

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2008-52 and should be submitted on or before September 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>61</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58365; File No. SR-NYSEArca-2008-81]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of Four CurrencyShares Trusts

August 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 30, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned

subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On August 11, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting approval to the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

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

The Exchange proposes to list shares ("Shares") of the following trusts: CurrencyShares<sup>SM</sup> Hong Kong Dollar Trust, CurrencyShares<sup>SM</sup> Russian Ruble Trust, CurrencyShares<sup>SM</sup> Singapore Dollar Trust, and CurrencyShares<sup>SM</sup> South African Rand Trust ("Trusts") under NYSE Arca Equities Rule 8.202. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange'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, NYSE Arca 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 III below. NYSE Arca 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

Under NYSE Arca Equities Rule 8.202, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Currency Trust Shares."<sup>3</sup> The Exchange proposes

<sup>3</sup> See NYSE Arca Equities Rule 8.202 and Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123) (order granting accelerated approval for the Exchange to adopt listing and trading standards for Currency Trust Shares and approving the UTP trading of shares of the Euro Currency Trust (now known as the

to list the Shares of the Trusts under NYSE Arca Equities Rule 8.202.<sup>4</sup>

Rydex Specialized Products LLC is the sponsor of the Trusts ("Sponsor"); The Bank of New York is the trustee of the Trusts ("Trustee"); JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trusts ("Depository"); and Rydex Distributors, Inc. is the distributor for the Trusts ("Distributor"). The Sponsor, Trustee, Depository and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated. For more information on these entities, see below.

The Shares represent units of fractional undivided beneficial interest in, and ownership of, the respective Trust. The investment objective of the Trusts is for the Shares issued by the Trusts to reflect the price of the applicable foreign currency owned by the specific Trust, plus accrued interest, less the expenses and liabilities of such Trust, according to the Registration Statements for the Trusts.<sup>5</sup> The Shares

("CurrencyShares Euro Trust"). E-mail from Michael Cavalier, Associate General Counsel, NYSE Group, Inc., to Brian O'Neill, Staff Attorney, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 4, 2008 (confirming the name change of the Euro Currency Trust to the CurrencyShares Euro Trust). As defined in NYSE Arca Equities Rule 8.202(c), the term "Currency Trust Shares" means a security that (a) is issued by a trust ("Trust") that holds a specified non-U.S. currency deposited with the Trust; (b) 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 (c) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the Trust.

<sup>4</sup> The Commission has previously approved listing or UTP trading of issues of CurrencyShares based on non-US currencies. See Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE-2005-65) (order granting accelerated approval for the New York Stock Exchange ("NYSE") to list and trade shares of the CurrencyShares Euro Trust); Securities Exchange Act Release No. 54020 (June 20, 2006), 71 FR 36579 (June 27, 2006) (SR-NYSE-2006-35) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Australian Dollar Trust, CurrencyShares British Pound Sterling Trust, CurrencyShares Canadian Dollar Trust, CurrencyShares Mexican Peso Trust, CurrencyShares Swedish Krona Trust and CurrencyShares Swiss Franc Trust); Securities Exchange Act Release No. 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR-NYSE-2007-03) (order granting accelerated approval for NYSE to list and trade shares of the CurrencyShares Japanese Yen Trust); Securities Exchange Act Release No. 55320 (February 21, 2007), 72 FR 8828 (February 27, 2007) (SR-NYSEArca-2007-15) (order granting accelerated approval for the Exchange to UTP trade shares of the CurrencyShares Japanese Yen Trust); Securities Exchange Act Release No. 56131 (July 25, 2007), 72 FR 42212 (August 1, 2007) (SR-NYSEArca-2007-57) (order granting accelerated approval for Exchange to list eight CurrencyShares Trusts).

<sup>5</sup> See Preliminary Prospectuses for the CurrencyShares Hong Kong Dollar Trust

<sup>61</sup> 17 CFR 200.30-3(a)(12).

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

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

are intended to provide institutional and retail investors with a simple, cost-effective means of hedging their exposure to a particular foreign currency and otherwise implement investment strategies that involve foreign currency (e.g., diversify more generally against the risk that the U.S. Dollar ("USD") would depreciate).<sup>6</sup>

Futures and options on futures on the Russian Ruble and the South African Rand are traded on the Chicago Mercantile Exchange ("CME"). Futures on the Russian Ruble are also traded on the Moscow Interbank Currency Exchange and the Russian Trading System. Based upon the Exchange's review of information supplied by major market data vendors, futures or options are not traded on the Singapore Dollar or Hong Kong Dollar. Because the Shares are traded on NYSE Arca, investors are able to access the applicable foreign currency market through a traditional brokerage account which provides investors with an efficient means of implementing investment tactics and strategies that involve the applicable foreign currency.

