

what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### Electronic Comments

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1–09779 or;

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–09779. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6–214 Filed 1–11–06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53059; File No. SR–Amex–2005–128]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading Pursuant to Unlisted Trading Privileges of the Euro Currency Trust

January 5, 2006.

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 14, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 4, 2006, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

The Amex proposes new Amex Rules 1200B *et seq.* in order to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”), shares issued by a trust that holds a specified non-U.S. currency or currencies (“Currency Trust Shares”) and trading, pursuant to UTP, Euro Shares (“Shares”) of the Euro Currency Trust (“Trust”).

The text of the proposed rule change is available on the Exchange's Web site at (<http://www.amex.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room. The text of the proposed rule change is set forth below. Proposed new language is *italicized*; deletions are in [brackets].

\* \* \* \* \*

#### Rule 1200B. Currency Trust Shares

(a) *Applicability.* The Rules in this Section (Trading of Currency Trust Shares) are applicable only to Currency Trust Shares. Except to the extent that specific Rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Currency Trust Shares are included within the definitions of “security” or “securities” as such terms are used in the Constitution and Rules of the Exchange.

(b) The term “Currency Trust Shares” for purposes of this Rule means a security that (i) that is issued by a trust that holds a specified non-U.S. currency deposited with the trust; (ii) 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 (iii) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust.

\* \* \* Commentary

.01 A Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency or currencies deposited with the trust.

.02 The Exchange requires that members and member organizations provide to all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

.03 Transactions in Currency Trust Shares will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series, as specified by the Exchange.

.04 (a) *Limit Orders—Members and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same trust, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Currency Trust Shares on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same Currency Trust Shares; the multiple acquisition and liquidation of positions in the same Currency Trust Shares during the same day; and the entry of multiple limit orders at different prices in the same Currency Trust Shares.*

(b) Members and member organizations may not enter, nor permit the entry of, orders into the Exchange's order routing system if those orders are (i) created and communicated electronically without manual input (i.e., order entry by public customers or associated persons of members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent) and (ii) eligible for execution through the Exchange's automatic execution system for Currency Trust Shares. Nothing in this paragraph, however, prohibits members from electronically communicating to the Exchange orders manually entered by customers into

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Amendment No. 1 is incorporated in this notice.

<sup>5</sup> 17 CFR 200.30–3(a)(1).

front-end communication systems (e.g., Internet gateways, on-line networks, etc.).

\* \* \* \* \*

**Rule 1201B. Designation of an Underlying Foreign Currency**

The Exchange may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency or currencies. Each issue of a Currency Trust Share shall be designated as a separate series and shall be identified by a unique symbol.

\* \* \* \* \*

**Rule 1202B. Initial and Continued Listing**

Currency Trust Shares will be listed and traded on the Exchange subject to application of the following criteria:

(a) **Initial Listing**—The Exchange will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) **Continued Listing**—Following the initial 12-month period following the commencement of trading of the Currency Trust Shares, the Exchange may remove from listing Currency Trust Shares under any of the following circumstances:

(i) If the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days;

(ii) If the trust has fewer than 50,000 Currency Trust Shares issued and outstanding;

(iii) If the market value of all Currency Trust Shares issued and outstanding is less than \$1,000,000;

(iv) If the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, trust, custodian or Exchange or the Exchange stops providing a hyperlink on its website to any such unaffiliated applicable non-U.S. currency value;

(v) If the intraday indicative value is no longer made available on at least a 15-second delayed basis; or

(vi) If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Upon termination of a trust, the Exchange requires that Currency Trust Shares issued in connection with such trust be removed from Exchange listing.

(c) **Term**—The stated term of the trust shall be as stated in the prospectus.

However, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus.

(d) **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 as co-trustee.

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

(e) **Voting**—Voting rights shall be as set forth in the applicable trust prospectus.

\* \* \* **Commentary**

.01 The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and/or trading of the Currency Trust Shares designated on different underlying non-specified U.S. currencies.

