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U. S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

February 23. 2016

Re: File Number SR- NYSEArca-2015-68

I appreciate the opportunity to comment on the above-captioned rule filing. By way of background, I was an Associate Director in the Division of Trading and Markets (then called the Division of Market Regulation) shortly after the adoption of the Securities Acts Amendments of 1975 and was in charge of implementation of the Commission's effort to establish a National Market System. My oral history is available at the SEC Historical Society website.[1] For ease of reading, I am including each question asked in the most recent request for comment.[2]

1. In general, do commenters believe that the proposal is consistent with the requirements of Section 6 of the Act applicable to a national securities exchange, and in particular, Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, 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 and Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act?

Exchange traded funds are the only publicly traded securities that impose management fees on shareholders' returns and can also be borrowed and sold short. As described by NYSE Arca (the "Exchange"), this unique situation creates the opportunity for traders to profit by short selling or short redeeming ETF shares while simultaneously purchasing derivatives that virtually eliminate any economic purpose in the transaction other than to profit from the decay in the assets of the ETF (the "Strategy"). This Strategy creates economic distortions in the market that are not in the best interest of investors. As noted by the Exchange, the short interest in the Euro and Yen CurrencyShares ETFs far exceeds the outstanding number of shares of each ETF. The Exchange's proposed rule is designed to address this situation and is definitely in the best interest of investors.

2. According to the Exchange, "a Trader that borrows the Shares and redeems or sells its borrowed Shares deprives a Trust of the assets against which the management fee is

[1] http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/oral-histories/20090223_Simon_GeorgeT_T.pdf

[2] Release No. 34-76472 (Nov. 18, 2015)

assessed." Do commenters agree with this assertion? What, if any, broader policy implications do commenters think this assertion raises?

The primary focus of the Commission's role in fostering a National Market System is to encourage market participants and, in particular, exchanges to adopt procedures to enhance competition. Rather than force the SEC to address the massive short positions in ETFs, the Exchange has been proactive in creating a solution without Commission intervention. The broad policy implications of proactive exchange adopted solutions is a very positive step.

3. The Exchange states: "Long holders of Shares that do not lend to Traders are bearing the costs associated with lenders' long position in Shares that Traders redeem or sell." Do commenters agree with this assertion? What, if any, broader policy implications do commenters think this assertion raises?

Long holders of ETF shares indirectly pay a management fee for the privilege of having exposure to the underlying assets of the fund. Foreign currency exposure is an important asset class that was not available to investment managers dealing solely in stocks prior to the creation of CurrencyShares. While management fees of other ETFs have dropped over the years, the management fees of CurrencyShares have remained at 40 basis points since their inception over 10 years ago. The Exchange's proposal would offset management fees paid by long holders and thereby reduce those management fees while simultaneously eliminating a parasitic trading strategy that harms both the sponsors and long holders of CurrencyShares.

4. According to the Exchange, the Strategy permits certain Traders to profit from the reduction in the NAV of the Shares over time associated with Management Fee Decay, to the detriment of the value of the Shares held by shareholders who do not engage in the Strategy. The Exchange further represents that, as a consequence of the Strategy, the issuer cannot achieve economies of scale necessary to reduce management fees charged to shareholders, which are being paid only by those shareholders who do not lend their Shares. Assessing the ETF Loan Fee would, the Exchange asserts, have a positive impact on shareholders that do not lend their Shares because the ETF Loan Fees would be used to offset Trust expenses, bringing down the management fee. Do commenters agree with the Exchange's assertions? What, if any, broader policy implications do commenters think these assertions raise?

See answer to question 3.

5. The Exchange asserts that the Strategy discussed above is detrimental to liquidity in the Shares and that the Strategy potentially results wider spreads, harming all investors through higher costs to buy and sell Shares. Based on the trading history of the Shares, do commenters agree with the Exchange's assertions? Are these assertions by the Exchange consistent with the Exchange's statement elsewhere in the Notice that it "believes that imposition of the ETF Loan Fee would not materially impact trading of the Shares"?

ETF shares are unique in that short squeezes are impossible to create because shares can always be created to eliminate the squeeze. Given the extreme over-sold short position in Euro and Yen

CurrencyShares, the cost to borrow shares has increased such that investors actually wishing to establish a real economic short position (as opposed to a hedged, economically neutral position), must pay higher loan fees than they would otherwise pay. This additional borrowing cost negatively impacts spreads. Imposition of the loan fee will reduce these over-sold positions while eliminating the subsidy short sellers currently enjoy.

6. The Exchange states that eliminating the economic distortion allegedly created by the Strategy would facilitate pricing of FXE and FXY on parity with the underlying asset (i.e., euros or yen). Based on past and current spreads between the market price per Share for the Trusts and their respective NAVs, do commenters agree with the Exchange's assertions? Have commenters observed any problems with respect to the trading or valuation of FXE or FXY? For example, do commenters believe that the markets prices for these products closely track the underlying values of their portfolios?

