

listed securities of at least \$80 million to be eligible for initial listing.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Nasdaq believes that the proposed rule change, as amended, clarifies Nasdaq's rules.

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

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

Nasdaq requests that the Commission waive the 30-day operative period under

Rule 19b-4(f)(6)(iii).<sup>12</sup> The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay,<sup>13</sup> because the proposal is consistent with the treatment afforded business development companies by other markets.<sup>14</sup>

At any time within 60 days of the filing of such proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>15</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2006-044 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-044. 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

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> See Section 102.04 of the New York Stock Exchange Listed Company Manual.

<sup>15</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 2, 2006, the date Nasdaq filed Amendment No. 1 to the proposed rule change. See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-044 and should be submitted on or before December 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-19424 Filed 11-16-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54730; File No. SR-NYSEArca-2006-04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendments No. 1, 2 and 3 Thereto Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

November 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2006, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE Arca filed Amendment No. 1 to the proposed rule change on August 18, 2006.<sup>3</sup> NYSE Arca filed Amendment No. 2 to the proposed

<sup>16</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> Amendment No. 1 replaced the original filing in its entirety.

<sup>8</sup> 15 U.S.C. 78f.

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). As required by Rule 19b-4(f)(6)(iii) of the Act, Nasdaq provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

rule change on October 17, 2006.<sup>4</sup> NYSE Arca filed Amendment No. 3 to the proposed rule change on November 6, 2006.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to amend NYSE Arca Rules 5.3(g), 5.6(k) and 6.39(a), as well as the Commentary to NYSE Arca Rules 11.3 and 11.16, to enable the initial and continued listing and trading on the Exchange of options on shares or other securities ("Exchange-Traded Fund Shares" or "Fund Shares") that represent an interest in a specified non-U.S. currency. The text of the proposed rule change is below. Additions are *italicized*, deletions are [bracketed].

#### Rules of the NYSE Arca, Inc.

### RULE 5 OPTION CONTRACTS TRADED ON THE EXCHANGE

#### Section 2. Underlying Securities

\* \* \* \* \*

#### Rule 5.3—Criteria for Underlying Securities

(a)–(f)—No change.

(g) Exchange-Traded Fund Shares. Securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares" or "*Fund Shares*") that are [principally] traded on a national securities exchange [or through the facilities of a national securities association] and *are defined as an "NMS stock" in Rule 600(b)(47) of Regulation NMS* [reported as a national market security], and that (i) represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities, or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust

<sup>4</sup> Amendment No. 2 corrected certain minor, inadvertent omissions to the changes proposed in Amendment No. 1. In Amendment No. 2, NYSE Arca also clarified that Fund Shares must be traded on a national securities exchange pursuant to NYSE Arca Rule 5.3(g).

<sup>5</sup> Amendment No. 3 clarified the proposal, as earlier amended, and corrected certain minor, inadvertent omissions to the changes proposed in Amendments No. 1 and 2.

by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust ("*Funds*"); provided:

(1)

(A) the Exchange-Traded Fund Shares meet the criteria and guidelines for underlying securities set forth in Rule 5.3(a) and (b); or

(B) the Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from *or through the issuing trust, investment company or other entity* [the investment company] at a price related to the net asset value. In addition, the *issuer* [investment company] *is obligated* [shall provide that] *to issue Fund Shares in a specified aggregate number* [fund shares may be created] even though some or all of the *investment assets* [securities] needed to be deposited have not been received by the *issuer* [unit investment trust or the management investment company], provided the authorized creation participant has undertaken to deliver the *investment assets* [shares] as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the *issuer of Fund Shares* [fund] which underlie[s] the option as described in the *Fund Shares'* [fund or unit trust] prospectus; and

(2)

(A) any non-U.S. component securities (including fixed-income) in an [the] index or portfolio of securities on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(B) *component securities* (including fixed-income) *of an index or portfolio of securities on which Fund Shares are based* for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; [and]

(C) *component securities* (including fixed-income) *of an index or portfolio of securities on which Fund Shares are based* for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index; and[.]

(D) *for Funds that hold a specified non-U.S. currency deposited with the trust, the Exchange has entered into an appropriate comprehensive surveillance*

*sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency, which are utilized by the national securities exchange where the underlying Funds are listed and traded.*

(h)—No change.