#### Foreign Currency Regulation

Most trading in the global over-the-counter ("OTC") foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar

best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.

Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities. In addition, in the U.S. the Commodity Futures Trading Commission ("CFTC") regulates trading of futures, options and options on futures on foreign currencies on regulated futures exchanges.<sup>7</sup> The CFTC has established rules designed to prevent market manipulation, abusive trade practices and fraud, as does the CME.

The CME has authority to perform surveillance on its members' trading activities, review positions held by members and large-scale customers, and monitor the price movements of options and/or futures markets by comparing them with cash and other derivative markets' prices. As noted above, based upon the Exchange's review of market data information, futures or options are not traded on the Singapore Dollar or Hong Kong Dollar. Therefore, CME surveillance and CFTC oversight would pertain only to futures and options on futures on the Russian Ruble and South African Rand.

The Sponsor

The Sponsor of each Trust is a Delaware limited liability company. The sole member of the Sponsor is PADCO Advisors II, Inc., a Maryland corporation solely owned by Rydex Holdings, Inc., a Maryland corporation. Rydex Holdings, Inc. is solely owned by Rydex NV, Inc., a Nevada corporation that is privately-held. The Sponsor and its affiliates collectively do business as "Rydex Investments."

The Sponsor is responsible for establishing the Trusts and for the registration of the Shares. The Sponsor generally oversees the performance of the Trustee and the Trusts' principal service providers, but does not exercise day-to-day oversight over the Trustee or

such service providers. The Sponsor regularly communicates with the Trustee to monitor the overall performance of the Trusts. The Sponsor, with assistance and support from Rydex affiliates who also do business as "Rydex Investments," the Trustee and outside professionals, are responsible for preparing and filing periodic reports on behalf of the Trusts with the SEC.<sup>8</sup> The Sponsor designates the auditors of the Trusts and may from time to time employ legal counsel for the Trust.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trusts, preparing marketing materials on the Shares, executing the marketing plan for the Trusts and providing strategic and tactical research on the global foreign exchange markets. The Sponsor would not enter into an agreement with the Distributor covering these services, because the Distributor is an affiliate and would not be paid any compensation by the Sponsor for performing these services.

The Sponsor with the Distributor's assistance maintains a public Web site on behalf of the Trusts, <http://www.currencyshares.com>, which contains information about the Trusts and the Shares, and oversees certain Shareholder services, such as a call center and prospectus delivery.

The Sponsor may direct the Trustee in the conduct of its affairs, but only as provided in the Depositary Trust Agreement. For example, the Sponsor may direct the Trustee to sell the Trusts' foreign currency to pay certain extraordinary expenses, to suspend a redemption order, postpone a redemption settlement date, or to terminate the Trusts if certain criteria are met. The Sponsor anticipates that, if the market capitalization of a Trust is less than \$300 million for five consecutive trading days beginning after the first anniversary of such Trust's inception, then the Sponsor would, in accordance with the Depositary Trust Agreement, direct the Trustee to

(Registration No. 333-150686), CurrencyShares Russian Ruble Trust (Registration No. 333-150687), CurrencyShares Singapore Dollar Trust (Registration No. 333-150684), and CurrencyShares South African Rand Trust (Registration No. 333-150685), each dated July 21, 2008. The Preliminary Prospectuses listed in this paragraph are collectively referred to herein as the "Registration Statements." All information in this proposed rule change relating to the Shares and the Trusts is based on information in the Registration Statements.

<sup>6</sup> For April 2007, the daily average reported foreign exchange market turnover of the USD against the Hong Kong Special Administrative Region (SAR), Russia, Singapore and South Africa was \$175 billion, \$50 billion, \$231 billion and \$14 billion, respectively. (Source: Bank for International Settlements, Triennial Central Bank Survey, December 2007, Table B.2 ("Central Bank Survey")). The Central Bank Survey reports that there appears to have been an increase in total turnover of emerging market currencies. In April 2007, emerging market currencies were involved in almost 20% of all transactions. Specifically, the Hong Kong Dollar, Singapore Dollar, Rand and Ruble experienced a percentage share of average daily turnover of 2.8%, 1.2%, 0.9% and 0.8%, respectively, reflecting slight increases from previously reported years. (Source: Bank for International Settlements, Triennial Central Bank Survey, December 2007, Table B.6)

<sup>7</sup> The CFTC is an independent government agency with the mandate to regulate commodity futures and options markets in the United States under the Commodity Exchange Act. In addition to its oversight of regulated futures exchanges, the CFTC has jurisdiction over certain foreign currency futures, options and options on futures transactions occurring other than on a regulated exchange and involving retail customers.