\* \* \* \* \*

**Rule 1203B. Specialist Prohibitions**

Rule 175(c) shall be deemed to prohibit an equity specialist, his member organization, or any other member, limited partner, officer, or approved person thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives. However, an approved person of an equity specialist that has established and obtained Exchange approval of procedures restricting the flow of material, non-public market information between itself and the specialist member organization pursuant to Rule 193, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in Currency Trust Shares on another market center, in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives.

\* \* \* **Commentary**

.01 In connection with Currency Trust Shares, Commentaries .01, .02 and .07 of Rule 170 shall not apply to the trading of Currency Trust Shares for the purpose of bringing the price of Currency Trust Shares into parity with the value of the applicable non-U.S. currency on which the Currency Trust

Shares are based, with the net asset value of the Currency Trust Shares or with a futures contract on the applicable non-U.S. currency on which the Currency Trust Shares are based. Such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.

\* \* \* \* \*

**Rule 1204B. Securities Accounts and Orders of Specialists**

(a) The member organization acting as specialist in Currency Trust Shares is obligated to conduct all trading in Currency Trust Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (See Rule 170). In addition, the member organization acting as specialist in the Currency Trust Shares must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in the Currency Trust Shares shall trade in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (See, e.g. Rule 31), the member organization acting as a specialist in Currency Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, member organization, limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

(c) In connection with trading the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives (including

Currency Trust Shares), the specialist registered as such in Currency Trust Shares shall not use any material nonpublic information received from any person associated with a member, member organization or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, related futures or options on futures, or any other related derivatives.

\* \* \* \* \*

**Rule 1205B. Limitation on Exchange Liability**

Neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable non-U.S. currency value, the current value of the applicable non-U.S. currency if required to be deposited to the trust in connection with issuance of Currency Trust Shares; net asset value; or other information relating to the purchase, redemption or trading of the Currency Trust Shares, resulting from any negligent act or omission by the Exchange or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange 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 the applicable non-U.S. currency.

\* \* \* \* \*

**Original Listing Fees**

Section. 140. Stock Issues—No Change.

Issues Listed Under Section 106 (Currency and Index Warrants) and Section 107 (Other Securities)—No Change.

Warrants—No Change.

Bonds—No Change.

Index Fund Shares, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares and Closed-End Funds—The original listing fee for Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200, Commodity-Based Trust Shares listed under Rule 1200A, Currency Trust Shares listed under Rule 1200B and Closed-End Funds listed under section 101 of the Company Guide is \$5,000 for each series or Fund, with no application processing fee.

Special Shareholder Rights Plans—No Change.

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**Annual Fees**

Section. 141. Stock Issues; Issues Listed Under Sections 106 and 107; Rules 1200 (Trust Issued Receipts) and 1200A (Commodity-Based Trust Shares) and; Rule 1200B (Currency Trust Shares;) and Closed-End Funds.

Shares outstanding	Fees (dollars)
5,000,000 shares or less .....	15,000 (minimum)
5,000,001 to 10,000,000 shares	17,500
10,000,001 to 25,000,000 shares	20,000
25,000,001 to 50,000,000 shares	22,500
In excess of 50,000,000 shares	30,000 (maximum)
30,000 (maximum) .....	

The Board of Governors or its designee may, in its discretion, defer, waive or rebate all or any part of the applicable annual listing fee specified above excluding the fees applicable to issues listed under sections 106 and 107 and rule 1200 (Trust Issued Receipts); and Closed-End Funds.

Issues Listed Under Rule 1000A (Index Fund Shares)—No Change.

The annual fee is payable in January of each year and is based on the total number of all classes of shares (excluding treasury shares) and warrants according to information available on Exchange records as of December 31 of the preceding year. (The above fee schedule also applies to companies whose securities are admitted to unlisted trading privileges.)

In the calendar year in which a company first lists, the annual fee will be prorated to reflect only that portion of the year during which the security has been admitted to dealings and will be payable within 30 days of the date the company receives the invoice, based on the total number of outstanding shares of all classes of stock at the time of original listing.