\* \* \* \* \*

#### Rule 5.6—Withdrawal of Approval of Underlying Securities

(a)–(j)—No change.

(k) Absent exceptional circumstances, securities initially approved for options trading pursuant to Rule 5.3(g) (such securities are defined and referred to in that [Commentary] rule as "Exchange-Traded Fund S[ha]res" or "*Fund Shares*") shall not be deemed to meet the Exchange's requirements for continued approval, and the exchange shall not open for trading any additional series of option contracts of the class covering such Exchange-Traded Fund Shares, whenever the Exchange-Traded Fund Shares are delisted *as provided in subparagraph (b)(5) or [and] trading in the Fund Shares is [suspended] halted on their primary market* [a national securities exchange, or the Exchange-Traded Fund Shares are no longer traded as national market securities through the facilities of a national securities association]. In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Exchange-Traded Fund Shares in any of the following circumstances:

(1) In accordance with the terms of paragraphs 1 through [7]4 of Rule 5.6(b) in the case of options covering Exchange-Traded Fund Shares when such options were approved pursuant to Rule 5.3(g)(1)(A).

(2) *In the case of options covering Exchange-Traded Fund Shares approved pursuant to Rule 5.3(g)(1)(B), [F]ollowing the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares on a national securities exchange [or as national market securities through the facilities of a national market association] and are defined as an "NMS stock" in Rule 600(b)(47) of Regulation NMS*, there are fewer than 50 record and/or beneficial holders of *such* Exchange-Traded Fund Shares for 30 or more consecutive trading days;

(3) The value of the index or portfolio of securities or non-U.S. currency on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or

(4) Such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

(1)—No change.

**Commentary:**

.01—No change.

\* \* \* \* \*

**RULE 6 OPTIONS TRADING**

**Rule 6.39—Securities Accounts and Orders of Market Makers**

(a) Identification of Accounts [Upon Request]. *A Lead Market Maker in the Fund Shares, as defined in Rule 5.3(g), is obligated to conduct all trading in the Fund Shares in account(s) that have been reported to the Exchange. In addition, [I]n a manner prescribed by the Exchange, each Market Maker shall [upon request] file with the Exchange a list identifying all accounts for stock, options, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency and related securities trading in which the Market Maker may directly or indirectly engage in trading activities or over which the Market Maker exercises investment discretion. No Market Maker shall engage in stock, options, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency or related securities trading in an account that has not been reported pursuant to this Rule.*

(b)—No change.

**Commentary:**

.01—No change.

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**RULE 11 BUSINESS CONDUCT**

**Rule 11.3—Prevention of the Misuse of Material, Nonpublic Information**

(a)–(b)—No change.

**Commentary:**

.01 For purposes of Rule 11.3, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

A. Trading in any securities issued by a corporation or *Funds, as defined in Rule 5.3(g), or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency while in possession of material, non-public information concerning that issuer; or*

B. Trading in a security or related options or other derivative securities, *or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency while in possession of material non-public information concerning imminent transactions in the above [security or related securities]; or*

C. Disclosing to another person or entity any material, non-public information involving a corporation or *Funds or a trust or similar entities* whose shares are publicly traded or an imminent transaction in an underlying security or related securities *or in the underlying non-U.S. currency, or any related non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* for the purpose of facilitating the possible misuse of such material, non-public information.

.02–.03—No change.

\* \* \* \* \*

**Rule 11.16—Books and Records**

(a)—No change.

**Commentary:**

.01—No change.

.02 *In addition to the existing obligations under Exchange rules regarding the production of books and records, a Lead Market Maker in non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, shall make available to the Exchange such books, records or other information pertaining to transactions in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives on such currency, as may be requested by the Exchange.*

(b)—No change.

\* \* \* \* \*

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

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

1. Purpose

The purpose of this proposed rule change is to amend NYSE Arca Rules 5.3(g), 5.6(k) and 6.39(a), as well as the Commentary to NYSE Arca Rules 11.3 and 11.16, to enable the initial and continued listing and trading on the Exchange of options on shares of exchange-traded funds (“ETFs”) that hold a specified non-U.S. currency. The proposed rule change is based on the rule proposal of the International Securities Exchange (“ISE”), which was approved by the Commission.<sup>6</sup>

Currently, the term “Exchange-Traded Fund Shares,” as defined under NYSE Arca Rule 5.3(g), requires that the investment assets held by a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity consist of securities constituting or otherwise based on or representing an investment in an index or portfolio of securities. As proposed, amended NYSE Arca Rule 5.3(g) would also permit the investment assets to consist of a trust that holds a specified non-U.S. currency deposited with the trust.

