

with respect to any location so approved and designated must be promptly brought to the attention of the Exchange for reconsideration.

### III. Discussion and Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

According to the Exchange, many broker-dealer business models are becoming more reliant on offices of more than three RRs that service geographically isolated locations, but do not offer a full line of securities products and services. Given that the proposed safeguards are designed to promote effective supervisory procedures, the Commission believes it is reasonable for the Exchange to have more flexibility and discretion to determine whether a qualified on-site branch office manager is necessary for offices that engage in a limited scope of securities-related business activity. The Commission also believes that the proposed Interpretation strikes an appropriate balance between providing flexibility to the Exchange to accommodate the evolving business models of its members, while at the same time setting parameters to ensure that limited purpose offices will continue to be effectively supervised. To further ensure that such offices receive effective remote supervision, the Commission expects the Exchange to review plans of risk-based supervision and control for limited purpose offices and their implementation as part of the Exchange's regular examination of members and member organizations.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act<sup>10</sup> that the proposed rule change (SR–

NYSE–2004–51) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52843; File No. SR–NYSE–2005–65]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Euro Currency Trust

November 28, 2005.

#### I. Introduction

On September 29, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade Euro Shares under new NYSE Rules 1300A *et seq.* The proposed rule change was published for comment in the **Federal Register** on November 10, 2005 for a 15-day comment period, which ended on November 25, 2005.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

#### II. Description of the Proposal

The Exchange proposes to list and trade Euro Shares (“Shares”), which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust (“Trust”). As stated in the Trust’s Registration Statement,<sup>4</sup> the investment objective of the Trust, which will hold euro as its sole asset, is for the Shares to reflect the value of the euro. To facilitate trading of the new product, the NYSE has proposed new NYSE Rules 1300A and 1301A that will govern the trading of Shares on the Exchange. Information

about the liquidity, depth, and pricing mechanisms of the euro market, management and structure of the Trust, and description of the Shares follows below.

#### A. Description of the Foreign Exchange Industry and the Euro

The Exchange represents that the foreign exchange market is the largest and most liquid financial market in the world. The Exchange states that, as of April 2004, the foreign exchange market experienced average daily turnover of approximately \$1.88 trillion, which was a 57% increase (at current exchange rates) from 2001 daily averages. The foreign exchange market is predominantly an over-the-counter market with no fixed location, and it operates 24 hours a day, seven days a week. London, New York, and Tokyo are the principal geographic centers of the worldwide foreign exchange market, with approximately 58% of all foreign exchange business executed in the United Kingdom, United States (“U.S.”), and Japan.

Approximately 89% of foreign exchange transactions involve the U.S. dollar (“USD”), and approximately 37% involve the euro. The Exchange represents that the euro/USD pair is by far the most-traded currency pair and in recent years has comprised approximately 28% of the global turnover in foreign exchange. As of September 26, 2005, \$1 USD was worth approximately 0.828 euro, calculated at the then-current Noon Buying Rate.<sup>5</sup>

The Exchange states that there are three major kinds of transactions in the traditional foreign exchange markets: spot transactions, outright forwards, and foreign exchange swaps. There also are transactions in currency options, which trade both over-the-counter and, in the U.S., on the Philadelphia Stock Exchange (“Phlx”). Currency futures are traded on a number of regulated markets, including the International Monetary Market division of the Chicago Mercantile Exchange (“CME”), the Singapore Exchange Derivatives Trading Limited (“SGX,” formerly the Singapore International Monetary Exchange or SIMEX), and the London International Financial Futures

<sup>11</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 52715 (November 1, 2005), 70 FR 68490 (“Notice”).

<sup>4</sup> The Sponsor, on behalf of the Trust, filed the Form S–1 (the “Registration Statement”) on June 7, 2005, Amendment No. 1 thereto on August 12, 2005, and Amendment No. 2 thereto on October 25, 2005. See Registration No. 33–125581.

