



RULE  
ADOPTION  
NOTICE

**RAN-06-23**  
**May 2, 2006**

**TO: ETP Holders and Sponsored Participants**

**FROM: Department of Regulatory Policy**

**SUBJECT: DB Commodity Index  
(File No. SR-PCX-2006-22)**

On March 3, 2006, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (“Exchange”) filed a proposed rule change to amend PCXE Rule(s) 8.200 to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”) shares of trust issued receipts (“TIRs”) where the trust holds shares or securities (“Investment Shares”) that are issued by a trust, partnership, commodity pool or other similar entity that holds investments comprising or otherwise based on 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. The Exchange also proposed to trade shares of the DB Commodity Index Tracking Fund pursuant to UTP. On March 27, 2006 the Exchange filed Amendment No. 1 to the proposed rule change. The Commission approved the proposed rule change and released the notice on April 27, 2006.

The following is the text of the rule change. Questions regarding this bulletin may be directed to David Strandberg at 312/422-7085.

#### **EXHIBIT 5**

#### **Text of the Proposed Rule Change:<sup>1</sup>**

#### **Rules of NYSE Arca Equities, Inc.**

#### **Trust Issued Receipts**

**Rule 8.200 (a) through (f).** No Change

**Commentary .01.** No Change

**Commentary .02**

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<sup>1</sup> New text is underscored and deleted text is in brackets.

(a) The provisions of this Commentary apply only to Trust Issued Receipts that invest in “Investment Shares” as defined below. Rules that reference Trust Issued Receipts shall also apply to Trust Issued Receipts investing in Investment Shares.

(b) Definitions. The following terms as used in this Commentary shall, unless the context otherwise requires, have the meanings herein specified:

(1) Investment Shares. The term "Investment Shares" means a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests 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; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.

(2) Futures Contract. The term “futures contract” is commonly known as a “contract of sale of a commodity for future delivery” set forth in Section 2(a) of the Commodity Exchange Act.

(3) Forward Contract. A forward contract is a contract between two parties to purchase and sell a specific quantity of a commodity at a specified price with delivery and settlement at a future date. Forwards are traded over-the-counter (“OTC”) and not listed on a futures exchange.

(c) Designation. The Corporation may list and trade Trust Issued Receipts investing in Investment Shares. Each issue of a Trust Issued Receipt based on a particular Investment Share shall be designated as a separate series and shall be identified by a unique symbol.

(d) Initial and Continued Listing. Trust Issued Receipts based on Investment Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) Initial Listing--The Corporation will establish a minimum number of receipts required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Listing—The Corporation will consider removing from listing Trust Issued Receipts based on an Investment Share under any of the following circumstances:

(i) if following the initial twelve month period following the commencement of trading of the shares, (A) the Issuer has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (B) if the Issuer has fewer than 50,000 securities or shares issued and outstanding; or (C) if the market value of all securities or shares issued and outstanding is less than \$1,000,000;

(ii) if the value of an underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis or the Corporation stops providing a hyperlink on its website to any such asset or investment value;

(iii) if the Indicative Value is no longer made available on at least a 15-second delayed basis; or

(iv) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of the Trust, the Corporation requires that Trust Issued Receipts issued in connection with such Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

(3) Term -- The stated term of the Trust shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee--The following requirements apply:

(i) The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(ii) No change is to be made in the trustee of a listed issue without prior notice to and approval of the Corporation.

(5) Voting--Voting rights shall be as set forth in the applicable Trust prospectus.

(e) Market Maker Accounts.

(1) An ETP Holder acting as a registered Market Maker in Trust Issued Receipts is obligated to comply with PCXE Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Trust Issued Receipts only, Other Business Activities shall include acting as a market maker or functioning in any capacity involving market-making responsibilities in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. However, an approved person of an ETP Holder acting as a registered Market Maker in Trust Issued Receipts that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making

capacity, other than as a Market Maker in the Trust Issued Receipts on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

(2) The ETP Holder acting as a registered Market Maker in Trust Issued Receipts must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Trust Issued Receipts shall trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Corporation as required by this Rule.

(3) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Trust Issued Receipts shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(4) In connection with trading the underlying physical asset or commodity, related futures or options on futures or any other related derivative (including Trust Issued Receipts), the ETP Holder acting as a registered Market Maker in Trust Issued Receipts shall not use any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the physical asset or commodity, futures or options on futures, or any other related derivatives.

(f) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the Trust in connection with issuance of Trust Issued Receipts; net asset value; or other information relating to the purchase, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying asset or commodity.

(g) The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading Trust Issued Receipts based on separate Investment Shares.