In particular, the proposed amendment to NYSE Arca Rule 5.3(g) would permit the Exchange to list options on the euro shares (“Shares” or “Euro Shares”) <sup>7</sup> issued by the Euro Currency Trust (“Trust”) <sup>8</sup> and other similarly structured currency-based products, which function as an ETF, whose Shares reflect the price of a particular foreign currency and whose assets are limited to a particular foreign currency. The Shares may be purchased from the Trust only in one or more blocks of 50,000 Shares, as described in the prospectus under “Creation and Redemption of Shares.” A block of 50,000 shares is called a Basket. The Trust issues Shares in Baskets on a continuous basis to certain authorized participants (“Authorized Participants”) as described in the prospectus under “Plan of Distribution.” Each Basket, when created, is offered and sold to an Authorized Participant at a price in euro

<sup>6</sup> See Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR-ISE-2005-60).

<sup>7</sup> The Shares trade on the New York Stock Exchange (“NYSE”) under the symbol “FXE.” The Shares may also trade in other markets.

<sup>8</sup> The Exchange notes that the Trust is not a registered investment company under the Investment Company Act of 1940 (the “1940 Act”) and is not required to register under the 1940 Act.

equal to the net asset value ("NAV") for 50,000 Shares on the day that the order to create the Basket is accepted by the Trustee.

The Exchange believes that permitting options on foreign currency-based Fund Shares to be traded on the Exchange is consistent with the Commission's recent approval order of a rule change filed by the NYSE to list and trade the Shares.<sup>9</sup> This rule change to NYSE Arca's listing criteria for Fund Shares is intended to provide appropriate listing standards for options on the Shares and similar types of foreign currency-based Fund Shares that may be listed in the future.

For options trading, the underlying Fund Shares will continue to need to satisfy the listing standards in NYSE Arca Rule 5.3(g). Specifically, the Fund Shares must be traded on a national securities exchange and must be an "NMS stock" as defined in Rule 600(b)(47) of Regulation NMS.<sup>10</sup> The Fund Shares must also either: (1) Meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a) and (b); or (2) be available for creation or redemption each business day in cash or in kind from or through the issuer at a price related to NAV, and the issuer is obligated to issue Fund Shares in a specified aggregate number even though some or all of the investment assets needed to be deposited have not been received by the issuer, subject to the condition that the authorized creation participant has undertaken to deliver the investment assets as soon as possible, and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as described in the prospectus. Proposed NYSE Arca Rule 5.3(g)(2)(D) provides that "for Funds that hold a specified non-U.S. currency deposited with the trust, the Exchange has entered into an appropriate comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency, which are utilized by the national securities

exchange where the underlying Funds are listed and traded." The Exchange is also proposing to make other conforming changes to the text of NYSE Arca Rule 5.3(g) to reflect the proposed broadened definition of Fund Shares.

Under NYSE Arca Rule 5.6(k), the Exchange will not open for trading any additional series of option contracts of a class covering Fund Shares whenever the Fund Shares are delisted or trading in the Fund Shares is halted on the primary market. In addition, the Exchange will consider the suspension of opening transactions in any series of options of the class covering Fund Shares as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days; (2) the value of the non-U.S. currency is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

The Exchange represents that the expansion of the types of investments that may be held by a Fund Share under NYSE Arca Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits<sup>11</sup> or margin.<sup>12</sup>

The Exchange is also proposing to amend Commentary .01 to NYSE Arca Rule 11.3 to require an OTP Holder or OTP Firm to establish, maintain, and enforce written policies and procedures designed to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. Finally, the Exchange is proposing to amend NYSE Arca Rule 6.39(a) and to add Commentary .02 to NYSE Arca Rule 11.16 to require that market makers handling options on Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, proposed NYSE Arca Rule 6.39(a) would prohibit market makers from engaging in stock, options, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency or related securities trading in an account which

has not been reported in a manner prescribed by the Exchange.