The annual fee for issues listed under Rule 1000A (Index Fund Shares), Rule 1200 (Trust Issued Receipts), [and] Rule 1200A (Commodity-Based Trust Shares) and Rule 1200B (Currency Trust Shares) is based upon the number of shares of a series of Index Fund Shares, Trust Issued Receipts, [or] Commodity-Based Trust Shares or Currency Trust Shares outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an open-end management investment company, [or] for multiple series of Trust Issued Receipts and/or Commodity-Based Trust Shares, or for multiple series of Currency Trust Shares, the annual listing fee is based on the aggregate number of shares in all series

outstanding at the end of each calendar year.

The annual fee for a Closed-End Fund listed under Section 101 of the Company Guide is based upon the number of shares outstanding of such Fund at the end of each calendar year. For multiple Closed-End Funds of the same sponsor, the annual listing fee is based on the aggregate number of shares outstanding of all such Funds at the end of each calendar year.

Bond Issues—No Change.

Late Fee—No Change.

NOTE: No Change.

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**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. The text of these statements may be examined at the places specified in Item III below, and is set forth in sections A, B, and C below.

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

**1. Purpose**

The Exchange proposes to add new Amex Rules 1200B *et. seq.* for the purpose of permitting the trading, either by listing or pursuant to UTP, of Currency Trust Shares.<sup>4</sup> In particular, the Exchange proposes to initially trade the Shares under proposed Amex Rule 1201B pursuant to UTP. The Commission previously approved the original listing and trading of the Shares by the New York Stock Exchange, Inc. ("NYSE").<sup>5</sup>

The Shares represent beneficial ownership interests in the net assets of

<sup>4</sup> Currency Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the non-U.S. currency or currencies deposited into the trust. The Exchange notes that the Commission has approved the listing and trading of other securities products for which the underlying interest was not a security trading on a regulated market. See Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of shares of the iShares COMEX Gold Trust); and 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (approving the trading of shares of the streetTRACKS Gold Trust pursuant to UTP).

Unlike Commodity-Based Trust Shares under Amex Rule 1200A, which are shares of a trust that holds one or more physical commodities, the Currency Trust Shares are shares of a trust that holds non-U.S. currency or currencies.

<sup>5</sup> See Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE-2005-65) ("NYSE Order").

the Trust consisting only of euro on demand deposits in a euro-denominated, interest-bearing account, less the expenses of the Trust.

According to the Trust's Registration Statement,<sup>6</sup> the investment objective of the Trust is for the Shares to reflect the price of the euro. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the euro.

Amex Rules 1200B et seq. are intended to accommodate possible future listing and trading of trusts based on non-U.S. currencies in addition to the euro. For each separate and discrete Currency Trust Share, the Exchange will submit a filing pursuant to section 19(b) of the Act,<sup>7</sup> subject to the review and approval of the Commission. The Exchange also proposes to amend its original listing and annual listing fees in sections 140 and 141 of the Amex Company Guide ("Company Guide") to include the Currency Trust Shares. A description of the Euro, the Foreign Exchange Industry, foreign currency regulation, trust, and the Shares is set forth in the NYSE Order.

Issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof ("Basket"). The Trust will issue and redeem 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 trustee, the Bank of New York ("Trustee"), at the net asset value ("NAV") per Share next determined after an order to purchase a Basket is received in proper form.

When calculating NAV, the Trustee will value the euros held by the Trust on the basis of the day's announced Noon Buying Rate. If the Noon Buying Rate is not announced, the Trustee will use the most recently announced Noon Buying Rate, unless the Trustee, in consultation with the Sponsor, determines to apply an alternative basis for evaluation as a result of extraordinary circumstances. The calculation methodology for the NAV is described in more detail in the NYSE Order.

Baskets will be issued in exchange for an amount of euros ("Basket Euro Amount") based on the combined NAV per Share of the number of Shares

included in the Baskets being created. The Basket Euro Amount and NAV will be determined by the Trustee "as promptly as practicable" after the Federal Reserve announces the Noon Buying Rate and published on the Trust's Web site on each Business Day.<sup>9</sup> Authorized Participants that wish to purchase a Basket must transfer the Basket Euro Amount to the Trust in exchange for a Basket. Baskets are then separable upon issuance into the Shares that will be traded on the Amex on a UTP basis.<sup>10</sup>

The Shares will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 50,000 Shares). Authorized Participants that wish to redeem a Basket will receive the Basket Euro Amount in exchange for each Basket surrendered. The operation of the Trust and creation and redemption process is described in more detail in the NYSE Order.

