

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54983; File No. SR-Amex-2006-87)

December 20, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Criteria for Securities that Underline Options Traded on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 13, 2006, the American Stock Exchange LLC (“Amex” 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 Amendment No. 1 to the proposed rule change on November 22, 2006.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on December 14, 2006.<sup>4</sup> This order provides notice of the proposed rule change as modified by Amendment Nos. 1 and 2 and approved the proposed rule change as amended 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 Amex Rules 3, 915, 916, and 957 to enable the listing and trading on the Exchange of options on Exchange-Traded Fund Shares that hold a specified non-U.S. currency or currencies. The text of the proposed rule change is available at the Amex,

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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> Amendment No. 1 replaced and superseded the proposed rule change as originally filed in its entirety.

<sup>4</sup> In Amendment No. 2, which supplemented the filing as amended by Amendment No. 1, the Exchange corrected typographical errors and made non-substantive, technical changes to the proposed rule text contained in Exhibits 4 and 5 of Amendment No. 1 to the proposed rule change, and also made a minor clarifying change to Section I of the 19b-4.

the Commission's Public Reference Room, and on the Amex's Web site at

<http://www.amex.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 those statements may be examined at the places specified in Item III below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Amex Rules 3, 915, 916, and 957 to enable the listing and trading on the Exchange of options on Exchange-Traded Fund Shares that hold a specified non-U.S. currency or currencies. Amex Rule 915, Commentary .06, currently provides that securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares" or "ETFs") that are principally traded on a national securities exchange or through the facilities of a registered national securities association, and are defined as an NMS Stock. Commentary .06 further states that these shares or securities must also 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. The Exchange proposes to amend Commentary .06 to Rule 915 to expand the type of options to include options on ETFs that represent an interest in a trust or other similar

entity that holds specified non-U.S. currency or currencies deposited with the trust or similar entity. The Exchange is also proposing to require that for Funds that hold a specified non-U.S. currency or currencies deposited with the trust, the Exchange will have entered into a 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 or currencies, which are utilized by the national securities exchange where the underlying Funds are listed and traded.<sup>5</sup>

The proposed amendment to Amex Rule 915 would permit the Exchange to list options on, for example, the Euro Currency Trust (“Trust”).<sup>6</sup> The Trust issues Euro Shares (“Shares”) that represent units of fractional undivided beneficial interest in, and ownership of, the Trust. PADCO Advisors II, Inc., d/b/a Rydex Investments, is the sponsor of the Trust (“Sponsor”)<sup>7</sup> and may be deemed the “issuer” of the Shares pursuant to Section 2(a)(4) of the Securities Act of 1933, as amended. 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, and Rydex Distributors, Inc. is the distributor for the Trust. The Trust intends to issue additional Shares on a continuous basis through the Trustee.

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<sup>5</sup> See proposed Amex Rule 915, Commentary .06(b)(iv).

<sup>6</sup> See Securities Exchange Act Release No. 53059 (January 5, 2006), 71 FR 2072 (January 12, 2006) (SR-Amex-2005-128).

<sup>7</sup> The Sponsor maintains a public Web site on behalf of the Trust, <http://www.currencyshares.com>, which contains information about the Trust and the Shares.

As stated in the Trust's registration statement, the investment objective of the Trust is for the Shares to reflect the price of the euro.<sup>8</sup> 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"). Each Basket, when created, is offered and sold to an Authorized Participant at a price in euro 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. On December 12, 2005, the Shares were sold to the public by Authorized Participants at varying prices in dollars by reference to, among other things, the market price of euro and the trading price of the Shares on the New York Stock Exchange LLC ("NYSE") at the time of each sale. The Shares trade on the NYSE under the symbol "FXE." The Shares may also trade in other markets.

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

For options trading, Exchange-Traded Fund Shares will continue to need to satisfy the listing standards in Commentary .06 to Amex Rule 915. Specifically, the Exchange-Traded

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<sup>8</sup> See Registration No. 333-125581. 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.