<sup>5</sup> For April 2004, the daily average foreign exchange turnover of the U.S. dollar against the euro was approximately \$550 billion. See Bank for International Settlements, Triennial Central Bank Survey, March 2005, Statistical annex tables, Table E–2. In addition, the reported daily turnover of foreign exchange contracts (USD against euro) in over-the-counter derivatives markets for April 2004, including outright forwards and Forex swaps, was \$1.15 trillion. See *id.* at 17.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

Exchange ("LIFFE").<sup>6</sup> Over 85% of currency derivative products (swaps, options, and futures) are traded over-the-counter.<sup>7</sup>

The primary participants in the foreign exchange market are banks (including government-controlled central banks), investment banks, money managers, multinational corporations, and institutional investors. The most significant participants are the major international commercial banks that act both as brokers and as dealers. In their dealer role, these banks maintain long or short positions in a currency and seek to profit from changes in exchange rates. In their broker role, the banks handle buy and sell orders from commercial customers, such as multinational corporations.

*The Euro.* According to the Registration Statement, in 1998, the European Central Bank in Frankfurt was organized by Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain in order to establish a common currency—the euro. In 2001, Greece joined as the twelfth country adopting the euro as its national currency. Unlike the U.S. Federal Reserve System, the Bank of Japan, and other comparable central banks, the European Central Bank is a central authority that conducts monetary policy for an economic area consisting of many otherwise largely autonomous states.

*Foreign Currency Regulation.* Most trading in the global over-the-counter foreign currency markets is conducted by regulated financial institutions, such as banks and broker-dealers. In addition, in the U.S., 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. over-the-counter 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 SEC regulates trading of options on foreign currencies on the Phlx, and the Commodity Futures Trading Commission ("CFTC") regulates trading of futures, options, and options on futures on foreign currencies on regulated futures exchanges.

The Phlx, CME, SGX, and LIFFE have authority to perform surveillance on their 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.

#### B. Trust Management and Structure

The Exchange proposes to list and trade Shares, which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the value of the euro. The Trust's assets will consist only of euro on demand deposit in a euro-denominated, interest-bearing account at JPMorgan Chase, London Branch.<sup>8</sup> The Trust will not hold any derivative products. Each Share will represent a proportional interest, based on the total number of Shares outstanding, in the euro owned by the Trust, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The price of a Share will reflect accumulated interest, as well as the estimated accrued but unpaid expenses of the Trust. The Trust 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 in 2045.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity.<sup>9</sup> Rydex Specialized Products LLC is the sponsor of the Trust ("Sponsor"),

The Bank of New York is the trustee of the Trust ("Trustee"), JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trust ("Depository"), and Rydex Distributors, Inc. is the distributor for the Trust ("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.

#### C. Trust Expenses and Management Fees

The Trust will use interest earned on the Deposit Account to pay the Sponsor's fee and any other Trust expenses that may arise from time to time. If that interest is not sufficient to fully pay the Sponsor's fee and Trust expenses, then the Trustee will sell deposited euro as needed.

The Trust's only ordinary recurring expense is expected to be the Sponsor's fee, and, in turn, the Sponsor is obligated to pay: The Trustee's monthly fee, the Distributor's fee, NYSE listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses, and up to \$100,000 per year in legal fees and expenses. The Sponsor is also obligated to pay the costs of the Trust's organizational expenses and the costs of the initial sale of the Shares, including the applicable SEC registration fees.<sup>10</sup>

Under the Deposit Account Agreement, the Depository is entitled to invoice the Trustee or debit the Deposit Account for certain out-of-pocket expenses; however, except for certain reimbursable expenses, the Depository will not be paid a fee for its services to the Trust.

The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the euro and that the price of a Share will reflect accumulated interest, as well as the estimated accrued but unpaid expenses of the Trust.

#### D. Description and Characteristics of the Shares

##### 1. Net Asset Value and Distributions

The Trustee expects to determine the net asset value ("NAV") of the Trust between 12 p.m. and 2 p.m. (New York time) each business day. In doing so, the Trustee will value the euro held by the

<sup>10</sup> The following additional expenses may be charged to the Trust: (1) Expenses and costs of any extraordinary services performed by the Trustee or the Sponsor on behalf of the Trust or action taken by the Trustee or the Sponsor to protect the Trust or interests of Shareholders; (2) indemnification of the Sponsor; (3) taxes and other governmental charges; and (4) expenses of the Trust other than those the Sponsor is obligated to pay pursuant to the Depositary Trust Agreement.

