

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54043; File No. SR-NYSEArca-2006-26]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading of Shares of Six Currency Trusts Pursuant to Unlisted Trading Privileges

June 26, 2006.

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> notice is hereby given that, on June 6, 2006, the NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. On June 23, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to the proposed rule change, as amended.

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

Pursuant to NYSE Arca Equities Rule 8.202, which governs the trading of Currency Trust Shares,<sup>4</sup> the Exchange proposes to trade pursuant to unlisted trading privileges (“UTP”) shares

(“Shares”) of the following six trusts: CurrencyShares™ Australian Dollar Trust, which issues Australian Dollar Shares; CurrencyShares™ British Pound Sterling Trust, which issues British Pound Sterling Shares; CurrencyShares™ Canadian Dollar Trust, which issues Canadian Dollar Shares; CurrencyShares™ Mexican Peso Trust, which issues Mexican Peso Shares; CurrencyShares™ Swedish Krona Trust, which issues Swedish Krona Shares; and CurrencyShares™ Swiss Franc Trust, which issues Swiss Franc Shares (collectively, the “Trusts”).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, 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 Exchange has prepared summaries, substantially 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

As mentioned above, the Exchange proposes to trade, pursuant to UTP and NYSE Arca Equities Rule 8.202, the Shares. Each Share represents a proportional interest, based on the total number of Shares outstanding, in the applicable foreign currency owned by the specific Trust, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of such Trust. On June 20, 2006, the Commission approved a rule proposal by the New York Stock Exchange LLC (“NYSE”) to permit the original listing and trading of the Shares by and on the NYSE.<sup>5</sup>

Rydex Specialized Products LLC is the sponsor of the Trusts (“Sponsor”),<sup>6</sup>

<sup>5</sup> See File No. SR-NYSE-2006-35, as amended (“NYSE Proposal”), and Securities Exchange Act Release No. 54020 (“NYSE Order”).

<sup>6</sup> The Sponsor, on behalf of the Trusts, filed a Form S-1 for each Trust on March 10, 2006 (collectively, “Registration Statements”). See Registration No. 333-132362 for the CurrencyShares Australian Dollar Trust, Registration No. 333-132361 for the CurrencyShares British Pound Sterling Trust, Registration No. 333-132363 for the CurrencyShares Canadian Dollar Trust, Registration No. 333-132367 for the CurrencyShares Mexican

Peso Trust, Registration No. 333-132366 for the CurrencyShares Swedish Krona Trust, and Registration No. 333-132364 for the Swiss Franc Trust.

According to the Exchange, the investment objective of each Trust is for the Shares issued by the Trust to reflect the price of its particular currency,<sup>8</sup> less the expenses of the Trust. Each Trust’s assets will consist only of foreign currency on demand deposit in a foreign currency-denominated, interest-bearing account at the Depository. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the applicable foreign currency and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the specific Trust.

#### a. The Shares

A description of the currencies underlying each of the Trusts, the foreign exchange industry, foreign currency regulation, operation of the Trusts, and the Shares is set forth in the NYSE Proposal and the NYSE Order. To summarize, issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof (“Baskets”). The Trusts will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (“Authorized Participants”)<sup>9</sup> with the Trustee. The

<sup>7</sup> See Securities Exchange Act Release No. 53253, supra note 4.

<sup>8</sup> The CurrencyShares™ Australian Dollar Trust holds the Australian Dollar; the CurrencyShares™ British Pound Sterling Trust holds the British Pound Sterling; the CurrencyShares™ Canadian Dollar Trust holds the Canadian Dollar; the CurrencyShares™ Mexican Peso Trust holds the Mexican Peso; the CurrencyShares™ Swedish Krona Trust holds the Swedish Krona; and the CurrencyShares™ Swiss Franc Trust holds the Swiss Franc.