(a) *Dissemination of Information About the Shares and Underlying Euro Holdings.* Although the spot price of a foreign currency, such as the euro, is not disseminated over the facilities of Consolidated Tape Association ("CTA"), the last sale price for the Shares, as is the case for all equity securities traded on the Exchange, will be disseminated over the CTA. Market prices for the Shares will be available from a variety of public sources, including brokerage firms, financial information Web sites such as Bloomberg (<http://bloomberg.com/markets/currencies/eurafrcurrencies.html>), CBS Market Watch (<http://finance.marketwatch.com/tools/stockresearch/globalmarkets>) and Yahoo! Finance (<http://finance.yahoo.com/currency>), and other information service providers. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.

In addition, there is a considerable amount of euro price and euro market information available on public Web sites and through professional and subscription services. Current spot prices are also generally available from foreign exchange dealers. Investors may obtain on a 24-hour basis euro pricing

information based on the euro spot price from various financial information service providers. The Exchange states that, like bond securities traded in the over-the-counter market with respect to which pricing information is available directly from bond dealers, current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. Complete real-time data for euro futures and options prices traded on the Chicago Mercantile Exchange ("CME") and Philadelphia Stock Exchange ("Phlx") are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites. There are a variety of other public Web sites that provide information on foreign currency and the euro, such as Bloomberg (<http://www.bloomberg.com/markets/currencies/eurafrcurrencies.html>), which regularly reports current foreign exchange pricing for a fee. Other service providers include CBS Market Watch (<http://www.marketwatch.com/tools/stockresearch/globalmarkets>) and Yahoo! Finance (<http://finance.yahoo.com/currency>). Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.<sup>11</sup>

The Trust's Web site at (<http://www.currencyshares.com>) (to which the Amex will provide a link) will be publicly accessible at no charge and will contain the following information: (1) The euro spot price,<sup>12</sup> including the bid and offer and the midpoint between the bid and offer for the euro spot price, updated every 5 to 10 seconds; (2) an intraday indicative value ("IIV") per Share calculated by multiplying the indicative spot price of the euro by the quantity of euro backing each Share, on a 5 to 10-second delayed basis; (3) a 20-

<sup>11</sup> There may be incremental differences in the euro spot price among the various information service sources. While the Exchange believes the differences in the euro spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of euro or foreign currency derivatives, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

<sup>12</sup> The Trust Web site's euro spot price will be provided by The Bullion Desk (<http://www.thebulliondesk.com>). The Commission notes that the NYSE Order states that the Bullion Desk is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor, or the Exchange. In the event that the Trust's Web site should cease to provide this euro spot price information from an unaffiliated source and the intraday indicative value of the Shares, the Commission notes that NYSE will halt trading in the Shares and commence delisting proceedings for the Shares.

<sup>6</sup> The Sponsor, on behalf of the Trust, filed the Form S-1 (the "Registration Statement") on June 7, 2005 and Amendment No. 4 thereto on December 6, 2005. See Registration No. 333-125581.

<sup>7</sup> 15 U.S.C. 78s(b).

<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 or an Indirect Participant and (iii) has in effect a valid Authorized Participant Agreement.

<sup>9</sup> Ordinarily no later than 2 p.m. (ET).

<sup>10</sup> Shares are separate and distinct from the underlying euro comprising the portfolio of the Trust. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying euro.

minute delayed basis indicative value, which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20-minute delayed basis; (5) the NAV of the Trust as calculated each Business Day; (6) accrued interest per Share; (7) the daily Noon Buying Rate; (8) the Basket Euro Amount; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay.

