

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54087; File No. SR-ISE-2005-60)

June 30, 2006

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

I. Introduction

On December 14, 2005, the International Securities Exchange, Inc. (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to enable the listing and trading on the Exchange of options on shares or other securities (“Fund Shares”) that hold specified non-U.S. currency. The ISE filed Amendment No. 1 to the proposed rule change on May 5, 2006.³ The ISE filed Amendment No. 2 to the proposed rule change on May 9, 2006.⁴ The proposed rule change, as amended, was published for comment in the Federal Register on May 16, 2006.⁵ The Commission received no comments on the proposal. On June 28, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.⁶ This order approves the proposed rule change, as amended, grants accelerated approval to Amendment No. 3 to the proposed rule change, and solicits comments from interested persons on Amendment No. 3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original filing in its entirety.

⁴ Amendment No. 2 replaced the text of proposed ISE Rules 408(a) and 807(a) in their entirety.

⁵ See Securities Exchange Act Release No. 53783 (May 10, 2006), 71 FR 28394 (“Notice”).

⁶ In Amendment No. 3, which supplemented the proposal as noticed, the Exchange amended ISE Rule 503(h)(3) to clarify that the Exchange will consider the suspension of opening transactions with respect to a Fund Share if, inter alia, the value of the non-U.S. currency on which the Fund Shares are based is no longer calculated or available.

II. Description of the Proposed Rule Change

The Exchange proposes to amend ISE Rules 408(a), 502(h), 807(a), and 1400 to enable the initial and continued listing and trading on the Exchange of options on Fund Shares that represent interests in a trust that hold a specified non-U.S. currency. In addition, the Exchange proposes to amend ISE Rule 503(h) to clarify the effect, with respect to options trading on the Exchange, of any Fund Shares being delisted from trading or halted from trading on their primary market.

Specifically, the Exchange is proposing to amend ISE Rule 502(h) (Criteria for Underlying Securities) to broaden the definition of Fund Shares to include shares or other securities that represent interests in registered investment companies or unit investment trusts or similar entities that hold a specified non-U.S. currency. The Exchange is also proposing to make other conforming changes to the text of ISE Rule 502(h) to reflect the proposed broadened definition of Fund Shares. In addition, the Exchange is proposing to require, in ISE Rule 502(h)(4), that 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.

The Exchange also proposes to amend ISE Rule 408(a) to require a member to establish, maintain, and enforce written policies and procedures 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. In addition, the Exchange proposes to amend ISE Rules 807(a) and 1400 to require that market makers handling 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.

Finally, the Exchange proposes to amend ISE Rule 503(h) regarding withdrawal of approval of the underlying securities to specify that Fund Shares approved for options trading under ISE Rule 502(h) will not be deemed to meet the requirements for continued approval, and ISE will not open any additional series of options contracts thereof, if the Fund Shares are delisted from trading or halted from trading on their primary market. In Amendment No. 3, the Exchange is also proposing to amend ISE Rule 503(h)(3) to clarify the continued listing criteria applicable to Fund Shares that hold specified non-U.S. currency.⁷

III. Discussion

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.⁸ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁹ 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

⁷ See supra note 6.

⁸ 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).

⁹ 15 U.S.C. 78f(b)(5).

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 interests in registered investment companies, unit investment trusts, or other similar entities that hold portfolios of securities or are otherwise based on or represent investments in broad-based indexes or portfolios of securities.¹⁰ 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. For example, the Exchange's proposed rule change will permit the Exchange to list options on the Euro Currency Trust ("Trust"), which issues shares ("Euro Shares") that are listed and traded on the New York Stock Exchange ("NYSE") under the symbol "FXE," and may also trade in other markets.¹¹ Fund Shares would continue to need to satisfy the listing standards in ISE Rule 502(h). Specifically, the Fund Shares must be traded on a national securities exchange or through the facilities of a national securities association and, as the Exchange has proposed, must be an "NMS stock" as defined under Rule 600 of Regulation NMS.¹² The Fund Shares must also either: (1) meet the criteria and guidelines under ISE Rules 502(a) and 502(b) (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, and the issuer is obligated to issue Fund Shares in a specified aggregate number even if some or all of the investments required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the

¹⁰ See ISE Rule 502(h).

¹¹ See Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE-2005-65).

¹² In light of the implementation of certain aspects of Regulation NMS, the Exchange also proposes to amend ISE Rule 502(h) to reflect that qualifying Fund Shares must be defined as National Market System stocks as defined under Rule 600 of Regulation NMS.

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 Fund Share's prospectus. The Commission notes that the Exchange has represented that the expansion of the types of investments that may be held by Fund Shares under ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits¹³ or margin.¹⁴

To accommodate the listing and trading of options on Fund Shares investing primarily in non-U.S. currency, the Exchange proposes to amend ISE Rule 408(a) to require that, in connection with 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, an ISE member must establish policies and procedures prohibiting the use of any material nonpublic information it might have or receive from any person associated with it 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 ISE Rules 807(a) and 1400 to require that market makers handling 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 minimize the potential for manipulating the underlying currency held by the Fund Shares.

Finally, under the proposed change to ISE Rule 503(h), 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

¹³ See Notice, supra note 5, at text accompanying note 13. See also ISE Rules 412 and 414.

¹⁴ See Notice, supra note 5, at text accompanying note 14. See also ISE Rule 1202.

Fund Shares are delisted from trading or, pursuant to the proposed rule change, are halted from trading on their primary market. The Commission believes that the Exchange's proposal to expand ISE Rule 503(h) to address the effect of a trading halt in the Fund Shares on their primary market is consistent with the protection of investors and the public interest.

The Commission also notes that the Exchange has represented that it has an adequate surveillance program in place for options on 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, the Exchange is able to obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who 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 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.¹⁵

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the Federal Register pursuant to Section 19(b)(2) of the Act.¹⁶ The Commission notes that Amendment No. 3 clarifies the operation of the continued listing criteria in ISE Rule 503(h)(3) by providing that the Exchange will consider the suspension of opening transactions for Fund Shares if the value of the non-U.S. currency on which the Fund Shares are based is no longer calculated or

¹⁵ Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

¹⁶ 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

available.¹⁷ The Commission notes that the Notice's discussion of the Euro Shares addressed this point,¹⁸ and that Amendment No. 3 makes a conforming change to the text of ISE Rule 503(h)(3) to address the Exchange's proposed broadened definition of Fund Shares to include Fund Shares that represent interests in a trust that hold a specified non-U.S. currency. The Commission therefore believes that it is appropriate to accelerate approval of Amendment No. 3 so that the proposed rule change, as amended, may be implemented without delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to 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. Please include File Number SR-ISE-2005-60 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.

¹⁷ Under the existing continued listing criteria in ISE Rule 503(h), Fund Shares may be delisted 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 index or portfolio of securities 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.

¹⁸ See Notice, supra note 5, at 28397 (noting that Euro Shares may be delisted if the value of the euro is no longer calculated or available).

All submissions should refer to File Number SR-ISE-2005-60. 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-ISE-2005-60 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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,¹⁹ that the proposed rule change (SR-ISE-2005-60), as amended, is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Nancy M. Morris
Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).