<sup>8</sup> The Sponsor has obtained guidance from the SEC Division of Corporation Finance with respect to the Trusts pursuant to which the Sponsor's principal executive officer and principal financial officer will provide any certifications that are required from a "registrant's" principal executive officer and principal financial officer. See letters from the Office of Chief Counsel, Division of Corporation Finance, at the Commission dated March 22, 2006 (with respect to the CurrencyShares<sup>SM</sup> Euro Trust); September 13, 2006 (with respect to the CurrencyShares<sup>SM</sup> Australian Dollar Trust, CurrencyShares<sup>SM</sup> British Pound Sterling Trust, CurrencyShares<sup>SM</sup> Canadian Dollar Trust, CurrencyShares<sup>SM</sup> Mexican Peso Trust, CurrencyShares<sup>SM</sup> Swedish Krona Trust, and CurrencyShares<sup>SM</sup> Swiss Franc Trust) and March 27, 2007 (with respect to the CurrencyShares<sup>SM</sup> Japanese Yen Trust).

terminate and liquidate such Trust. The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the applicable foreign currency in the Trust (including all unpaid interest but excluding unpaid fees, each as accrued through the immediately preceding day) and is paid monthly.

#### The Trustee

The Trustee is generally responsible for the day-to-day administration of the Trusts, including keeping the Trusts' operational records. The Trustee's principal responsibilities include selling the Trusts' foreign currency if needed to pay the Trusts' expenses, calculating the Net Asset Value ("NAV") of the Trusts and the NAV per Share, receiving and processing orders from Authorized Participants to create and redeem Baskets (as discussed below) and coordinating the processing of such orders with the Depository and DTC. The Trustee earns a monthly fee that is paid by the Sponsor.

The Trustee intends to regularly communicate with the Sponsor to monitor the overall performance of the Trusts. The Trustee, along with the Sponsor, consults with the Trusts' legal, accounting and other professional service providers as needed. The Trustee assists and supports the Sponsor with the preparation of all periodic reports required to be filed with the SEC on behalf of the Trusts. Affiliates of the Trustee may from time to time act as Authorized Participants or purchase or sell foreign currency or Shares for their own account.

#### The Depository

The Depository accepts Trust foreign currency deposited with it as a banker by Authorized Participants in connection with the creation of Baskets. The Depository facilitates the transfer of the applicable foreign currency into and out of the Trust through the primary and secondary deposit accounts maintained with it as a banker by the Trust.

The Depository is not paid a fee for its services to the Trusts. The Depository may earn a "spread" or "margin" over the rate of interest it pays to the Trusts on the applicable foreign currency deposit balances.

The Depository is not a trustee for the Trusts or the Shareholders. The Depository and its affiliates may from time to time act as Authorized Participants or purchase or sell foreign currency or Shares for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

#### The Distributor

The Distributor is a registered broker-dealer and is a member of FINRA. The Distributor is assisting the Sponsor in developing a marketing plan for the Trusts on an ongoing basis, preparing marketing materials regarding the Shares, including the content on the Trusts' Web site, <http://www.currencyshares.com>, executing the marketing plan for the Trusts, and providing strategic and tactical research on the global foreign exchange market. The Distributor and the Sponsor are affiliates of one another. There is no written agreement between them, and no compensation is paid by the Sponsor to the Distributor in connection with services performed by the Distributor for the Trusts.

#### Description of the Trusts

The Trusts hold the applicable foreign currency and are expected from time to time to issue Baskets in exchange for deposits of the foreign currency and to distribute the foreign currency in connection with redemptions of Baskets. The investment objective of the Trusts is for the Shares to reflect the price in USD of the applicable foreign currency. The Shares represent units of fractional undivided beneficial interest in, and ownership of, the respective Trusts. The Trusts are not managed like business corporations or active investment vehicles. The foreign currency held by the Trusts would only be sold (1) if needed to pay Trust expenses, (2) in the event a Trust terminates and liquidates its assets or (3) as otherwise required by law or regulation. The sale of foreign currency by the Trusts is a taxable event to Shareholders. According to the Registration Statements, the Trusts are not registered as investment companies under the Investment Company Act of 1940<sup>9</sup> and are not required to register under such Act.