<sup>9</sup> An “Authorized Participant” is a person, who at the time of submitting to the Trustee an order to create or redeem one or more Baskets, is a Depository Trust Company Participant that is a registered broker-dealer or other securities market participant such as a bank or other financial institution that is not required to register as a

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Partial Amendment No. 1.

<sup>4</sup> Currency Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the non-U.S. currency deposited into the trust. See NYSE Arca Equities Rule 8.202 and Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123) (order granting accelerated approval for the Exchange to adopt generic listing and trading standards for Currency Trust Shares and approving the UTP trading of shares of the Euro Currency Trust).

creation and redemption of Baskets requires the delivery to the Trusts or the distribution by the Trusts of the amount of foreign currency represented by the Baskets being created or redeemed. This amount is based on the combined net asset value ("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 Trustee will calculate, and the Sponsor will publish, each Trust's NAV each business day.<sup>10</sup> To calculate the NAV for a Trust, the Trustee will subtract the Sponsor's accrued fee for the current day from the foreign currency held by the Trust (including all unpaid interest accrued through the immediately preceding day) and calculate the value the foreign currency held by a Trust in dollars on the basis of the day's announced Noon Buying Rate as determined by the Federal Reserve Bank of New York.<sup>11</sup> If the Noon Buying Rate is not announced by 2 p.m. Eastern time ("ET"), the Trustee will use the most recently announced Noon Buying Rate, unless the Trustee, in consultation with the Sponsor, determines to apply an alternative basis for evaluation as a result of extraordinary circumstances. The Trustee also determines the NAV per Share, which equals the NAV of the Trusts divided by the number of outstanding Shares. The calculation methodology for the NAV is described in more detail in the NYSE Proposal and the NYSE Order.

The total deposit required to create each Basket, called the "Basket Amount," is an amount of foreign currency bearing the same proportion to the number of Baskets to be created as the total assets of a Trust (net of estimated accrued but unpaid expenses) bears to the total number of Baskets outstanding on the date that the order to purchase is properly received. The amount of the required deposit is determined by dividing the number of

broker-dealer to engage in securities transactions and has entered into a Participant Agreement with the Sponsor and the Trustee.

<sup>10</sup> For purposes of processing purchase and redemption orders, a "business day" means any day other than a day when the NYSE is closed for regular trading.

<sup>11</sup> According to the NYSE Proposal, the NAV will be posted on the Trusts' Web site as soon as the valuation of the foreign currency held by a Trust is complete (ordinarily by 2 p.m. ET). Ordinarily, the NAV will be posted no more than 30 minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York. The NYSE represented in the NYSE Proposal 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.

units of foreign currency (e.g. Australian Dollars) held by a Trust (net of estimated accrued but unpaid expenses) by the number of Baskets outstanding. The Basket Amount and NAV will be determined by the Trustee "as promptly as practicable" after the Federal Reserve announces the Noon Buying Rate and will be published on the Trusts' Web site on each business day.<sup>12</sup> Authorized Participants that wish to purchase a Basket must transfer the Basket Amount to a Trust in exchange for a Basket.<sup>13</sup> Baskets are then separable upon issuance into the Shares that will be traded on the NYSE Arca Marketplace on a UTP basis.<sup>14</sup>

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

#### b. Dissemination of Information About the Shares and the Underlying Foreign Currencies

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

Investors may obtain on a 24-hour basis foreign currency pricing

<sup>12</sup> Ordinarily no later than 2 p.m. (ET). According to the NYSE Proposal, the Basket Amount will be published simultaneously with the NAV. See NYSE Proposal and NYSE Order, *supra* note 5.

<sup>13</sup> Before the delivery of Baskets for a purchase order or the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee a non-refundable transaction fee due for the order.