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

Fund Shares must be traded on a national securities exchange or through the facilities of a registered national securities association and must be an “NMS Stock” as defined under Rule 600 of Regulation NMS.<sup>10</sup> The Exchange-Traded Fund Shares must also either: (1) meet the criteria and guidelines under Amex Rule 915 (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day in cash or in-kind from the investment company, issuing trust, or other entity at a price related to the net asset value, and the investment company, issuing trust, or other entity shall provide that Exchange-Traded Fund Shares may be created even though some or all of the securities required to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the 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 fund which underlies the option as described in the fund or unit trust prospectus.

Under the applicable continued listing criteria in Commentary .07 to Amex Rule 916, the Exchange-Traded Fund Shares may be subject to delisting as follows: (1) following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (2) the value of the euro is no longer calculated or available;<sup>11</sup> or (3) such other event occurs or condition exists that in the opinion of

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<sup>10</sup> In light of the implementation of certain aspects of Regulation NMS, the Exchange hereby seeks to amend Commentary .06 to Amex Rule 915 to reflect that Exchange-Traded Fund Shares must be NMS Stocks as defined under Rule 600 of Regulation NMS instead of “national market” securities.

<sup>11</sup> The Exchange states that euro pricing information based on the euro spot price is available to investors on a 24-hour basis from numerous financial information service providers, and there are a variety of other public Web sites providing information on

the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Exchange-Traded Fund Shares shall not be deemed to meet the 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, if trading in the shares is halted or suspended on their primary market, or if the Exchange-Traded Fund Shares are delisted in accordance with the terms of Amex Rule 916.

The Exchange represents that the expansion of the types of investments that may be held by an Exchange-Traded Fund Share under Amex rules will not have any effect on the rules pertaining to position and exercise limits<sup>12</sup> or margin.<sup>13</sup>

The Exchange is proposing to amend Amex Rule 957 to ensure that Specialists and Registered Traders handling Exchange-Traded 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, the revision to Amex Rule 957 will prohibit a specialist or registered trader from engaging in trading in non-U.S. currency, non-U.S. currency options, futures, options on futures or non-U.S. currency and other derivatives based on such currency from trading in an account which has not been reported to the Exchange.

Finally, the Exchange is proposing to amend Amex Rule 3 to require members and member organizations to establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information in connection with trading in securities

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foreign currency and euro, including Bloomberg, CBS MarketWatch, and Yahoo! Finance.

<sup>12</sup> See Amex Rules 904 and 905.

<sup>13</sup> See Amex Rule 462.

issued by, among others, currency trust shares 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 nonpublic information concerning that currency trust share or similar entity. The Exchange further proposes to require such procedures to prevent the trading of any of the foregoing securities while in possession of knowledge concerning imminent transactions of the same securities. Finally, the Exchange proposes to require procedures to prevent the disclosure of material nonpublic information involving the foregoing to another person.

The Exchange represents that it has an adequate surveillance program in place for options on Exchange-Traded Fund Shares based on the value of a non-U.S. currency or currencies. 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. Specifically, the Amex 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>14</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>15</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>16</sup> in particular, in that it is designed to prevent

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<sup>14</sup> The Amex and PHLX are members of the ISG. CME and LIFFE are affiliate members of the ISG.

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

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

fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The proposed rule change does not 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

No written comments were solicited or received with respect to the proposed rule change by the Exchange.

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-Amex-2006-87 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-Amex-2006-87. 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 at <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 the 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 No. SR-Amex-2006-87 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Amex has asked the Commission to approve its proposal on an accelerated basis to accommodate its timetable for listing options on Exchange-Traded Fund Shares, as described above. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, 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

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<sup>17</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).

general, to protect investors and the public interest.<sup>18</sup> Further, the Commission finds that the Exchange's proposal is substantially similar to one it recently approved for the International Securities Exchange LLC ("ISE").<sup>19</sup>

Currently, Amex's rules permit it to list options on Exchange-Traded 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 which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities.<sup>20</sup> The Exchange's proposal would allow it to list and trade options on Exchange-Traded Fund Shares whose investment assets consist of a specified non-U.S. currency or currencies deposited with a trust or similar entity. For example, the proposed rule change would allow the Exchange to list options on the Euro Currency Trust.