Each of the Trust's assets consists primarily of the applicable foreign currency on demand deposit in two deposit accounts maintained by the Depository: A primary deposit account which earns interest and a secondary deposit account which does not earn interest. The secondary deposit account is used only in connection with mid-month creations and redemptions of blocks of 50,000 Shares ("Baskets"). The secondary account is used to account for interest that has been earned on the primary deposit account during the month but not yet paid and to receive interest earned on the primary deposit

account, pay Trust expenses and distribute any excess interest to shareholders on a monthly basis.

The Trusts do not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in the applicable foreign currency owned by the respective Trusts, plus accrued but unpaid interest, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of a Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the applicable foreign currency and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of a Trust. The Trusts will terminate upon the occurrence of any of the termination events listed in the Depositary Trust Agreement and will otherwise terminate on a specified date 40 years after formation of the Trusts.

The Sponsor, on behalf of the Trusts, relies on relief previously granted by the Division of Market Regulation (now known as the Division of Trading and Markets)<sup>10</sup> from certain trading requirements of the Securities Exchange Act of 1934 ("Act").<sup>11</sup> The Sponsor has received guidance from the Commission regarding the application of the certification rules for quarterly and annual reports adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.<sup>12</sup> In addition, the Trusts will not be subject to the Exchange's corporate governance requirements.<sup>13</sup>

<sup>10</sup> See letter from Racquel L. Russell, Branch Chief, SEC Division of Market Regulation, to George T. Simon, Foley & Lardner, dated June 21, 2006 ("June 21, 2006 letter") (granting relief from certain rules under the Act for certain of the Trusts); letter from James A. Brigagliano, Assistant Director, SEC Division of Market Regulation to Michael Schmidberger, Sidley, Austin, Brown & Wood, dated January 19, 2006 ("January 19, 2006 Letter") (granting relief from certain rules under the Act for the DB Commodity Index Tracking Master Fund). The Sponsor is relying on the June 21, 2006 Letter regarding Rule 10a-1, Rule 200(g) of Regulation SHO, and Rules 101 and 102 of Regulation M under the Act, and is relying on the January 19, 2006 Letter regarding Section 11(d)(1) of the Act and Rule 11d1-2 thereunder.

<sup>11</sup> 15 U.S.C. 78a.

<sup>12</sup> See note 10, *supra*.

<sup>13</sup> See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR-NYSE-2002-33, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts). See also Securities Exchange Act Release No. 47654 (April 9, 2003), 68 FR 18788 (April 16, 2003) (File No. S7-02-03) (noting in Section II(F)(3)(c) that "SROs may exclude from Exchange Act Rule 10A-3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as

<sup>9</sup> 15 U.S.C. 80a.

## Liquidity

The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the major foreign currency markets and the Exchange. Because of the potential for arbitrage inherent in the structure of the Trusts, the Sponsor believes that the Shares will not trade at a material discount or premium to the value of underlying currency held by a Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts and can be expected to operate efficiently in the case of the Shares and the foreign currency. If the price of the Shares deviates enough from the price of the foreign currency to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to foreign currency that underlies them, an Authorized Participant, either on its own behalf or acting as agent for investors, arbitrageurs or traders, may buy the Shares at a discount, immediately redeem them in exchange for the foreign currency and sell the foreign currency in the cash market at a profit. If the Shares are expensive compared to the foreign currency that underlies them, an Authorized Participant may sell the Shares short, buy enough foreign currency to create the number of Shares sold short, acquire the Shares through the creation process and deliver the Shares to close out the short position.<sup>14</sup> In both instances the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying foreign currency.

## Issuance of the Shares

Each Trust creates and redeems Shares in Baskets on a continuous basis. A Basket is a block of 50,000 Shares. The creation and redemption of Baskets requires the delivery to the Trust or the

administering and distributing amounts in respect of securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.”)

<sup>14</sup>The Exchange notes that the Trusts, which will only hold the applicable foreign currency as an asset in the normal course of its operations, differs from index-based exchange-traded funds, which may involve a trust holding hundreds or even thousands of underlying component securities, necessarily involving in the arbitrage process movements in a large number of security positions. See, e.g., Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR-NYSE-2002-28) (approving the UTP trading of Vanguard Total Market VIPERs based on the Wilshire 5000 Total Market Index, among other funds).

distribution by the Trust of the amount of the applicable foreign currency represented by the Baskets being created or redeemed. This amount is based on the combined NAV per Share of the number of Shares included in the Baskets being created or redeemed, determined on the day the order to create or redeem Baskets is accepted by the Trustee.