<sup>6</sup> Volume in euro futures (Euro FX) on the CME for 2004 was 17,791,457 contracts. The 2005 Euro FX futures volume on the CME through October 19, 2005 was 25,222,252 contracts. Euro options (EURFX) volume on the Phlx was 6,162 contracts in June 2005 and 2,918 in July 2005. The 2005 EURFX volume through July was 33,408 contracts. See Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2005 (confirming Euro FX volume on CME).

<sup>7</sup> See Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004, September 2004 (Tables 2 and 6).

<sup>8</sup> The Deposit Account is the euro account of the Trust established with the Depository (the London branch of JP Morgan Chase Bank, N.A.) by the Deposit Account Agreement. The Deposit Account holds the euro deposited with the Trust.

<sup>9</sup> The Exchange states that the Trust is not a registered investment company under the Investment Company Act of 1940 ("1940 Act") and is not required to register under the 1940 Act.

Trust on the basis of the Noon Buying Rate, which is the USD/euro exchange rate as determined by the Federal Reserve Bank of New York as of 12 p.m. (New York time) on each day that the NYSE is open for regular trading.<sup>11</sup> If, on a particular business day, the Noon Buying Rate has not been determined and announced by 2 p.m. (New York time), then the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate will be used to determine the value of the euro held by 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 Federal Reserve Bank of New York determination of the Noon Buying Rate is not an appropriate basis for valuation of the Trust's euro, they shall determine an alternative basis for such evaluation to be employed by the Trustee.

To calculate the NAV of the Trust, the Trustee will subtract the Sponsor's accrued fee for the current day from the euro held by the Trust (including all unpaid interest accrued through the immediately preceding day). The Trustee will also determine the NAV per Share, which equals the NAV of the Trust divided by the number of outstanding Shares.<sup>12</sup> The NAV will be posted on the Trust's Web site as soon as the valuation of the euro held by the Trust is complete (ordinarily by 2:00 p.m. (New York time)). Ordinarily, it will be posted no more than thirty minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York. The Exchange states 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.

**Distributions.** The Depositary Trust Agreement requires the Trustee to promptly distribute "Surplus Property" that are in USD and sell or convert all other Surplus Property into USD and

distribute the proceeds. "Surplus Property" includes, among other things, interest on euro in the Deposit Account that the Trustee determines is not required to pay estimated Trust expenses within the following month. In addition, if the Trust is terminated and liquidated, then the Trustee will distribute to the Shareholders upon surrender of their Shares any amounts remaining after the satisfaction of all outstanding liabilities of the Trust and the establishment of such reserves for applicable taxes, other governmental charges and contingent or future liabilities as the Trustee shall determine. All distributions will be made monthly in USD. The Trustee will effectuate the conversion and will determine the exchange rate, which will be proximate to the Noon Buying Rate on the record date for the distribution. Shareholders of record on the record date fixed by the Trustee for any distribution will be entitled to receive their pro-rata portion of the distribution.<sup>13</sup>

## 2. Liquidity

The Exchange states that 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 euro markets and the NYSE. The period of greatest liquidity in the euro market is typically that time of the day when trading in the European time zones overlap with trading in the U.S., which is when over-the-counter market trading in London, New York, and other centers coincides with futures and options trading on the euro. While the Shares will trade on the NYSE until 4:15 p.m. (New York time), liquidity in the over-the-counter market for euro will be slightly reduced after the close of the London foreign currency markets.

Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or

premium to the value of underlying euro held by the Trust. The Exchange states that 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 euro.

## 3. Creation and Redemption of Trust Shares

The Trust will create Shares on a continuous basis only in aggregations of 50,000 Shares (such aggregation referred to as a "Basket") in exchange for deposits of euro and will distribute euro in connection with redemptions of Baskets. Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Shares for resale. Each Share will initially represent 100 euro. Except when aggregated in Baskets, the Shares are not redeemable. The Trust will impose transaction fees in connection with creation and redemption transactions.