The underlying Exchange-Traded Fund Shares would continue to need to satisfy the listing standards in Amex Rule 915. To accommodate the listing and trading of options on Exchange-Traded Fund Shares investing primarily in non-U.S. currency, the Exchange proposes to amend Amex Rule 3 to require a member or member organization 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. In addition, the Exchange proposes to amend Amex Rule 957 to require that Specialists and Registered Traders handling Exchange-

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR-ISE-2005-60). The Amex stated that it based its proposed rule change on the ISE filing.

<sup>20</sup> See Amex Rule 915, Commentary .06.

Traded 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. Each Specialist and Registered Trader also would be obligated to conduct all trading in the Exchange-Traded Fund Shares in account(s) which have been reported to the Exchange. The Commission believes that these requirements are designed to minimize the potential for manipulating the underlying currency held by the Exchange-Traded Fund Shares.

As proposed, the Exchange-Traded Fund Shares must be traded on a national securities exchange or through the facilities of a registered national securities association and must be an “NMS stock” as defined under Rule 600 of Regulation NMS.<sup>21</sup> The Exchange-Traded Fund Shares must also either: (1) meet the criteria and guidelines under Amex Rule 915, Commentary .01; or (2) be available for creation or redemption each business day from and through the investment company, issuing trust, or other entity in cash or in-kind at a price related to net asset value, and the investment company, issuing trust, or other entity shall provide that shares may be created even though some or all of the investments required to be deposited have not been received by the unit investment trust or the management investment company, provided that the person obligated to deposit the investments has undertaken to deliver the investment assets 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 fund which underlies the option, as described in the fund or unit trust prospectus. Furthermore, the Commission notes that the Exchange has represented that the expansion of the types of investments that may be held by

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

Exchange-Traded Fund Shares under Amex rules will not have any effect on the rules pertaining to position and exercise limits or margin.

Finally, under the proposed change to Amex Rule 916, Commentary .07, Exchange-Traded 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 Exchange-Traded Fund Shares, if the Exchange-Traded Fund Shares are delisted in accordance with Commentary .01(5) of Amex Rule 916 or trading in the shares are halted or suspended in their primary market. Additionally, as proposed, the Exchange will consider the suspension of opening transactions in any series of options covering Exchange-Traded Fund Shares if the value of the non-U.S. currency on which the Exchange-Traded Fund Shares are based is no longer calculated or available. The Commission believes that the proposed change to Amex Rule 916 with respect to withdrawal of approval is consistent with the protection of investors and the public interest.

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options on Exchange-Traded Fund Shares, including those funds that are based on the value of a non-U.S. currency. In addition, the Exchange has represented that it is able to obtain currency-related trading information via the ISG from other exchanges who are members or affiliates of the ISG, as discussed above, in connection with options and futures trading on those exchanges.

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 filing thereof in the Federal Register. The Exchange has requested accelerated approval because this proposed rule change is based on, and is substantially similar to, a proposal by the ISE that the Commission recently

approved.<sup>22</sup> Accordingly, this proposal raises no new or novel regulatory issues that have not been previously considered by the Commission. In addition, the Commission notes that it did not receive any comments on the ISE's proposal. The Commission believes that expanding Amex Rule 915 to encompass options on Exchange-Traded Fund Shares that represent interests in a trust that holds non-U.S. currency deposited with the trust will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading these products promptly. Additionally, the proposal contains measures that are designed to minimize the potential for manipulation of the underlying currency held by the Exchange-Traded Fund Shares. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>23</sup> to approve the amended proposal on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-Amex-2006-87), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>22</sup> See Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR-ISE-2005-60).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

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

<sup>25</sup> 17 CFR 200.30-3(a)(12).