Additional information regarding an overview of the foreign exchange industry, the specific foreign currency underlying each issue of Shares, creation and redemption procedures, risk factors, distributions, fees and expenses, and clearance and settlement procedures is available in the Registration Statements.

## Valuation of the Applicable Foreign Currency, Definition of Net Asset Value and Adjusted Net Asset Value

The Trustee calculates, and the Sponsor publishes, each Trust's NAV each business day. To calculate the NAV, the Trustee adds to the amount of foreign currency in the Trust at the end of the preceding day accrued but unpaid interest, the foreign currency receivable under pending purchase orders and the value of other Trust assets, and subtracts the accrued but unpaid Sponsor's fee, the foreign currency payable under pending redemption orders and other Trust expenses and liabilities, if any. The result is the NAV of the Trust for that business day. The Trustee shall also divide the NAV of each Trust by the number of Shares outstanding for the date of the evaluation then being made, which figure is the "NAV per Share." The NAV will be expressed in USD based on the Closing Spot Rate<sup>15</sup> as determined by WM/Reuters at 4:00 p.m. (London time). If, on a particular evaluation day, the Closing Spot Rate has not been determined and announced by 6 p.m. (London time), then the most recent Closing Spot Rate shall be used to determine the NAV of the Trust unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate to use as the basis for such valuation. In the event that the Trustee and the Sponsor determine that the most recent Closing Spot Rate is not an appropriate basis for valuation of the Trust's currency, the Trustee and the Sponsor shall determine an alternative basis or such evaluation to be employed by the Trustee. Such an alternative basis may include reference to the market

<sup>15</sup>Closing Rate is defined in the Registration Statements as "the [Foreign Currency]/USD exchange rate as determined by WM/Reuters at 4:00 PM (London time)." WM/Reuters is a joint venture of The WM Company PLC and Thomson Reuters.

price of futures contracts that reflect the value of the foreign currency relative to the USD. The use of any alternative basis to determine NAV would be disclosed on the Trust's Web site. The Trustee also determines the NAV per Share, which equals the NAV of the Trust divided by the number of outstanding Shares. The Sponsor publishes the NAV and NAV per Share for each Trust on each day that the Exchange is open for regular trading on the Trusts' Web site, <http://www.currencyshares.com>.<sup>16</sup>

## Availability of Information Regarding Foreign Currency Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency over the Consolidated Tape. However, there is dissemination over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of foreign currency price and market information available on public Web sites and through professional and subscription services. As is the case with equity securities generally and exchange-traded funds specifically, in most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

Complete real-time data for foreign currency futures and options on futures prices traded on the CME are also available by subscription from information service providers. The CME also provides delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

Investors may obtain, 24 hours a day, continuously updated every 15 seconds, foreign exchange pricing information based on the spot price of the applicable foreign currency from various financial information service providers, which service providers include Bloomberg, (<http://www.bloomberg.com/markets/currencies/fxc.html>), CBS Market Watch (<http://www.marketwatch.com/tools/stockresearch/globalmarkets>), Yahoo! Finance (<http://www.finance.yahoo.com/currency>), <http://www.moneycentral.com>, <http://www.cnnfn.com> and <http://www.reuters.com>. Such service providers provide spot price or currency conversion information about the

<sup>16</sup>The Exchange will obtain a representation from the Trusts that the NAV per Share will be calculated daily and made available to all market participants at the same time.

foreign currencies. 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, major market data vendors regularly report current currency exchange pricing for a fee for other currencies.<sup>17</sup> In addition, the Trusts' Web site provides ongoing pricing information for the applicable foreign currency spot prices and the Shares. Market prices for the Shares are available from a variety of sources, including brokerage firms, financial information Web sites and other information service providers. The NAV of the Trusts is published by the Sponsor on each day that the Exchange is open for regular trading and is posted on the Trusts' Web site. Like bond securities traded in the OTC market with respect to which pricing information is available directly from bond dealers, current foreign currency spot prices are also generally available with bid/ask spreads from foreign currency dealers.<sup>18</sup> Quotation and last sale information for the Shares will be made available via the Consolidated Tape.