The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of euro 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 properly received. The number of Shares outstanding is expected to increase and decrease from time to time as a result of the creation and redemption of Baskets. Authorized Participants pay for Baskets with euro. Shareholders pay for Shares with U.S. dollars.

The Exchange states that certain Authorized Participants are expected to have the facilities to participate directly in the global foreign exchange market. In some cases, an Authorized Participant may acquire euro from, or sell euro to, an affiliated foreign exchange trading desk, which may profit in these instances. The Sponsor believes that the size and operation of the foreign exchange market make it unlikely that an Authorized Participant's direct activities in the foreign exchange and securities markets will impact the price of euro or the price of Shares. The Exchange states that each Authorized Participant is (i) regulated as a broker-dealer regulated under the Exchange Act and registered with the National Association of Securities

<sup>11</sup> The Trustee and the Sponsor may determine to apply an alternative basis for evaluation in extraordinary circumstances, such as if the Federal Reserve Bank of New York does not announce a Noon Buying Rate, or discontinues such announcements, or if there is an extraordinary change in the spot price of euro after the Noon Buying Rate is established. In the event the Sponsor and Trustee determine to use, on a regular and ongoing basis, a source other than the Noon Buying Rate, the Exchange will make an appropriate filing pursuant to Rule 19b-4 under the Exchange Act.

<sup>12</sup> Shares deliverable under a purchase order will be considered outstanding for purposes of determining NAV per Share; Shares deliverable under a redemption order will not be considered outstanding for this purpose.

<sup>13</sup> On the last calendar day of each month, the Depositary will deposit into the Deposit Account the accrued but unpaid interest for that month and pay the accrued Sponsor's fee for the month plus any other Trust expenses. If the last calendar day of the month is not a business day, the deposit of interest and payment of the Sponsor's fee and expenses will be made on the next following business day. In the event that the interest deposited exceeds the sum of the Sponsor's fees for the month plus other Trust expenses, if any, then the Trustee shall convert the excess into dollars based on the Noon Buying Rate and distribute the dollars promptly to Shareholders of record on the last calendar day of the month, on a pro rata basis (in accordance with the number of Shares that they own). The distribution per Share shall be rounded down to the nearest penny, and any excess remaining after the rounding shall be retained by the Trust in euro.

Dealers, Inc. ("NASD"), or (ii) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Exchange Act or registered with the NASD, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.<sup>14</sup> Certain Authorized Participants will be regulated under federal and state banking laws and regulations. The Exchange states that each Authorized Participant will have its own set of rules and procedures, internal controls, and information barriers as it determines is appropriate in light of its own regulatory regime. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

#### 4. Information About Underlying Euro Holdings

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency, such as euro, over the Consolidated Tape. However, the last sale price for the Shares will be disseminated over the Consolidated Tape, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). 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. 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).

Investors may obtain on a 24-hour basis euro pricing information based on the euro spot price from various financial information service providers. 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 CME and 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

<sup>14</sup> The Commission notes that as of October 1, 2003, the temporary exemption for banks from the definition of "dealer" under the Act expired. Accordingly, banks that act as Authorized Participants should consider whether they are "dealers" under the federal securities laws. See 15 U.S.C. 78c(a)(5); Securities Exchange Act Release No. 47364 (February 14, 2003), 68 FR 8686 (February 24, 2003).

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>15</sup> 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 euro spot prices are also generally available with bid/ask spreads from foreign currency dealers.

In addition, the Trust's Web site will provide the following information: (1) The euro spot price,<sup>16</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;<sup>17</sup> (2) an intraday indicative value ("IIV") per share for the Shares calculated by multiplying the indicative spot price of euro by the quantity of euro backing each Share, on a 5- to 10-second delay basis;<sup>18</sup> (3) a delayed indicative value

<sup>15</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>16</sup> The Trust Web site's euro spot price will be provided by The Bullion Desk (<http://www.thebulliondesk.com>). The NYSE will provide a link to the Trust Web site. 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 NYSE will halt trading in the Shares and commence delisting proceedings for the Shares. See *infra*, note 26.