Between 12 p.m. and 2 p.m. (New York time) each business day the Trustee will calculate NAV and Basket Euro Amount based on the combined NAV per share of the number of Shares included in the Baskets being created of the shares and will post NAV on the Trust's Web site as soon as valuation of the euro held by the Trust is complete (ordinarily by 2 p.m. (New York time)). Ordinarily, it will be posted no more than 30 minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York.<sup>13</sup>

*(b) Continued Listing and UTP Criteria.* While the Exchange immediately seeks to UTP the Euro Currency Shares, the Exchange is also adopting general initial and continued listing standards applicable to all Currency Shares. In such an event, the Exchange would still file a Form 19b-4 to list such Shares. However, such continued listing standards include the following items. When the Exchange is the primary listing exchange, the Trust will be subject to the continued trading criteria under proposed Amex Rule 1202B.<sup>14</sup> In particular, the proposed criteria provides that the Shares may be removed from trading following the initial 12-month period from the date of commencement of trading of the Shares on the Exchange under any of the following circumstances:

- If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days;
- If the Trust has fewer than 50,000 Shares issued and outstanding;
- If the market value of all the Shares is less than \$1,000,000;
- If the value of the euro is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the

<sup>13</sup> The Commission notes that in the NYSE Order, NYSE represented that all market participants will have access to this data at the same time and, therefore, no market participant will have a time advantage in using such data.

<sup>14</sup> Proposed Amex Rule 1202B for trading the Shares is substantially similar to current Amex Rule 1202A relating to Commodity-Based Trust Shares.

Exchange stops providing a hyperlink on its Web site to any such unaffiliated euro value;

- If the IIV is no longer made available on at least a 15-second delayed basis; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust. Unless otherwise terminated pursuant to the terms of the Depositary Trust Agreement between the Trust and Sponsor, the Trust will terminate on a specified date in 2045.

If the Exchange is only trading the Shares pursuant to UTP, then the Exchange will cease trading in the Shares if (a) the primary market stops trading the shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or a halt because dissemination of the IIV and/or the underlying value (spot price on future contract) of the applicable non-U.S. currency has ceased; or (b) the primary market delist the Shares.

*(c) Trading Rules.* The Exchange deems the Currency Trust 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 trading hours for the Shares on the Exchange will be 9:30 a.m. until 4:15 p.m. ET. The Shares will trade with a minimum price variation of \$0.01.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated Currency Trust Shares, including the Shares, as eligible for this treatment.<sup>15</sup>

Currency Trust Shares will be deemed "Eligible Securities", as defined in Amex Rule 230, for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that members avoid initiating trade-throughs for ITS securities.

<sup>15</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

Specialist transactions in Currency Trust Shares made in connection with the creation and redemption of Currency Trust Shares will not be subject to the prohibitions of Amex Rule 190.<sup>16</sup> The Commission staff has provided certain exemptive and no-action relief for transactions in Currency Trust Shares from the short sale requirements of Rule 10a-1 and Regulation SHO under the Act.<sup>17</sup> The Exchange will issue a notice detailing the terms of the exemption or relief. In addition, the Exchange believes that Amex Commentary .12 to Amex Rule 170 exempting specialists from certain "stabilization" provisions in connection with Trust Issued Receipts ("TIRs") equally apply to Currency Trust Shares.<sup>18</sup>

The adoption of proposed Amex Rule 1203B relating to certain specialist prohibitions will address potential conflicts of interest in connection with acting as a specialist in Currency Trust Shares. Specifically, proposed Amex Rule 1203B provides that the prohibitions in Amex Rule 175(c) apply to a specialist in Currency Trust Shares, so that the specialist or affiliated person may not act or function as a market maker in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. An affiliated person of the specialist consistent with Amex Rule 193 may be afforded an exemption to act in a market making capacity on another market center, other than as a specialist in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. In particular, proposed Amex Rule 1203B provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist

<sup>16</sup> See Amex Commentary .05 to Rule 190.

<sup>17</sup> Currency Trust Shares are exempt from Rule 10a-1 under the Act permitting sales without regard to the "tick" requirements of Rule 10a-1 under the Act. Rule 10a-1(a)(1)(i) under the Act provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an "uptick") or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a "zero-plus tick"). No-action relief from the marking requirements of Rule 200(g) of Regulation SHO permits broker-dealers, subject to certain conditions, to mark short sales in the Euro Shares "short," rather than "short exempt." The SEC exempted the Shares from the short sale rule pursuant to a No-Action Letter dated December 5, 2005.

