

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58800; File No. SR-NYSEArca-2008-109)

October 16, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. to Adopt Rules to Permit the Trading of Rate-Modified Foreign Currency Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 10, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “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 prepared by the Exchange. 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 adopt rules to permit the trading of Rate-Modified Foreign Currency Options (“FCOs”). The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and www.nyse.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 self-regulatory organization 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 IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 adopt rules enabling the Exchange to list and trade FCOs. The Exchange proposes to adopt rules for the listing and trading of cash-settled FCOs on the following currencies: the euro, the British pound, the Australian dollar, the New Zealand dollar, the Japanese yen, the Canadian dollar, the Swiss franc, the Chinese renminbi, the Mexican peso, the Swedish krona, the Russian ruble, the South African rand, the Brazilian real, the Israeli shekel, the Norwegian krone, the Polish zloty, the Hungarian forint, the Czech koruna, and the Korean won (individually, a “currency” and collectively, the “Currencies”).³

The Exchange notes that the Philadelphia Stock Exchange (“PHLX”) currently has rules that permit the listing and trading of both physically-settled FCOs and U.S. Dollar-settled FCOs on a number of foreign currencies.⁴ FCOs listed and traded by the Exchange pursuant to this proposed rule change will not be fungible with those listed and traded by PHLX. The Exchange also notes that the International Securities Exchange has rules that permit the listing and trading of both physically-settled FCOs and U.S. Dollar-settled FCOs on a number of foreign currencies.⁵ The Exchange intends, however, to license the contract terms governing FCOs from the International Securities Exchange (“ISE”), and any FCOs listed and traded on the Exchange would be fungible with those listed and traded on ISE.

³ Except as noted herein, FCO’s would, in all other respects, be traded pursuant to the Exchange’s existing trading rules and procedures and be covered under the Exchange’s existing surveillance program.

⁴ See Securities Exchange Act release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-PHLX-2006-34). See also PHLX rules 1000-1093.

⁵ See Securities Exchange Act Release No, 34-55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59). See also ISE rules 2200-2213.

The Exchange proposes to list and trade cash-settled FCOs using the Reuters Composite Currency Rate,⁶ an industry benchmark, and modify that rate to create an underlying value that represents the prevailing rate of a currency pair in an index-like format. NYSE Arca proposes to use modifiers of 1, 10, or 100 depending on the exchange rate level of the underlying foreign currency. For example, if one US Dollar buys .84177 euros, a modifier of 100 would be used so that the modified exchange rate would become 84.18.⁷ Modified exchange rates are rounded to two decimal places (i.e., to the nearest one one-hundredth). Modified exchange rates are rounded up if they end in values greater than or equal to five one-thousandths, and rounded down if less than five one-thousandths. In the example above, if one US Dollar buys .84174 euros, the modified exchange rate, using the same 100 modifier, would become 84.17. The Reuters data is based on an amalgamation of midpoint dealer quotes on its foreign exchange dealing system.

⁶ The Exchange notes that there are many major trading platforms for spot market currencies including single bank portals (Deutsche Bank, Citigroup, UBS, Barclays, etc.), multi-bank portals (FXall, Currenex, FXConnect, etc.) broker-neutral portals (Reuters Dealing and EBS), portal aggregators (Bloomberg, LavaFX, FlexTrade), as well as many online broker portals. Additionally, several major NYSE Arca members, including OptionsXpress and Interactive Brokers, provide access to Chicago Mercantile Exchange futures products. NYSE Arca therefore believes that sufficient market access is available to both institutionals as well as retail investors. Foreign exchange prices are also widely available via public websites, broker websites, as well as in print publications. Additionally, websites such as Bloomberg.com, Reuters.com, Yahoo! Finance, CNBC.com, OANDA.com, Nasdaq.com, and many others provide free currency data. Investors Business Daily, Wall Street Journal, and the New York Times also provide currency data as part of their daily coverage. Furthermore, the ISE presently disseminates real-time underlying data on OPRA for all the currency rates NYSE Arca intends to list options on.

⁷ Modifiers used for creating underlying values will be modeled on the modifiers developed by the ISE and will be posted on the Exchange's web site no later than the first day on which FCOs begin trading on the Exchange. Once a modifier has been assigned to a currency pair by the ISE, it can only be changed upon a filing of a proposed rule change by the ISE with the Securities and Exchange Commission ("Commission"). If the Exchange determines that it will no longer adopt modifiers assigned by the ISE, the Exchange will be required to submit a proposed rule change to the Commission in order to amend a modifier.