Due to short redemptions of the Euro and Yen CurrencyShares ETFs, the size of each portfolio is a fraction of the true economic long interest in the shares. This reduced portfolio size reduces intraday trading volume which negatively impacts pricing accuracy.

7. Have commenters observed the Strategy being employed with respect to FXE or FXY, and if so, have commenters observed any deleterious effects of the Strategy?

Yes, it is our experience that the Strategy is widely employed and has deleterious effects on the markets.

8. The Exchange asserts that the Strategy is not available with asset classes other than exchange-traded products. Do commenters agree with this assertion? If commenters believe that the Strategy is available for exchange-traded products, do commenters believe that certain exchange-traded products or types of exchange-traded products are more susceptible to the Strategy than others? For example, would an exchange-traded product be susceptible to Management Fee Decay if the returns on its portfolio exceeded its management fee? Does the nature of the assets held by an exchange-traded product affect its vulnerability to the alleged Strategy?

Any ETF that charges a management fee and can be easily hedged is susceptible to the Strategy. The return on the underlying portfolio has no impact on the effectiveness of the strategy since any fund with a management fee will always underperform its underlying assets by the amount of the management fee.

9. The Exchange states that the sponsor represents that, "because of large outstanding short positions in the shares ... it is difficult to borrow shares, particularly for market participants that are not Authorized Participants that are seeking to engage in short selling for trading strategies other than the Strategy." What are commenters' views of these assertions?

See comments above.

10. What are the prevailing securities lending rates that commenters have observed for shares of FXE and FXY? Do commenters have a view regarding whether the Strategy is viable under these observed securities lending rates?

The current loan rate for CurrencyShares Euro shares is -1.25%. The current loan rate for CurrencyShares Yen shares is -2.0%. These numbers reflect the extraordinarily high cost of borrowing these CurrencyShare products. Persons borrowing shares must post cash collateral equal to the value of the borrowed shares, plus an additional cushion of about 3%. The lender of the shares is permitted to invest the cash collateral and retain a portion of the interest earned. The interest portion that the lender does not retain is called the stock loan rebate and is paid to the borrower of the shares. Therefore, the cost of the loan is the loss of interest income by the borrower which equals the interest earned less the loan rebate.

The negative loan rate for these two CurrencyShares products is highly unusual because, instead of receiving a rebate, the borrower must post cash collateral, receives no loan rebate and must additionally pay the lender 1.25% or 2.0% to borrow the shares. This exorbitant loan rate reflects the excessive short overhang currently existing and makes it extremely difficult if not impossible for investors wishing to establish a true short position to do so. The Commission has often stated that short selling is an important aspect of market liquidity. In the current environment, that liquidity is denied to investors in CurrencyShares Euro and Yen.

11. The Exchange states that, according to the sponsor, “the ETF Loan Fee is not expected to negatively affect short selling generally, but rather only affect certain types of short selling activities conducted by certain market participants (namely the Strategy) at the expense of long investors.” What are commenters’ views concerning this assertion? For example, what are commenters’ views about the effect of the proposed rule change on investors who wish to express a bearish view on either the euro or the yen, or to hedge a long position in euros or yen, by holding a short position in shares of the Trusts over some period of time?

As things stand now, any person wishing to have a short economic position in CurrencyShares receives a 40 basis point cushion that subsidizes potential losses. Thus, if the Euro or Yen rose by 40 basis points over the course of a year, instead of incurring a loss, the short investor would remain flat.

12. The proposal would prohibit any holder of the Shares from lending its shares or from entering into an agreement to repurchase the shares unless the holder (a) self-reports to an agent of the sponsor of the Trusts and (b) remits a fee to that agent equal to the sponsor’s management fee. What are commenters’ views regarding the policy implications of permitting an issuer of securities to place such restrictions on the transfer of shares that it has issued in a public offering and that are listed and traded on a national securities exchange? In particular, are such restrictions consistent with Sections 6(b)(5) and 6(b)(8) of the Act? What are commenters’ views on whether a fee based on self-reporting of lending or repurchase activity can be administered in a manner consistent with Section 6(b)(5) of the Act?

404 Church St
Evanston, IL 60201

The CurrencyShares funds have engaged BNY Mellon to administer the Loan Fee program. As one of the largest custodians in the U.S., BNY Mellon should be able to assure that all loans are reported correctly and expeditiously. Self reporting is a central part of the broker-dealer regulatory scheme. Broker-dealers are required to self report short sales and regulatory violations. We do not believe self reporting under the Exchange's rule will be any less consistent.

I appreciate the opportunity to comment on this proposed rule.

Very Truly Yours

George Simon