049 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>17</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>18</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>19</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>20</sup> The Commission notes that it previously

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<sup>17</sup> In approving this rule change, the Commission notes that it has considered the proposal'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> 15 U.S.C. 78l(f).

<sup>20</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

approved the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP.<sup>21</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>22</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>23</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 disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IFV, updated to reflect changes in currency exchange rates, is calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading

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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>21</sup> See supra note 4 (approving listing and trading of Shares on Amex). See also Securities Exchange Act Release No. 54569 (October 4, 2006) 71 FR 60594 (October 13, 2006) (approving UTP trading of Shares on NYSE Arca).

<sup>22</sup> 17 CFR 240.12f-5.

<sup>23</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

hours for the Shares. In addition, if the listing market halts trading when the IFV is not being calculated or disseminated, the Exchange would halt trading in the Shares.

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 represented that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares. This approval order is conditioned on the Exchange's adherence to this representation.

In addition, the Commission recently approved the trading of the Shares on the Exchange pursuant to UTP for a pilot period of three months.<sup>24</sup> In the Pilot Order, the Commission noted that exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying securities. In its proposal to trade the Shares for a pilot period, the Exchange represented that it was in the process of completing these surveillance arrangements and expected to do so "in the near future." The Exchange recently provided the Commission with evidence that it has completed these surveillance arrangements.

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 previously, the Commission previously found that the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP are consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the continued trading of the Shares on the

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<sup>24</sup> See supra note 3.

Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by continuing the additional competition in the market for the Shares.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-NASDAQ-2007-049), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).