<sup>17</sup> The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares. Assuming a euro spot bid of \$1.2235 and an offer of \$1.2236, the midpoint would be calculated as follows:

(Euro spot bid plus ((euro spot offer minus euro spot bid) divided by 2)) or  $(\$1.2235 + ((\$1.2236 - \$1.2235)/2)) = \$1.22355$ .

<sup>18</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

(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 the Trust as calculated each business day by the Sponsor; (6) accrued interest per Share; (7) the daily Federal Reserve Bank of New York Noon Buying Rate; (8) the Basket Euro Amount; and (9) the last sale price (under symbol FXE) of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.<sup>19</sup> The Exchange will provide on its own public Web site (<http://www.nyse.com>) a link to the Trust's Web site. The market prices for the Shares will also be available from a variety of sources, including brokerage firms, financial information Web sites, and other information service providers.

#### E. Initial Share Issuance and Continued Listing

Bear Hunter Structured Products, LLC is expected to purchase three Baskets, representing 150,000 Shares, as the initial seed Baskets, which will be outstanding at the commencement of trading on the Exchange.<sup>20</sup> Each Share will initially represent 100 euro. The Exchange's original listing fee applicable to the listing of the Trust will be \$5,000. The annual continued listing fee for the Trust will be \$2,000.

The Exchange's applicable continued listing criteria require it to delist the Shares if any of the following occur: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of euro is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Exchange, or the Exchange stops providing a hyperlink on the Exchange's Web site to any such unaffiliated euro value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur

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. The Trust's Web site is expected to indicate that the intraday indicative value and euro spot prices are subject to an average delay of 5 to 10 seconds.

<sup>19</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>20</sup> Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 18, 2005.

or condition exist that, 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.

#### F. Exchange Trading Rules and Policies

The Shares are considered "securities" pursuant to NYSE Rule 3 and are subject to all applicable trading rules. The Exchange's surveillance procedures will be comparable to those used for investment company units currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

The Exchange has proposed to adopt new NYSE Rule 1300A ("Currency Trust Shares") to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rules 13 ("Definitions of Orders"), 36.30 ("Communications Between Exchange and Members' Offices: Specialist Post Wires"), 98 ("Restrictions on Approved Person Associated with a Specialist's Member Organization"), 104 ("Dealings by Specialists"), 105(m) ("Specialists' Interest in Pools, Options, and Single Stock Futures: Specialist Shall Not Be Options or Single Stock Futures Market-Maker"),<sup>21</sup> 460.10 ("Specialists Participating in Contests"), 1002 ("Availability of Automatic Execution Feature"), and 1005 ("Orders May Not Be Broken Into Smaller Amounts") the Shares will be treated the same as Investment Company Units. When these Rules discuss Investment Company Units, references to the word "index" (or derivative or similar words) will be deemed to be references to the applicable currency spot price, and reference to the word "security" (or derivative or similar words) will be deemed to be references to the Currency Trust Shares. The term "applicable non-U.S. currency" as used in proposed NYSE Rules 1300A and 1301A, is defined as the currency held by the Trust for a particular issue of Currency Trust Shares. Proposed NYSE Rules 1300A and 1301A are intended to accommodate possible future listings of trusts based on non-U.S. currencies in

<sup>21</sup> In particular, proposed NYSE Rule 1300A provides that NYSE Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member, or approved person in such member organization or officer or employee thereof from acting as a market-maker or functioning in any capacity involving market-making responsibilities in the applicable non-U.S. currency, options, futures, or options on futures on such currency, or any other derivatives based on such currency, except as otherwise provided therein.

addition to the euro. Any Exchange listing of an issue of Currency Trust Shares will be subject to approval of a proposed rule change by the Commission pursuant to Section 19(b)(2) of the Exchange Act<sup>22</sup> and Rule 19b-4<sup>23</sup> thereunder.