<sup>14</sup> Shares are separate and distinct from the underlying foreign currency comprising the portfolio of a Trust. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying foreign currency.

information based on the foreign currency spot price of each applicable foreign currency from various financial information service providers. Complete real-time data for foreign currency futures<sup>15</sup> and options prices traded on the Chicago Mercantile Exchange ("CME") and the Philadelphia Stock Exchange ("Phlx") are also available by subscription from information service providers.<sup>16</sup> The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

There are a variety of other public Web sites available at no charge that provide information on the currencies underlying the Shares that are the subject of this filing, which service providers include Bloomberg, (<http://www.bloomberg.com/markets/currencies/fxc.html>), CBS Market Watch (<http://www.marketwatch.com/tools/stockresearch/globalmarkets>), Yahoo! Finance (<http://www.finance.yahoo.com/currency>), [moneycentral.com](http://moneycentral.com), [cnnfn.com](http://cnnfn.com) and [reuters.com](http://reuters.com), which provide spot price or currency conversion information about each of the currencies that underlie the Shares that are the subject of this filing. 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>17</sup> In addition, major market data vendors regularly report current currency exchange pricing for a fee for the currencies underlying the Shares that are the subject of this proposal.

In addition, the Trusts' Web site (<http://www.currencyshares.com>), which is publicly accessible at no charge, will provide the following information: (1) The spot price for each applicable foreign currency,<sup>18</sup> including

<sup>15</sup> See telephone conversation between Kimberly Loies, attorney, Lord, Bissell & Brook LLP, counsel for the Exchange, Geoffrey Pemble, Special Counsel, Commission, and Christopher Chow, Special Counsel, Commission, on June 26, 2006 ("June 26 Telephone Conversation").

<sup>16</sup> See *infra* note 29.

<sup>17</sup> There may be incremental differences in the foreign currency spot price among the various information service sources. While the Exchange believes the differences in the foreign currency spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of the applicable foreign currency or 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>18</sup> The Trusts' Web site's foreign currency spot price will be provided by FactSet Research Systems (<http://www.factset.com>). FactSet Research Systems is not affiliated with the Trusts, Trustee, Sponsor, Depository, Distributor, or the Exchange. In the event that the Trusts' Web site should cease to

the bid and offer and the midpoint between the bid and offer for the foreign currency spot price, updated at least every 15 seconds;<sup>19</sup> (2) an IIV per Share calculated by multiplying the indicative spot price of the applicable foreign currency by the quantity of foreign currency backing each Share, updated at least every 15 seconds; (3) an indicative value (subject to a 20-minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20-minute delayed basis; (5) the NAV of each Trust as calculated each business day by the Trustee; (6) accrued interest per Share; (7) the daily Federal Reserve Bank of New York Noon Buying Rate; (8) the Basket Amount for each applicable foreign currency; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.<sup>20</sup> On the Trusts' Web site, the foreign currency spot prices will be available and disseminated at least every 15 seconds and the IIV per Share will be calculated and disseminated at least every 15 seconds during NYSE Arca Marketplace's opening and late trading sessions, as well as during its core trading session.<sup>21</sup> The Exchange will provide on its own public Web site (<http://www.nysearca.com>) a link to the Trusts' Web site.

#### c. UTP Trading Criteria

The Exchange will cease trading in the Shares during the listing market's trading hours if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the IIV and/or the

provide this foreign currency spot price information from an unaffiliated source and the intraday indicative value ("IIV") of the Shares, the NYSE will commence delisting proceedings for the Shares. The NYSE also will halt trading in an issue of Shares for which the IIV is no longer calculated or disseminated. *See NYSE Proposal and NYSE Order.*

<sup>19</sup> The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares. For example, assuming a British Pound spot bid of \$1.7473 and an offer of \$1.7474, the mid point would be calculated as follows: (British Pound spot bid plus ((spot offer minus spot bid) divided by 2)) or (\$1.7473 + (\$1.7474 - \$1.7473)/2)) + \$1.74735. The Sponsor has represented to the Exchange that the IIV will be available during the Exchange's early, core and late trading sessions (4 a.m. ET to 8 p.m. ET).