In addition, the Trusts' Web site (<http://www.currencyshares.com>) provides the following information: (1) The spot price for each applicable foreign currency,<sup>19</sup> including the bid and offer and the midpoint between the bid and offer for the foreign currency spot price, updated every 5 to 10 seconds<sup>20</sup> which is an essentially real-time basis; (2) an intraday indicative value ("IIV") per share for the Shares calculated by multiplying the indicative spot price of the applicable foreign currency by the quantity of foreign currency backing each Share, updated at

least every 15 seconds<sup>21</sup>; (3) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) the NAV of each Trust as calculated each business day by the Trustee; (6) accrued interest per Share; (7) the Basket Amount for each applicable foreign currency; and (8) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.<sup>22</sup> On the Trusts' Web site, the foreign currency spot price is available and disseminated at least every 15 seconds and the IIV per Share is calculated and disseminated at least every 15 seconds during NYSE Arca's Core Trading Session.<sup>23</sup> The Exchange will provide on its own public Web site (<http://www.nyse.com>) a link to the Trusts' Web site.

#### Initial and Continued Listing Criteria

The Shares would be subject to the criteria for initial and continued listing of Currency Trust Shares under NYSE Arca Equities Rules 8.202. A minimum of two Creation Units (at least 100,000 Shares) would be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading would be comparable to requirements that have been applied to previously listed series of exchange-traded funds. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange would remove the Shares from trading and listing upon termination of the Trusts.<sup>24</sup>

<sup>17</sup> The intraday indicative value of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. See, e.g., Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR-NYSE-2002-51) for a discussion of indicative portfolio value in the context of an exchange-traded fund.

<sup>18</sup> The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

<sup>19</sup> Pursuant to NYSE Arca Equities Rule 7.34(a), the NYSE Arca Marketplace trading hours for exchange-traded funds are as follows: (1) Opening trading session—4:00 a.m. to 9:30 a.m. ET; (2) core trading session—9:30 a.m. to 4:15 p.m. ET; and (3) late trading session—4:15 p.m. to 8:00 p.m. ET. The Sponsor has represented to the Exchange that the spot price will be available on the Trust's Web site without interruption 24 hours a day, seven days a week.

<sup>20</sup> E-mail from Michael Cavalier, Associate General Counsel, NYSE Group, Inc., to Edward Y. Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 14, 2008 (confirming that the Trusts are not required to

#### Trading Rules

The Exchange 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 trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (4 a.m. to 8 p.m. Eastern time). The minimum trading increment for Shares on the Exchange would be \$0.01.

NYSE Arca Equities Rules 8.202(g)–(i) set forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. NYSE Arca Equities Rule 8.202(h) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. NYSE Arca Equities Rule 8.202(i) prohibits the ETP Holder acting as a registered Market Maker in the Shares from using 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 applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency (including the Shares). In addition, NYSE Arca Equities Rule 8.202(g) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

#### 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 of a Trust. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the applicable underlying foreign currency; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares could be halted pursuant

comply with Rule 10A-3 under the Act, 17 CFR 240.10A-3, for the initial and continued listing of the Shares).

<sup>17</sup> There may be incremental differences in the foreign currency spot price among the various information service sources. While the Exchange believes the differences in the foreign currency spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of the applicable foreign currency or derivatives thereon, 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>18</sup> See, e.g., Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR-Amex-2001-35) (noting that quote and trade information regarding debt securities is widely available to market participants from a variety of sources, including broker-dealers, information service providers, newspapers and Web sites).

<sup>19</sup> The Trusts' Web site's foreign currency spot prices will be provided by FactSet Research Systems (<http://www.factset.com>). FactSet Research Systems is not affiliated with the Trusts, Trustee, Sponsor, Depository, Distributor or the Exchange.

<sup>20</sup> The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares.

to the Exchange's "circuit breaker" rule.<sup>25</sup>

If the IIV or the value of foreign currency is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the IIV or the foreign currency value occurs. If the interruption to the calculation or wide dissemination of the IIV or the foreign currency value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.<sup>26</sup>

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Currency Trust Shares, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.<sup>27</sup> Specifically, the Exchange can obtain such information from the CME in connection with foreign currency futures and options on futures trading on the CME pertaining to futures and options on futures on the Russian Ruble and South African Rand.<sup>28</sup> Therefore, as noted earlier, CME surveillance and CFTC oversight would pertain only to futures and options on futures on the Russian Ruble and South African Rand. In addition, the Exchange also has a general policy prohibiting the

distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to listing the Shares on the Exchange, the Exchange would inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would discuss the following: (i) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a),<sup>29</sup> which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) how information regarding the IIV and applicable foreign currency value is disseminated; (iv) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (v) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; and (vi) trading information.