The Exchange does not currently intend to exempt Currency Trust Shares from the Exchange's "Market-on-Close/Limit-on-Close/Pre-Opening Price Indications" Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

The Exchange is proposing to adopt new NYSE Rule 1301A ("Currency Trust Shares: Securities Accounts and Orders of Specialists") to ensure that specialists handling Currency Trust Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, options, futures contracts and options thereon or any other derivative on such currency.<sup>24</sup> As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

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 on the Exchange in the Shares 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: (1) The extent to which trading is not occurring in euro, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>25</sup> The Exchange will halt trading in the Shares if the Trust Web site (to which the NYSE 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.<sup>26</sup>

#### G. Surveillance

The Exchange's surveillance procedures will be comparable to those used for Investment Company Units and streetTRACKSR Gold Shares and will incorporate and rely upon existing NYSE surveillance procedures governing equities. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares and to detect violations of Exchange rules, thereby deterring manipulation.<sup>27</sup>

The Exchange's current trading surveillance focuses on detecting securities trading 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 is able to obtain information regarding trading in the Shares, euro options, and euro futures through NYSE members, in connection with such members' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG. Specifically, the NYSE can

<sup>25</sup> See NYSE Rule 80B.

<sup>26</sup> In the event that the Trust Web site (to which the NYSE 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, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 22, 2005.

<sup>27</sup> See Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2005.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 240.19b-4.

<sup>24</sup> Proposed NYSE Rule 1301A also states that, in connection with trading the applicable non-U.S. currency, options, futures, or options on futures, or any other derivatives on such currency (including Currency Trust Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures, or options on futures, or any other derivatives on such currency. For purposes of proposed NYSE Rule 1301A, "person associated with a member" shall have the same meaning ascribed to it in Section 3(a)(21) of the Exchange Act.

obtain such information from the Phlx in connection with euro options trading on the Phlx and from the CME and LIFFE in connection with euro futures trading on those exchanges.<sup>28</sup>

#### H. Due Diligence

Before a member, member organization, allied member, or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to NYSE Rule 405 and must determine that the recommendation complies with all other applicable Exchange and federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction.

#### I. Information Memo

The Exchange will distribute an Information Memo to its members in connection with the trading in the Shares. The Information Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the indicative price of euro and IIV, dissemination information, trading information, and the applicability of suitability rules.<sup>29</sup> The Information Memo will also state that the number of euro required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that the Trust is required to sell deposited euro 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.<sup>30</sup> The Information Memo will also reference the fact that there is

<sup>28</sup> Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

<sup>29</sup> The Information Memo will also discuss any exemptive relief granted by the Commission from certain rules under the Exchange Act.

<sup>30</sup> See Telephone conference between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on October 21, 2005.

no regulated source of last sale information regarding euro, and that the Commission has no jurisdiction over the trading of euro. Finally, the Information Memo will also note to members their obligations regarding prospectus delivery requirements for the Shares.

#### IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act<sup>31</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>32</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange Act,<sup>33</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

##### A. Surveillance

Information sharing agreements with markets trading securities underlying a derivative are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.<sup>34</sup> Although an information sharing agreement is not possible with the OTC euro-dollar foreign exchange market, the Commission believes that the unique liquidity and depth of the euro-dollar foreign exchange market, together with the Exchange's participation in the ISG,<sup>35</sup> and NYSE Rules 1300A(b) and 1301A create the basis for the NYSE to monitor for fraudulent and manipulative practices in the trading of the Shares.<sup>36</sup>

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

<sup>32</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>34</sup> See e.g., Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving proposal by the NYSE to list and trade trust shares that correspond to a fixed amount of gold) ("Gold Order").

<sup>35</sup> See *supra* note 28 and accompanying text.

<sup>36</sup> The Commission notes that it had previously approved the listing and trading of foreign currency options, for which there is no self-regulatory organization or Commission surveillance of the underlying markets, on the basis that the magnitude of the underlying currency market militated against manipulations through inter-market trading activity. See *id.*, at 64619 (Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign

In particular, NYSE Rule 1301A will require that the specialist handling the Shares provide the Exchange with information relating to its trading in euro options, futures or options on futures on the euro, or any other derivatives based on the euro. The Exchange believes that these reporting and recordkeeping requirements will assist it in identifying situations potentially susceptible to manipulation. NYSE Rule 1301A(c) will also prohibit the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in euro, or options, futures or options on futures of euro, or any other derivatives based on euro (including the Shares). In addition, NYSE Rule 1300A(b) will prohibit the specialist in the Shares from being affiliated with a market maker in euro, or options, futures or options on futures on euro, or any other derivatives based on euro unless information barriers are in place that satisfy the requirements in NYSE Rule 98. The Commission believes that the NYSE can adequately surveil trading in the Shares, notwithstanding the lack of a surveillance sharing agreement with the OTC market that trades euro.