The Exchange represents that it has an adequate surveillance program in place for options on the Fund Shares, and intends to apply those same program procedures that it applies to options on Fund Shares currently traded on the Exchange. To comply with proposed NYSE Arca Rule 5.3(g)(2)(D), the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG. Specifically, NYSE Arca can obtain such information from the Philadelphia Stock Exchange ("Phlx") in connection with euro options trading on the Phlx and from the Chicago Mercantile Exchange ("CME") and the London International Financial Futures Exchange ("LIFFE") in connection with euro futures trading on those exchanges.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>14</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>15</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In addition, the Exchange believes that, with the commencement of trading of a currency-based ETF of the NYSE, amending its rule to accommodate the listing and trading of options on publicly traded shares or other securities that hold investment assets consisting of foreign currency will benefit investors by providing them with the same valuable risk management tool that is currently available with respect to other publicly traded ETFs whose investment assets consist of securities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>9</sup> See Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE-2005-65).

<sup>10</sup> In light of the implementation of certain aspects of Regulation NMS, the Exchange hereby seeks to amend NYSE Arca Rule 5.3(g) to reflect that Exchange-Traded Fund Shares must be NMS stocks as defined in Rule 600(b)(47) of Regulation NMS instead of "national market" securities. The Exchange also seeks to amend NYSE Arca Rule 5.6(k), the maintenance rule for Exchange-Traded Fund Shares, to delete obsolete references contained therein.

<sup>11</sup> See NYSE Arca Rules 6.8 and 6.9.

<sup>12</sup> See NYSE Arca Rule 4.16.

<sup>13</sup> Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

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

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

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

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

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2006-04 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2006-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE Arca. 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-2006-04 and should be submitted on or before December 8, 2006.

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

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, that the rules of an exchange be designed 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.

Currently, the Exchange can list options on Fund Shares that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity that holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities.<sup>18</sup> The Exchange's proposal would allow it to list and trade options on Fund Shares whose investment assets consist of a specified non-U.S. currency deposited with a trust.<sup>19</sup>

The underlying Fund Shares would continue to need to satisfy the listing standards in NYSE Arca Rule 5.3(g). Specifically, the Fund Shares must be traded on a national securities exchange<sup>20</sup> and must be an "NMS stock" as defined in Rule 600(b)(47) of Regulation NMS.<sup>21</sup> The Fund Shares must also either: (1) meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a) and (b); or (2) be available for creation or redemption each business day in cash or in kind from or through the issuer at a price related to NAV, and the issuer is obligated to issue Fund Shares in a specified aggregate number. The Commission notes that the Exchange has represented that the expansion of

the types of investments that may be held by a Fund Share under NYSE Arca Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits or margin.<sup>22</sup>

To accommodate the listing and trading of options on Fund Shares investing in non-U.S. currency, the Exchange proposes to amend Commentary .01 to NYSE Arca Rule 11.3 to require an OTP Holder or OTP Firm to establish, maintain, and enforce written policies and procedures designed to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. Further, the Exchange proposes to amend NYSE Arca Rule 6.39(a) and to add Commentary .02 to NYSE Arca Rule 11.16 to require that market makers handling options on Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. The Commission believes that these requirements should minimize potential manipulation concerns.

Finally, under the proposed change to NYSE Arca Rule 5.6(k), absent exceptional circumstances, Fund Shares would not be deemed to meet the requirements for continued approval, and the Exchange would not open for trading any additional series of option contracts of the class covering such Fund Shares, if the Fund Shares are delisted or, pursuant to the proposed rule change, trading in the Fund Shares is halted on their primary market. The Commission believes that the Exchange's proposal to amend NYSE Arca Rule 5.6(k) addressing trading halts in the Fund Shares on their primary market is consistent with the protection of investors and the public interest. NYSE Arca Rule 5.6(k) also provides that the Exchange will consider the suspension of opening transactions in any series of options of the class covering Fund Shares if the value of the non-U.S. currency on which the Fund Shares are based is no longer calculated or available. The Commission believes that this change appropriately addresses the Exchange's proposed broadened definition of Fund Shares to include Fund Shares that represent interests in a trust that holds a specified non-U.S. currency.

<sup>16</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>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See NYSE Arca Rule 5.3(g).