The Bulletin would also state that the number of units of the applicable foreign currency required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that a Trust is required to withdraw or sell units of foreign currency to pay the Trust's expenses, and that if done at a time when the price of the applicable foreign currency is relatively low, it could adversely affect the value of the Shares. In addition, the Bulletin would reference that the Trusts are subject to various fees and expenses described in the Registration Statements. The Bulletin would also reference the fact that there is no regulated source of last sale information regarding foreign currency, and that the Commission has no jurisdiction over the trading of foreign currency. The Bulletin would also discuss any exemptive, no-action

<sup>29</sup> NYSE Arca Equities Rule 9.2(a) provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-CMX-2005-115).

and interpretive relief granted by the Commission from Section 11(d)(1) of the Act<sup>30</sup> and certain rules under the Act.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>31</sup> of the Act, in general, and Section 6(b)(5),<sup>32</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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.202 are intended to protect investors and the public interest.

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

NYSE Arca 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

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 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-NYSEArca-2008-81 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>30</sup> 15 U.S.C. 78k(d)(1).

<sup>31</sup> 15 U.S.C. 78f(b).

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See NYSE Arca Equities Rule 7.12.

<sup>26</sup> See Securities Exchange Act Release No. 58111 (July 7, 2008), 73 FR 40643 (July 15, 2008) (SR-NYSEArca-2008-50).

<sup>27</sup> For a list of the current members of ISG, see <http://www.isgportal.org>.

<sup>28</sup> CME is a member of ISG.

Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-81. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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-NYSEArca-2008-81 and should be submitted on or before September 11, 2008.

#### IV. 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.<sup>33</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>34</sup> which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, 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 notes that it previously approved the original listing and trading of shares of other CurrencyShares Trusts, and the instant proposal is substantively identical to the previous proposals.<sup>35</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>36</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 and last-sale price information for the Shares are disseminated over the Consolidated Tape. The Trust disseminates the foreign currency spot prices for each of the Trusts and the IIV per Share at least every 15 seconds on its Web site during the Core Trading Session of the Exchange. In addition, the Sponsor publishes the NAV and NAV per Share for each Trust on each day that the Exchange is open for regular trading on the Trusts' Web site. Investors may obtain on a 24-hour basis foreign currency pricing information based on the foreign currency spot price of each applicable foreign currency from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. In addition, the Trusts' Web site provides ongoing pricing information for the applicable foreign currency spot prices and the Shares. The Exchange represents that complete, real-time data for foreign currency futures and options prices traded on CME are also available by subscription from information service providers. CME also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites available at no charge that provide information on the foreign currencies underlying the Shares, including spot price or currency conversion information about the foreign currencies. In addition, the Trusts' Web site provides the following information: (1) The spot price for each applicable foreign currency, including the bid and offer and the midpoint between the bid and offer for the foreign currency spot price, updated every 5 to 10 seconds; (2) IIV, updated at least every 15 seconds; (3) a delayed indicative value (subject to a 20 minute delay), which is used for calculating

premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) accrued interest per Share; (6) NAV of each Trust; (7) the Basket amount for each applicable foreign currency; and (8) the last-sale price of the Shares as traded in the U.S. markets, subject to a 20-minute delay. The Exchange states that it will provide on its own Web site a link to the Trusts' Web site.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain a representation from the Trusts that the NAV per Share for each Trust would be calculated daily and made available to all market participants at the same time.<sup>37</sup> NYSE Arca Equities Rule 8.202(i) provides that, in connection with trading in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, including Currency Trust Shares, an ETP Holder acting as a Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares is restricted from using any material, non-public information received from any person associated with such ETP Holder who is trading such foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, NYSE Arca Equities Rule 8.202(g) prohibits an ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 8.202(e)(2) provides that, when the Exchange is the listing market, if the value of the underlying foreign currency or IIV is no longer calculated or available on at least a 15-second delayed basis, the Exchange would consider suspending trading in the Shares. NYSE Arca Equities Rule 8.202(e)(2) also provides that the Exchange may seek to delist the Shares in the event the value of the applicable foreign currency or IIV is no longer calculated or available as

<sup>33</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>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> See *supra* note 4.

<sup>36</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>37</sup> See *supra* note 16.

required. In addition, NYSE Arca Equities Rule 7.34(a)(5) provides that, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.<sup>38</sup>

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that any securities listed pursuant to this proposal will be deemed equity securities and be subject to existing Exchange rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange represents that it intends to utilize its existing surveillance procedures applicable to derivative products, including Currency Trust Shares, to monitor trading in the Shares and that such procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG. Specifically, the Exchange can obtain such information from CME in connection with foreign currency futures and options on futures trading on CME pertaining to futures and options on futures on the Russian ruble and South African rand.