Under the proposed rule change, FCOs listed by the Exchange will be cleared by The Options Clearing Corporation (“OCC”), and will enable holders of options contracts to receive U.S. Dollars representing the difference between the modified exchange rate⁸ and the exercise price of the option. Specifically, upon exercise of an in-the-money cash-settled FCO call option, the holder will receive, from OCC, U.S. Dollars representing the difference between the exercise strike price and the closing settlement value of the cash-settled FCO contract multiplied by 100. Upon exercise of an in-the-money cash-settled FCO put option, the holder will receive, from OCC, U.S. Dollars representing the excess of the exercise price over the closing settlement value of the cash-settled FCO contract multiplied by 100. Additionally, cash-settled FCOs that are in-the-money by any amount on expiration date will be exercised automatically by OCC, while cash-settled FCOs that are out-of-the-money on expiration date will expire worthless.

The Exchange hereby proposes to adopt new rules and amend certain existing rules in order to list and trade FCOs. The Exchange shall use the same contract specifications used by the ISE, as noted in Exhibit 3 to this filing.⁹ The Exchange’s proposed NYSE Arca Rule 5.71, Definitions, defines terms applicable to FCOs. Proposed NYSE Arca Rule 5.72, Criteria for Foreign Currency Options, states that the Currencies may be approved for trading on the Exchange and sets forth the cross rate FCOs that may be traded on the Exchange. Proposed NYSE Arca Rule 5.72 also states that if any of the sovereign governments or the European Economic Community’s European Monetary System issuing one of the Currencies replaces it with a new currency, that new currency, subject to filing a proposed rule change with the Commission, shall also be approved for listing and trading under these proposed rules. Proposed NYSE Arca Rule 5.73, Foreign Currency Options Contracts To Be Traded, states that the

⁸ A “modified exchange rate” is defined in proposed NYSE Arca Rule 5.71(6).

⁹ See note 5, supra.

Exchange may open for trading put options and call options on the Currencies and that only options contracts of a series of options approved by the Exchange and currently open for trading may be traded on the Exchange. Proposed NYSE Arca Rule 5.74, Withdrawal of Approval of Foreign Currency Options, states that, in the interest of a fair and orderly market and for the protection of investors, the Exchange may withdraw approval of the trading of a foreign currency option. For example, in the case of the European Economic Community's European Monetary System, the Exchange will withdraw approval of the trading of a foreign currency option if such currency is eligible to and does in fact merge with the euro.

Proposed NYSE Arca Rule 5.75, Series of Foreign Currency Options Opened for Trading, states that after a class of options contracts on any of the Currencies has been approved for listing and trading, the Exchange may open for trading series of FCOs that expire in consecutive monthly intervals, in three or "cycle" month intervals, or that have up to 36 months to expiration.¹⁰ Under this proposed rule change, the Exchange may list cash-settled FCOs with expirations that are the same as the expirations permitted for index options pursuant to NYSE Arca Rules 5.10 and 5.19, except that cash-settled FCOs shall have expirations up to 36 months only. Though no long-term series will be listed initially, this proposal would allow the Exchange to list long-term series, i.e., up to 36 months. The expiration date for the consecutive and cycle month options will be 8:59 p.m. Pacific time on the Saturday immediately following the third Friday of the expiration month. Under Proposed NYSE Arca Rule 5.75, as the modified exchange rate moves, the Exchange may list additional series of FCOs in order to maintain sufficient numbers of in-the-money and out-of-the-money series. Further, the strike price of

¹⁰ The Exchange notes that consecutive month and cycle month expirations of a given series will never overlap.

each series of FCOs opened for trading by the Exchange shall be reasonably close to the modified exchange rate.

Proposed NYSE Arca Rule 5.76, Terms of Foreign Currency Options Contracts, states that, among other things, all FCOs shall be quoted in U.S. Dollars, shall be European-style, and that the interval between strike prices of series of FCOs shall be no less than \$0.10.

Proposed NYSE Arca Rule 5.77, Position Limits for Foreign Currency Options, sets the position limit for FCOs, on the same side of the market, as follows: 1,200,000 contracts for the euro; 600,000 contracts for the Australian dollar, the New Zealand dollar, the British pound, the Canadian dollar, the Japanese yen, and the Swiss franc; 300,000 contracts for the Brazilian real, the Chinese renminbi, the Czech koruna, the Hungarian forint, the Israeli shekel, the Korean won, the Mexican peso, the Norwegian krone, the Swedish krona, the Polish zloty, the Russian ruble and the South African rand. For the purpose of determining which positions are on the same side of the market, under proposed NYSE Arca Rule 5.77, long call positions are to be aggregated with short put positions and short call positions are to be aggregated with long put positions. Position limits for each of the proposed cross-rate FCOs are specified in proposed NYSE Arca Rule 5.77.

