

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58110; File No. SR-BSE-2008-34)

July 7, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Permit the Listing and Trading of Options on Foreign Currency ETFs and Commodity Pool ETFs

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 June 27, 2008, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 certain rules of the Boston Options Exchange (“BOX”) to permit the listing and trading of options on: (1) shares of exchange-traded funds (“ETFs”) that hold specified non-U.S. currency options, futures, or options on futures on such currency, or any other derivatives based on such currency (referred collectively herein as “Foreign Currency ETFs”); and (2) trust-issued receipts (“TIRs”), partnership units, and securities issued by other

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

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

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

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

entities that hold or invest in commodity futures products (referred collectively herein as “Commodity Pool ETFs”).

The text of the proposed rule change is available at the principal office of the Exchange, the Commission’s Public Reference Room, and [www.bostonstock.com](http://www.bostonstock.com).

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 IV below. BSE 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 the proposed rule change is to enable the listing and trading on BOX of options on Foreign Currency ETFs and Commodity Pool ETFs. Currently, Section 3(i) of Chapter IV of the BOX Rules provides that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that are traded on a national securities exchange and represent interests in registered investment companies, unit investment trusts, or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (“Financial Instruments”), and money market instruments, including but not limited to U.S. government securities and repurchase agreements (the “Money Market Instruments”), comprising or otherwise based on or

representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).

The Exchange proposes to amend Section 3(i) of Chapter IV of the BOX Rules to expand the types of options listed and traded on BOX to include options on:

- trusts that hold a specified non-U.S. currency or currencies deposited which when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust; and
- shares issued by an entity holding commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities and/or non-U.S. currency.

In particular, the proposed amendment to Section 3(i) of Chapter IV would permit the Exchange to list options on the CurrencyShares Euro Trust (“Trust”)<sup>5</sup> which issues Euro CurrencyShares (“Shares”)<sup>6</sup> and other similarly structured currency-based products.

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<sup>5</sup> Rydex Specialized Products LLC, d/b/a “Rydex Investments,” is the sponsor of the Trust (“Sponsor”) and may be deemed the “issuer” of the Shares pursuant to Section 2(a)(4) of the Securities Act of 1933. 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 Trust intends to issue additional Shares on a continuous basis through the Trustee.

<sup>6</sup> The Shares are listed and trade on NYSE Arca under the symbol “FXE.” The Shares may also trade in other markets.

The investment objective of Foreign Currency ETFs is for the shares of a particular fund to reflect the price of the particular foreign currency held therein. They are intended to provide institutional and retail investors with a simple, cost-effective means of gaining investment benefits similar to those of holding the particular foreign currency whose value is reflected.

Additionally, the proposed amendment to Section 3(i) of Chapter IV would permit the Exchange to list options on Commodity Pool ETFs. Commodity Pool ETFs may hold or trade in one or more types of investments that may include any combination of securities, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts. Proposed Section 3(i) of Chapter IV of the BOX Rules sets forth that for BOX to list an option on a Commodity Pool ETF, the Commodity Pool ETF must be traded on a national securities exchange and defined as an “NMS stock” under Rule 600 of Regulation NMS.

The Exchange believes that permitting options on Foreign Currency ETFs and Commodity Pool ETFs to be traded on BOX is consistent with the Commission’s approvals of rule changes filed by the International Securities Exchange (“ISE”) and NYSE Arca to list and trade shares of the Trust and similarly structured currency-based products.<sup>7</sup> This rule change to BOX’s listing criteria for ETFs is intended to provide appropriate listing standards and is necessary to enable the Exchange to list and trade options shares of Foreign Currency ETFs and

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<sup>7</sup> See Securities Exchange Act Release Nos. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR-ISE-2005-60) (approving the listing and trading of options on ETFs that hold specified non-U.S. currency); 54730 (November 9, 2006), 71 FR 66999 (November 17, 2006) (SR-NYSEArca-2006-04) (approving the listing and trading of options on ETFs that hold specified non-U.S. currency); 55635 (April 16, 2007), 72 FR 19999 (April 20, 2007) (SR-ISE-2007-16) (approving the listing and trading of options on Commodity Pool ETFs); and 56073 (July 13, 2007) 72 FR 39654 (July 19, 2007) (SR-NYSEArca 2007-53) (approving the listing and trading of options on Commodity Pool ETFs).

Commodity Pool ETFs that are now listed or may be listed in the future.<sup>8</sup> The Exchange believes that it is reasonable to expect other types of Foreign Currency ETFs and Commodity Pool ETFs to be introduced for trading in the near future. The proposed amendment to the Exchange’s listing criteria for options on Foreign Currency ETFs and Commodity Pool ETFs are necessary to ensure that the Exchange will be able to list options on existing Foreign Currency ETFs and Commodity Pool ETFs as well as any other similar ETFs that may be listed and traded in the future.