(2) The Exchange represents that if the interruption to the calculation or wide dissemination of the value of the underlying foreign currency or IIV persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

(3) Prior to listing and trading the Shares, the Exchange represents that it will inform its ETP Holders in the Bulletin of the special characteristics and risks associated with trading the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously approved the original listing and trading, and trading pursuant to UTP, of shares of other CurrencyShares

Trusts.<sup>39</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the listing and trading of the Shares on the Exchange. Accelerating approval of this proposed rule change would allow the Shares to be listed on the Exchange without undue delay.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2008-81), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-19356 Filed 8-20-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58361; File No. SR-Phlx-2008-50]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to the Electronic Handling of Complex Orders

August 14, 2008.

## I. Introduction

On July 1, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposal to adopt Phlx Rule 1080, Commentary .08, "Complex Orders on Phlx XL," to provide for the electronic handling of certain Complex Orders on Phlx XL, the Phlx's electronic trading platform for options. The proposed rule change was published for comment in the **Federal Register** on July 10, 2008.<sup>3</sup> The Commission received no comments regarding the proposed rule change. This order approves the proposed rule change.

<sup>39</sup> See *supra* notes 3 and 4.

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58099 (July 3, 2008), 73 FR 39769 ("Notice").

## II. Description of the Proposal

The Phlx proposes to adopt Phlx Rule 1080, Commentary .08 to provide for the electronic handling of certain Complex Orders on Phlx XL.<sup>4</sup> Phlx members and Phlx XL participants quoting and trading in open outcry will be required to submit quotes and/or orders electronically to participate in the electronic Complex Order system.<sup>5</sup>

As described briefly below and in greater detail in the Notice,<sup>6</sup> the proposal establishes a Complex Order Opening Process ("COOP"), a Complex Order Book ("CBOOK"), and a Complex Order Live Auction ("COLA"). In addition, the proposal includes a Strategy Price Protection ("SPP") feature that will prevent certain Complex Orders from trading at prices outside of specified pre-set limits.

### COOP

After trading has opened in each component of a pending Complex Order or re-opened following a trading halt, the Phlx XL system will initiate the COOP.<sup>7</sup> There will be one COOP per Complex Order Strategy.<sup>8</sup> The COOP is composed of two components: (1) The COOP Timer, a period ranging from 0 to 600 seconds, as determined by the Phlx, during which the Complex Order will not trade; and (2) the COOP Evaluation, the period following the conclusion of the COOP Timer during which the Phlx XL system will determine which Complex Order on the CBOOK, if any, will be eligible for a COLA. Complex Orders received during the COOP Timer and the COOP Evaluation will reside on the CBOOK and will be visible to Phlx XL participants.<sup>9</sup>

At the conclusion of the COOP Timer, the Phlx XL system will identify the "COLA-eligible order,"<sup>10</sup> if any, from

<sup>4</sup> The "Complex Orders" that may be traded on Phlx XL are spread orders, as defined in Phlx Rule 1066(f)(1); straddle orders, as defined in Phlx Rule 1066(f)(2); combination orders, as defined in Phlx Rule 1066(f)(3); ratio orders; and collar (risk reversal) orders. See Phlx Rule 1080, Commentary .08(a)(i).

<sup>5</sup> See Phlx Rule 1080, Commentary .08(e)(ix).

<sup>6</sup> See Notice, *supra* note 3.

<sup>7</sup> See Phlx Rule 1080, Commentary .08(d)(ii).

However, as described in greater detail in the Notice, *supra* note 3, a COOP will not be initiated if any of the conditions in Phlx Rule 1080, Commentary .08(c)(ii) exist.

<sup>8</sup> See Phlx Rule 1080, Commentary .08(d)(i). A "Complex Order Strategy" is any Complex Order involving any option series that is priced at a net debit or credit based on the relative prices of each component. See Phlx Rule 1080, Commentary .08(a)(ii).

<sup>9</sup> See Phlx Rule 1080, Commentary .08(d)(ii)(A)(3) and (4).

<sup>10</sup> A "COLA-eligible order" is a Complex Order (a) identified by way of a COOP; or (b) that, upon receipt, improves the cPBBO (*i.e.*, the Phlx best net

<sup>38</sup> See *supra* note 26 and accompanying text.