<sup>18</sup> See Securities Exchange Act Release Nos. 49087 (January 15, 2004), 69 FR 3622 (January 26, 2004) (Order); and 48800 (November 17, 2003), 68 FR 66144 (November 25, 2003) (Notice).

member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in Currency Trust Shares on another market center, in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency.

Adoption of proposed Amex Rule 1204B will also ensure that specialists handling the Currency Trust Shares provide the Exchange with all the necessary information relating to their trading in the underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in non-U.S. currencies would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

(d) *Information Circular.* Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets; (2) applicable Exchange rules including requirements of Amex Rule 411 ("Duty to Know and Approve Customers"), which impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; and (4) trading information. The Circular will also refer members to language in the Registration Statement regarding prospectus delivery requirements for the Shares. The Information Circular will also note to members their obligations regarding prospectus delivery requirements for the Shares. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Euro Amount) will receive a prospectus. Exchange members purchasing Shares

from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of euros required to create a Basket or to be delivered upon a redemption of a Basket may gradually decrease over time in the event that the Trust is required to sell euros to pay the Trust's expenses, and that if done at a time when the price of the euro is relatively low, it could adversely affect the value of the Shares. Finally, Information Circular will also reference the fact that there is no regulated source of last sale information regarding the euro, and that the Commission has no jurisdiction over the trading of the euro.

(e) *Trading Halts.* 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 the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. In addition, trading on the Exchange in the Shares may be halted if (1) the market volatility trading halt parameters set forth in Amex Rule 117 are reached or (2) the trading of futures contracts based on the euro is halted or suspended. In addition, if the Exchange is the listing market for Currency Trust Shares, the Exchange will halt trading in the Shares if the Trust Web site (to which the Exchange will link) ceases to provide (1) the value of the euro updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or (2) the IIV per Share updated at least every 15 seconds. If the Exchange is trading the Shares pursuant to UTP, such as the Euro Currency Shares, the Exchange will cease trading the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to Amex Rule 117 and/or a halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

(f) *Surveillance.* The Exchange's surveillance procedures applicable to trading in the proposed Currency Trust Shares will be similar to those applicable to TIRs, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares.

## 2. Statutory Basis

The proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>19</sup> in general and furthers the objectives of section 6(b)(5)<sup>20</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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act<sup>21</sup> because it deems the Fund Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchanges believes that the proposed rule change, as amended, will impose no 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, as amended, 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-Amex-2005-128 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-128. This file

<sup>19</sup> 15 U.S.C. 78s(b).

<sup>20</sup> 15 U.S.C. 78s(b)(5).

<sup>21</sup> 17 CFR 240.12f-5.

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 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-2005-128 and should be submitted on or before February 2, 2006.

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

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>23</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.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Act,<sup>24</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>25</sup> The Commission

notes that it previously approved the listing and trading of the Shares on the NYSE.<sup>26</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>27</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. Amex rules deem the Shares to be equity securities, thus trading in the Shares will be 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>28</sup> which sets forth Congress's 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 will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

In support of this proposed rule change, the Exchange has made the following representations:

1. Amex has appropriate rules to facilitate transactions in this type of security.
2. Amex surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.
3. Amex will distribute an Information Circular to its members prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.
4. Amex will require a member with a customer that purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Circular.
5. Amex will cease trading in the Shares if (a) the primary market stops trading the Shares because of a

security on a national securities exchange unless the security is 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>26</sup> See NYSE Order, *supra* note 4.

<sup>27</sup> 17 CFR 240.12f-5.

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

regulatory halt similar to a halt based on Amex Rule 117 and/or halt because dissemination of the IIV and/or underlying spot price has ceased; or (b) the primary market delists the Shares.

This approval order is conditioned on Amex's adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, 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 these Shares on the NYSE is consistent with the Act.<sup>29</sup> The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-128), as amended, is hereby approved on an accelerated basis.<sup>30</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-216 Filed 1-11-06; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53061; File No. SR-FICC-2005-20]

#### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Impose a Surcharge on Participants Submitting Trade Data by Batch Method

January 5, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 28, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on

<sup>29</sup> See NYSE Order, *supra* note 4.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

<sup>22</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>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78l(f).

<sup>25</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a