Proposed NYSE Arca Rule 5.78, Exercise Limits for Foreign Currency Options, generally states that exercise limits for FCOs and cross rate FCOs shall be equivalent to the position limits prescribed to that FCO. Thus, the exercise limit for FCOs over any five consecutive business days shall be as follows: 1,200,000 contracts for the euro; 600,000 contracts for the Australian dollar, the New Zealand dollar, the British pound, the Canadian dollar, the Japanese yen, and the Swiss franc; 300,000 contracts for the Brazilian real, the Chinese renminbi, the Czech koruna, the Swedish krona, the Hungarian forint, the Israeli shekel,

the Korean won, the Mexican peso, the Norwegian krone, the Polish zloty, the Russian ruble and the South African rand. The exercise limits for cross rate FCOs are set forth in Rule 5.78. Under Proposed NYSE Arca Rule 5.78(a)(3), the Exchange may from time to time, subject to Commission approval, establish exercise limits that are different from the position limits established for FCOs on a Currency or across all Currencies. Position limits for each of the proposed cross-rate FCOs are specified in proposed NYSE Arca Rule 5.77.

Proposed NYSE Arca Rule 5.79, Trading Sessions, provides that transactions in FCOs may be effected on the Exchange between the hours of 6:30 a.m. and 1:15 p.m. Pacific Time, except that on the last trading day of the week during which a FCO is set to expire, trading shall cease at 9:00 a.m. Pacific Time. Trading in cash-settled FCOs will follow the holiday schedule of the U.S. equity markets. If Friday is an Exchange holiday, the settlement value for cash-settled FCOs will be determined on the preceding trading day, which will also be the last trading day for the expiring option. The Exchange's Proposed Rules 5.79(b) and (c) make certain adjustments to current processes because FCO openings, unlike openings of equity and index options, do not depend on the opening of trading of the underlying market, because the currency market does not have specified trading hours. Accordingly, the opening auction for FCOs shall be held at or as soon as practicable after the Exchange's market opens, unless a Trading Official determines to delay the opening auction in the interest of maintaining a fair and orderly market.

Proposed NYSE Arca Rule 5.79 lists some of the factors a Trading Official may consider in delaying the opening auction. Additionally, in the interest of a fair and orderly market, an Exchange official may, under certain circumstances, halt or suspend trading in a FCO until such time that the circumstances that led to the halt or suspension no longer exist. The proposed rule

also provides that the Exchange shall delay opening or halt trading if the ISE is unable to disseminate the current modified exchange rate information at least every 15 seconds to OPRA.

Proposed NYSE Arca Rule 5.80, Reporting of Foreign Currency Options Position, requires each OTP Holder of the Exchange to file a report with respect to all accounts that have an aggregate position of 12,500 or more FCO contracts on the same side of the market in any underlying foreign currency. Under this proposed rule, OTP Holders shall be required to file all such reports within one business day following the day that the reportable transactions occur.

Proposed NYSE Arca Rule 5.81, Foreign Currency Options Closing Settlement Value, states that the closing settlement value, which shall be posted by the Exchange on its Web site, shall be the Noon Buying Rate, as determined by the Federal Reserve Bank of New York, on the last trading day during expiration week.¹¹ If the Noon Buying Rate is not announced by 2:00 p.m. Pacific Time, the closing settlement value will be the most recently announced Noon Buying Rate, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.¹²

In the event the Noon Buying Rate is not published for an underlying currency, the Exchange proposes to apply the WM/Reuters Closing Spot rate to determine the closing

¹¹ The closing settlement value, whether based on the Noon Buying Rate or the WM/Reuters Closing Spot rate, will also be modified using the applicable modifier, *i.e.*, 1, 10 or 100, that is used in calculating the respective modified exchange rate. Please note, the Federal Reserve Bank of New York is discontinuing the publication of the Noon Buying Rate on December 31, 2008.

¹² The Exchange may use the WM/Reuters Closing Spot rate if the Noon Buying Rate is not available. The Exchange notes that the Commission has recently approved listing standards for securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interests in non-U.S. currency deposited into a trust that utilizes the Noon Buying Rate for the calculation of the Net Asst Value of the trust. See Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (order granting accelerated approval of SR-NYSE-2005-65).

settlement value of any underlying currency.¹³ The WM/Reuters Closing Spot rate is determined at 16:00 UK time, also known as the ‘fix’ time (10:00 a.m. Pacific Time). WM/Reuters typically publishes its closing rates 15 minutes after the fix time. The Reuters System is the primary source of spot foreign exchange rates used in the calculation of the WM/Reuters Closing Spot rate. WM/Reuters, however, may use alternative sources such as a country’s Central Bank or rates from EBS, which is another major FX venue and market data service provider for 156 currencies, including all of the currencies underlying the products proposed by NYSE Arca under this filing.