<sup>20</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>21</sup> Pursuant to NYSE Arca Equities Rule 7.34(a), the NYSE Arca Marketplace trading hours for exchange-traded funds are as follows: (1) Opening trading session—4 a.m. to 9:30 a.m. ET; (2) core trading session—9:30 a.m. to 4:15 p.m.

underlying value (spot price)<sup>22</sup> of the applicable foreign currency is no longer calculated or disseminated;<sup>23</sup> or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Because NYSE Arca Marketplace will be trading the Shares during its opening and late trading sessions, when the listing market is closed, the Exchange will take reasonable steps designed to ensure that the applicable foreign currency spot price and IIV are disseminated during these trading sessions. In addition, the Exchange will cease trading the Shares if: (1) The value of the foreign currency is not calculated and available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Trustee, or the Exchange and the Exchange is not providing a hyperlink on the Exchange's Web site to any such unaffiliated foreign currency value; or<sup>24</sup> (2) the IIV is not made available on at least a 15-second delayed basis.<sup>25</sup>

#### d. Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.<sup>26</sup> Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a).<sup>27</sup> The Exchange represents that it has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

NYSE Arca Equities Rules 8.202(g)–(i) set forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. NYSE Arca Equities Rule 8.202(h) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable foreign currency, options, futures or options on futures on such

<sup>22</sup> For purposes of trading the Shares pursuant to UTP, the applicable value would be the applicable foreign currency spot price on the Trusts' Web site (to which the Exchange will hyperlink), which is currently provided by FactSet Research Systems (<http://www.factset.com>).

<sup>23</sup> June 26 Telephone Conversation, *supra* note 15.

<sup>24</sup> *Id.*

<sup>25</sup> In such case, the Exchange would immediately contact the Commission's staff. *See* Amendment No. 1.

<sup>26</sup> *See* NYSE Arca Equities Rule 8.202(b).

<sup>27</sup> *See* *supra* note 21.

currency, or any other derivatives based on such currency. NYSE Arca Equities Rule 8.202(i) prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency (including the Shares). In addition, NYSE Arca Equities Rule 8.202(g) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable foreign currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

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 the applicable foreign currency, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>28</sup> *See* "UTP Trading Criteria" section above for specific instances when the Exchange will cease trading in the Shares.

The Shares will be deemed "Eligible Listed Securities," as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

#### e. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, shares of the streetTRACKS Gold Trust, and shares of the Euro Currency Trust to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly

<sup>28</sup> *See* NYSE Arca Equities Rule 7.12.

monitor Exchange trading of the Shares in all trading sessions.

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, foreign currency options, and foreign currency futures through ETP Holders, in connection with such ETP Holders' 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.<sup>29</sup> Specifically, the Exchange can obtain information: (1) From the CME, an affiliate member of ISG, about the trading of the relevant foreign currency futures, and options on those futures, that trade on the CME; and (2) from the Phlx, a member of the ISG, about the trading of options on the relevant foreign currencies that trade on the Phlx.<sup>30</sup>

#### f. Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable but are redeemable only in aggregations of at least 50,000 Shares); (2) NYSE Arca Equities Rule 9.2(a),<sup>31</sup>

<sup>29</sup> As noted in the NYSE Proposal, futures on the Australian Dollar, British Pound, Canadian Dollar, Mexican Peso, Swedish Krona and Swiss Franc, as well as options on such futures (except for the Swedish Krona) are traded on the CME (both exchange pit trading and GLOBEX trading, except for Swedish Krona futures, which trade on GLOBEX only). Standardized options on the Australian Dollar, British Pound, Canadian Dollar and Swiss Franc trade on the Phlx. These U.S. markets are the primary trading markets in the world for exchange-traded futures, options, and options or futures on these currencies. As noted in the NYSE Proposal, based on the NYSE's review of information supplied by major market data vendors, exchange-traded options are not traded on the Mexican Peso or the Swedish Krona.