ETFs on which BOX-listed options are based have to satisfy the listing standards in Section 3(i) of Chapter IV of the BOX Rules. Specifically, the Exchange-Traded Fund Shares must be traded on a national securities exchange or through the facilities of a national securities association and must be an “NMS stock” as defined under Rule 600 of Regulation NMS. The ETF must also either: (1) meet the criteria and guidelines under Sections 3(a) and 3(b) of Chapter IV (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and through the issuer in cash or in-kind at a price related to net asset value. In addition, the trust, commodity pool, or other similar entity shall provide that shares may be created even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver the shares as soon as possible and such

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<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (SR-Amex-2005-59) (January 19, 2006) (approving the listing and trading of the DB Commodity Index Tracking Fund); 53582 (March 31, 2006), 71 FR 17510 (SR-Amex-2005-127) (April 6, 2006) (approving the listing and trading of Units of the United States Oil Fund, L.P.); and 54450 (September 14, 2006), 71 FR 51245 (September 21, 2006) (SR-Amex-2006-44) (approving the listing and trading of the PowerShares DB G10 Currency Harvest Fund).

undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer.

Under the applicable continued listing criteria in Section 4(h) of Chapter IV of the BOX Rules, ETF options approved for trading would not be deemed to meet the requirements for continued approval, and Boston Options Exchange Regulation (“BOXR”) would not open for trading any additional series of options contracts of the class covering such ETF in any of the following circumstances:

- the ETF is halted from trading on its primary market;
- the ETF is delisted in accordance with the terms of Section 4(b)(vi) of Chapter IV of the BOX Rules;
- following the initial 12-month period beginning upon the commencement of trading of the ETF, there are fewer than 50 record and/or beneficial holders of such ETF for 30 or more consecutive trading days;
- the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which the ETF is based is no longer calculated or available; or
- such other event occurs or condition exists that in the opinion of BOXR makes further dealing of the options on BOX inadvisable.

As part of this revision, the Exchange proposes to add paragraphs (i)(B)(iv) and (i)(B)(v) to Section 3 of Chapter IV of the BOX Rules to require that, for Foreign Currency ETFs and Commodity Pool ETFs, a comprehensive surveillance sharing agreement be in place with the

marketplace(s) with last-sale reporting that represent the highest volume in the underlying derivatives. Such derivatives consist of options or futures on the specified non-U.S. currency, commodity futures contracts, and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Foreign Currency ETFs and Commodity Pool ETFs are listed and traded.

The Exchange represents that it has an adequate surveillance program in place for options based on Foreign Currency ETFs and Commodity Pool ETFs, and intends to apply those same program procedures that it applies to ETF options currently traded on BOX. In addition, BOX may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG.<sup>9</sup> The Exchange represents that prior to listing and trading options on Foreign Currency ETFs and Commodity Pool ETFs, it will have the ability to obtain specific trading information either via ISG or from the exchange or exchanges where the particular underlying non-U.S. currency futures and/or options and commodity futures and/or options on commodity futures are traded.<sup>10</sup>

The Exchange is also proposing to amend Section 4(a) of Chapter III of the BOX Rules to require each Options Participant to establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information it might have or receive regarding 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, option, or derivative, or regarding

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<sup>9</sup> For a list of current members and affiliate members of the ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>10</sup> E-mail from Maura Looney, Associate Vice President Regulation and Enforcement, Exchange, to Michou H.M. Nguyen, Special Counsel, Division of Trading and Markets, Commission, on July 7, 2008 (correcting drafting error in purpose section of Form 19b-4).

the applicable related commodity, commodity futures, options on commodity futures, or any other related commodity derivatives.

The Exchange is further proposing to amend Section 7 of Chapter VI and Section 1 of Chapter VIII of the BOX Rules to ensure that market makers handling options on ETFs provide BOXR 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; any other derivatives based on such currency; physical commodities; physical commodity options; and commodity futures contracts, options on commodity futures contracts, or any other derivatives based on such commodity, and that all such trading occurs in an account which has been reported to BOXR.

Finally, the Exchange represents that the addition of options on Foreign Currency ETFs and Commodity Pool ETFs would not have any effect on the rules pertaining to position and exercise limits<sup>11</sup> or margin.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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<sup>11</sup> See Section 7 and Section 9 of Chapter III of the BOX Rules.

<sup>12</sup> See Section 3 of Chapter XIII of the BOX Rules.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that amending the BOX rules to accommodate the listing and trading of options on Foreign Currency ETFs and Commodity Pool ETFs would provide investors with greater risk management tools and, in general, would allow for the protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change would 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 has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change 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 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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii).

interest. The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission<sup>17</sup> and does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, 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 the furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-34 on the subject line.

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<sup>17</sup> See Securities Exchange Act Release Nos. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR-ISE-2005-60) and 54983 (December 20, 2006), 71 FR 78476 (December 29, 2006) (SR-Amex-2006-87) (approving the listing and trading of options on Foreign Currency ETFs); Securities Exchange Act Release Nos. 55547 (March 28, 2007) 72 FR 16388 (April 4, 2007) (SR-AMEX-2006-110) and 55635 (April 16, 2007) 72 FR 19999 (April 20, 2007) (SR-ISE-2007-16) (approving the listing and trading of options on Commodity Pool ETFs).

<sup>18</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

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

All submissions should refer to File Number SR-BSE-2008-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-BSE-2008-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Florence E. Harmon  
Acting Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).