##### B. Dissemination of Information About the Shares

The Commission believes that sufficient venues for obtaining reliable euro price information exist so that investors in the Shares can monitor the underlying spot market in euro relative to the NAV of their Shares. There is a considerable amount of euro price and euro market information available 24 hours per day through public Web sites and professional subscription services.

In addition, the Exchange will provide a link to the Trust's Web site on the NYSE's public Web site. The Trust's Web site, which is and will be publicly accessible at no charge, will provide, among other things, the euro spot price,<sup>37</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<sup>38</sup> and the daily Federal

currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

<sup>37</sup> As noted above, the Trust Web site's euro spot price will be provided by The Bullion Desk (<http://www.thebulliondesk.com>), which is not affiliated with the Sponsor, the Trust, the Depository, the Distributor, or the Exchange. See *supra* note 16.

<sup>38</sup> As noted above, the midpoint will be calculated by the Sponsor. See *supra* note 17.

Reserve Bank of New York Noon Buying Rate. The Commission also notes that the Trust's Web site will contain: (1) An intraday indicative value ("IIV") per share for the Shares calculated by multiplying the indicative spot price of euro by the quantity of euro backing each Share, on a 5 to 10 second delay basis; (2) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (3) premium/discount information, calculated on a 20 minute delayed basis; (4) the NAV of the Trust as calculated each business day by the Sponsor; (5) accrued interest per Share; (6) the Basket Euro Amount; and (7) the last sale price (under symbol FXE) of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.<sup>39</sup>

The Commission believes that the wide availability of euro price information and dissemination of information described above will facilitate transparency with respect to the proposed Shares and diminish the risk of manipulation or unfair informational advantage.

#### C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Exchange Act. Shares will trade as equity securities subject to NYSE rules including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting rules and procedures governing the trading of ICUs on the NYSE. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Memo the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares, including their prospectus delivery obligations.

#### D. Acceleration

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested the Commission to

approve the proposal on an accelerated basis, after a 15-day comment period, to enable investors to begin trading the Shares promptly. The Commission notes that the proposed rule change was noticed for a 15-day comment period and no comments were received. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>40</sup> to approve the proposal on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>41</sup> that the proposed rule change (SR-NYSE-2005-65) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>42</sup>

**Jonathan G. Katz,**

*Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52834; File No. SR-Phlx-2005-63]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Prohibition of Trade Shredding

November 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 25, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 707, Conduct Inconsistent with Just and Equitable Principles of Trade, to prohibit members, member organizations and persons associated

with or employed by a member or member organization from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization, or person associated with or employed by a member or member organization.

The text of the proposed rule change appears below. Additions are in italics.

\* \* \* \* \*

#### Rule 707 Conduct Inconsistent With Just and Equitable Principles of Trade

A member, member organization, or person associated with or employed by a member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade.

Commentary:

.01 No Change

*.02 Without limiting the generality of Rule 707, it is conduct inconsistent with just and equitable principles of trade for any member, member organization, or person associated with or employed by a member or member organization to engage in conduct that has the intent or effect of unbundling equity securities orders for execution for the primary purpose of maximizing a monetary or in-kind amount received by the member, member organization, or person associated with or employed by a member or member organization as a result of the execution of such equity securities orders. For purposes of this section, "monetary or in-kind amounts" shall be defined to include commissions, gratuities, payments for or rebate of fees resulting from the entry of such equity securities orders, or any similar payments of value to the member, member organization, or person associated with or employed by a member or member organization.*

\* \* \* \* \*

#### 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 Phlx 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 these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>39</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>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> *Id.*

<sup>42</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.