<sup>30</sup> See *supra* note 29.

<sup>31</sup> The Exchange has proposed to amend NYSE Arca Equities Rule 9.2(a) ("Diligence as to Accounts") to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security

which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. The Exchange notes that investors purchasing Shares directly from the Trusts (by delivery of the Basket Amount) will receive a prospectus. ETP Holders purchasing Shares from the Trusts for resale to investors will deliver a prospectus to such investors.

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

The Information Bulletin will also discuss any relief, if granted, by the Commission from any rules under the Exchange Act.<sup>32</sup>

#### 2. Statutory Basis

The Exchange states that the proposed rule change, as amended, is consistent with section 6(b) of the Exchange Act<sup>33</sup> in general and furthers the objectives of section 6(b)(5) of the Exchange Act<sup>34</sup> in

holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Amendment No. 2 to SR-PCX-2005-115 (May 5, 2006).

<sup>32</sup> The applicable rules are: Rule 10a-1; Rule 200(g) of Regulation SHO; Section 11(d)(1) and Rule 11d-2; and Rules 101 and 102 of Regulation M under the Exchange Act.

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

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

particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Exchange Act<sup>35</sup> because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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

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

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

The Exchange states that written comments 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 No. SR-NYSEArca-2006-26 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-2006-26. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2006-26 and should be submitted by July 24, 2006.

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

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act<sup>36</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>37</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Exchange Act,<sup>38</sup> which requires that the an exchange have rules designed, among other things, 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.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Exchange Act,<sup>39</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>40</sup>

<sup>36</sup> 15 U.S.C. 78f.

<sup>37</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 U.S.C. 78c(f).

<sup>38</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> 15 U.S.C. 78l(f).

<sup>40</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it

The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.<sup>41</sup>

The Commission also finds that the proposal is consistent with Rule 12f-5 under the Exchange Act,<sup>42</sup> which provides that an exchange shall not extend UTP to a security unless it has in effect a rule or rules providing for transactions in a class or type of security to which the exchange extends UTP. NYSE Arca rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.<sup>43</sup>

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>44</sup> which sets forth Congress' finding that it is in the public interest, and is appropriate for the protection of investors and the maintenance of fair and orderly markets, to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the proposal, the Exchange has made the following representations: (1) The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions; (2) the Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange; (3) the Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that explains the special characteristics and risks of trading the Shares; (4) the Exchange will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin; (5) the Exchange will cease trading in the Shares if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the IIV and/or the underlying value (spot price) of the applicable foreign currency is no longer calculated or disseminated; (b) the listing market

allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>41</sup> See NYSE Order, *supra* note 5.

<sup>42</sup> 17 CFR 240.12f-5.

<sup>43</sup> The Commission notes that any new listing or trading 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, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4.

<sup>44</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

delists the Shares; or (c) such other event occurs or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.<sup>45</sup> This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**. The Commission recently granted approval to the NYSE to list and trade the Shares.<sup>46</sup> Accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

#### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act<sup>47</sup> that the proposed rule change (SR-NYSEArca-2006-26), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>48</sup>

**Nancy M. Morris,**

*Secretary.*

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BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54045; File No. SR-PCX-2005-115]

#### Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Order Granting Partial Accelerated Approval Relating to Trading Shares of the Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

June 26, 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 October 11, 2005, the Pacific Exchange, Inc.

<sup>45</sup> In addition, the Exchange will cease trading the Shares if: (1) The value of the foreign currency is not calculated and available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Trustee, or the Exchange and the Exchange is not providing a hyperlink on the Exchange's Web site to any such unaffiliated foreign currency value; or (2) the IIV is not made available on at least a 15-second delayed basis.

<sup>46</sup> See NYSE Order, *supra* note 5.

<sup>47</sup> 15 U.S.C. 78s(b)(2).

<sup>48</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.