<sup>19</sup> For example, the Exchange's proposed rule change will permit the Exchange to list options on Euro Shares that are listed and traded on the NYSE under the symbol "FXE." See *supra* note 9.

<sup>20</sup> The Commission notes that NYSE Arca is proposing to revise NYSE Arca Rule 5.3(g) to eliminate the current reference to trading through the facilities of a national securities association.

<sup>21</sup> 17 CFR 242.600(b)(47).

<sup>22</sup> See *supra* notes 11 and 12.

The Exchange has represented that it has an adequate surveillance program in place for options on the Fund Shares, as defined by the Exchange's proposal, and it intends to apply those same program procedures that it applies to options on Fund Shares currently traded on the Exchange. In addition, under proposed NYSE Arca Rule 5.3(g)(2)(D), before listing and trading options on Fund Shares based on a non-U.S. currency, the Exchange must have entered into an appropriate comprehensive surveillance sharing agreement with the applicable marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency. This provision means that the options exchange listing options on the Fund Shares must utilize the same comprehensive surveillance sharing arrangements utilized by the equity markets that list and trade the Fund Shares. Through its membership in the ISG, the Exchange is able to obtain trading information regarding trading of listed foreign currency derivative products from other marketplaces that are members or affiliates of the ISG. With respect to the Euro Shares, the Commission notes that the Exchange can obtain such information from the Phlx in connection with euro options trading on the Phlx and from the CME and the LIFFE in connection with euro futures trading on those exchanges.<sup>23</sup>

#### Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>24</sup> The Exchange has requested accelerated approval of the proposed rule change. The proposal implements rules for the listing and trading of options on Fund Shares representing an interest in a specified non-U.S. currency that are substantially similar to listing standards recently adopted by the ISE.<sup>25</sup> Inasmuch as options on Fund Shares are already listed and traded on other exchanges, the Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Granting accelerated approval to the proposal will enable the Exchange to immediately list and trade options on ETFs holding non-U.S. currency. Therefore, the Commission finds good cause, consistent with Section 19(b)(2)

of the Act,<sup>26</sup> to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and rules and regulations thereunder applicable to the national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-NYSEArca-2006-04), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-19418 Filed 11-16-06; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54721; File No. SR-OCC-2006-10]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Cash-Settled Foreign Currency Options

November 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 8, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on October 26, 2006, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would enable OCC to accommodate a request from the Philadelphia Stock Exchange, Inc. ("Phlx") that OCC clear and settle cash-settled foreign currency options ("Cash-Settled FCOs").

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

The purpose of the proposed rule change is to enable OCC to accommodate a request from the Philadelphia Stock Exchange, Inc. ("Phlx") that OCC clear and settle Cash-Settled FCOs. OCC's By-Laws and Rules currently provide for the clearance and settlement of Cash-Settled FCOs although no such options are currently traded, but changes to OCC's By-Laws are needed in connection with the Cash-Settled FCOs proposed to be traded by Phlx.<sup>3</sup> The first change is to reflect the different expiration date of the Cash-Settled FCOs as compared with the date provided for in OCC's By-Laws. The definition of "expiration date" in Article XXII, Section 1 of OCC's By-Laws provides that Cash-Settled FCOs generally expire on the Monday specified by the relevant exchange at or before trading begins. To accommodate the Cash-Settled FCOs proposed to be traded by Phlx, the definition will need to be amended to provide for an expiration date of the Saturday following the third Friday of the expiration month, which is the same as the expiration date for equity and index options. OCC is also proposing to provide for expirations on such other dates as an exchange may determine, which is consistent with the definition of "expiration date" applicable to index options. The next proposed change, to Article VI, Section 22 of OCC's By-Laws, is intended to make it clear that Cash-Settled FCOs will not clear through OCC's International Clearing System.<sup>4</sup>

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> For a description of the Phlx proposed rule change, see Securities Exchange Act Release No. 54652 (October 26, 2006) 71 FR 64597 (November 2, 2006) [File No. SR-Phlx-2006-34].

<sup>4</sup> Interpretation .02 under Article VI, Section 22 of OCC's By-Laws currently provides, "All classes of foreign currency options and cross-rate foreign currency options are cleared through ICS."

<sup>23</sup> See *supra* note 13.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> See *supra* note 6.

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> See *id.*

<sup>28</sup> 17 CFR 200.30-3(a)(12).

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