WM/Reuters has two main methods for calculating its Closing Spot rate. The methodology used depends on whether a currency is determined by WM/Reuters to be a “trade currency” or a “non-trade currency.”¹⁴ WM/Reuters applies a unique methodology for each category. Closing Spot rates for “non-trade currencies” are determined primarily by using data from Reuters. This methodology involves taking snapshots of quoted bids and offers for each currency at 15-second intervals over a two minute period. The median is then calculated independently for each currency’s bid and offer. The midpoint of that median bid and offer becomes the final value.

Closing Spot rates for “trade currencies” are determined primarily by using data from both Reuters and EBS. This methodology involves taking snapshots of actual traded rates every

¹³ The Federal Reserve Bank of New York currently does not publish a Noon Buying Rate for the Czech koruna, the Hungarian forint, the Israeli shekel, the Korean won, the Polish zloty and the Russian ruble. As a result, the Exchange proposes to use the WM/Reuters Closing Spot rate for these 6 currencies to determine their closing settlement value.

¹⁴ The Australian dollar, British pound, Canadian dollar, Czech koruna, Danish krone, euro, Japanese yen, New Zealand dollar, Norwegian krone, Singapore dollar, South African rand, Swedish krona, and Swiss franc are all considered by WM/Reuters to be “trade currencies,” while all others are considered “non-trade currencies.” The instant filing proposes to trade FCOs on all the “trade currencies” except the Danish krone and the Singapore dollar.

second for a period of 30 seconds before the fix to 30 seconds after the fix. Trades are identified as a bid or offer and a spread is applied to calculate the opposite bid or offer. The spread applied is determined by the spread between buy and sell orders captured at the same time. The median is then independently calculated for each currency's bid and offer, resulting in a midpoint trade rate. The midpoint of that median bid and offer becomes the final value. Proposed NYSE Arca Rule 5.81 additionally disclaims the Exchange's (and that of any agent of the Exchange's) liability and that of the Reporting Authority due to force majeure.

The Exchange is also proposing to amend its Rule 4.16 regarding margin requirements by adopting a rule for FCOs that is substantially similar to the ISE's margin rules for foreign currency options. Accordingly, under proposed NYSE ARCA Rule 4.16(d), cash-settled FCOs will have the same customer margin requirements as are provided in ISE Rule 1202 (d), "Margin Requirements".

In addition, the Exchange proposes to modify Rule 6.72 to permit FCOs to quote and trade in one cent increments.

Chapter 9 of the Exchange's rules is designed to protect public customer trading and shall apply to trading in FCOs. Specifically, NYSE Arca Rules 9.18(a) and (b) prohibit OTP Firms and OTP Holders from accepting a customer order to purchase or write an option, including on a cash-settled FCO, unless such customer's account has been approved in writing by a designated Registered Options Principal. Additionally, NYSE Arca's Rule 9.18(c) regarding suitability is designed to ensure that options, including cash-settled FCOs, are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument. Further, NYSE Arca Rule 9.18(e) permits OTP Firms or OTP Holders to exercise discretionary power with respect to trading options, including trading cash-settled FCOs, in a customer's account only if

the OTP Firm or OTP Holder has received prior written authorization from the customer and the account had been accepted in writing by a designated Registered Options Principal. NYSE Arca Rule 9.18(e) also requires designated Registered Options Principals or Representatives of an OTP Firm or OTP Holder to approve and initial each discretionary order, including discretionary orders for cash-settled FCOs, on the day the discretionary order is entered. Finally, NYSE Arca Rule 9.18 (d), Supervision of Accounts, Rule 9.18 (f), Confirmation, and Rule 9.18 (g), Delivery of Current Options Disclosure Documents and Prospectus, will also apply to trading in FCOs.

As previously noted, the Exchange represents that it has an adequate surveillance program in place for FCOs, and intends to apply the same program procedures that it applies to the Exchange's index options. The Exchange is also a member of the Intermarket Surveillance Group ("ISG"), and may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. The members of the ISG include all of the U.S. registered stock and options markets. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. Specifically, NYSE Arca can obtain such information from the Chicago Mercantile Exchange ("CME") in connection with futures trading on that exchange.¹⁵

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of cash-settled FCOs.

2. Statutory Basis

¹⁵ CME is an affiliate member of ISG.

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect 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 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

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

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

Because the foregoing 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 this 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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of filing.¹⁸ However, Rule 19b-4(f)(6)(iii)¹⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it has approved substantially similar rules for the listing and trading of FCOs on the ISE and NYSE Arca's proposal raises no new regulatory issues.²⁰ Accordingly, the Commission designates that the proposed rule change become operative immediately.²¹

At any time within 60 days of the filing of such 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 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

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ Id.

²⁰ See supra note 5.

²¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2008-109 on the subject line.

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 SR-NYSEArca-2008-109. 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-109 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.²²

Florence E. Harmon
Acting Secretary

²² 17 CFR 200.30-3(a)(12).