

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55268; File No. SR-NYSE-2007-03]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding CurrencyShares<sup>SM</sup> Japanese Yen Trust

February 9, 2007.

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 January 9, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. On January 26, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 1, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to the proposed rule change, as amended.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade the following under Rules 1300A *et seq.* ("Currency Trust Shares" or "Shares"): CurrencyShares<sup>SM</sup> Japanese Yen Trust ("Trust"). The Trust issues Shares that represent units of fractional undivided beneficial interest in and ownership of the Trust.

#### 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. The text of these 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Trust issues Japanese Yen Shares, referred to herein as "Shares". Rydex Specialized Products LLC is the sponsor of the Trust ("Sponsor"). 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 Sponsor, Trustee, Depository and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated. The Exchange currently lists and trades Shares of the Euro Currency Trust; CurrencyShares<sup>SM</sup> Australian Dollar Trust; CurrencyShares<sup>SM</sup> British Pound Sterling Trust; CurrencyShares<sup>SM</sup> Canadian Dollar Trust; CurrencyShares<sup>SM</sup> Mexican Peso Trust; CurrencyShares<sup>SM</sup> Swedish Krona Trust; and CurrencyShares<sup>SM</sup> Swiss Franc Trust ("CurrencyShares Trusts"), all of which have the same Sponsor, Trustee, Depository and Distributor as the Trust.<sup>4</sup>

According to the Trust's Registration Statement,<sup>5</sup> the investment objective of the Trust is for the Shares issued by the Trust to reflect the price of the Japanese Yen. The Shares are intended to provide institutional and retail investors with a simple, cost-effective means of hedging their exposure to Japanese Yen and otherwise implement investment strategies that involve foreign currency (e.g., diversify more generally against the risk that the U.S. Dollar ("USD") will depreciate).

##### Overview of the Foreign Exchange Industry<sup>6</sup>

According to the Registration Statement, the foreign exchange market is the largest and most liquid financial market in the world. The Exchange states that, as of April 2004, the foreign exchange market experienced average daily turnover of approximately \$1.88

trillion, which was a 57% increase (at current exchange rates) from 2001 daily averages. The foreign exchange market is predominantly an over-the-counter market, with no fixed location and it operates 24 hours a day, seven days a week. London, New York and Tokyo are the principal geographic centers of the worldwide foreign exchange market, with approximately 58% of all foreign exchange business executed in the U.K., U.S., and Japan. Other smaller markets include Singapore, Zurich and Frankfurt.<sup>7</sup>

The Exchange states that there are three major kinds of transactions in the traditional foreign exchange markets: spot transactions, outright forwards and foreign exchange swaps. "Spot" trades are foreign exchange transactions that settle typically within two business days with the counterparty to the trade. Spot transactions account for approximately 35% of reported daily volume in the traditional foreign exchange markets. "Forward" trades, which are transactions that settle on a date beyond spot, account for 12% of the reported daily volume. "Swap" transactions, in which two parties exchange two currencies on one or more specified dates over an agreed period and exchange them again when the period ends, account for the remaining 53% of volume. There also are transactions in currency options, which trade both over-the-counter and, in the U.S., on the Philadelphia Stock Exchange ("Phlx"). Currency futures are transactions in which an institution buys or sells a standardized amount of foreign currency on an organized exchange for delivery on one of several specified dates. Currency futures are traded on a number of regulated markets, including the International Monetary Market division of the Chicago Mercantile Exchange ("CME"), the Singapore Exchange Derivatives Trading Limited ("SGX," formerly the Singapore International Monetary Exchange or SIMEX), and the London International Financial Futures Exchange ("LIFFE"). Over 85% of currency derivative products (swaps, options and futures) are traded over-the-counter.<sup>8</sup>

<sup>4</sup> See Securities Exchange Act Release Nos. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR-NYSE-2005-65); and 54020 (June 20, 2006), 71 FR 36579, (June 27, 2006) (SR-NYSE-2006-35).

<sup>5</sup> The Sponsor, on behalf of the Trust, filed a Form S-1 for the Trust on November 21, 2006 (the "Registration Statement"). See Registration No. 333-138881.

<sup>6</sup> Except as otherwise specifically noted, the information provided in this Form 19b-4 filing relating to the Shares, foreign currency markets, movements in foreign currency pricing, and related information is based entirely on information included in the Registration Statement.

<sup>7</sup> For April 2004, the daily average foreign exchange turnover of the U.S. dollar against the Japanese Yen was approximately \$296 billion. See Bank for International Settlements, Triennial Central Bank Survey, March 2005, Statistical Annex Tables, Table E-2. In April 2004, the daily average foreign exchange turnover in USD of the Japanese Yen against all other currencies was approximately \$359 billion. See Statistical Annex Tables, Table E-1.

<sup>8</sup> See Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange  
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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 the original filing in its entirety.

Futures on Japanese Yen are traded on the CME (both exchange pit trading and GLOBEX trading). Standardized options on the Japanese Yen trade on Phlx. Phlx also offers more customized options on certain currency pairs.<sup>9</sup>

According to the Exchange, participants in the foreign exchange market have various reasons for participating. Multinational corporations and importers need foreign currency to acquire materials or goods from abroad. Banks and multinational corporations sometimes require specific wholesale funding for their commercial loan or other foreign investment portfolios. Some participants hedge open currency exposure through off-balance-sheet products.

The Exchange further represents that the primary market participants in foreign exchange are banks (including government-controlled central banks), investment banks, money managers, multinational corporations and institutional investors. The most significant participants are the major international commercial banks that act both as brokers and as dealers. In their dealer role, these banks maintain long or short positions in a currency and seek to profit from changes in exchange rates. In their broker role, the banks handle buy and sell orders from commercial customers, such as multinational corporations. The banks earn commissions when acting as agent. They profit from the spread between the rates at which they buy and sell currency for customers when they act as principal.

Typically, banks engage in transactions ranging from \$5 million to \$50 million in amount. Although banks will engage in smaller transactions, the fees that they charge have made the foreign currency markets relatively inaccessible to individual investors. Some banks allow individual investors to engage in spot trades without paying traditional commissions on the trades. Such trading is often not profitable for individual investors, however, because the banks charge the investor the spread between the bid and the ask price maintained by the bank on all purchases and sales. The overall effect of this fee structure depends on the spread maintained by the bank and the frequency with which the investor trades. Generally this fee structure is

particularly disadvantageous to active traders.

The Trust's assets will consist only of Japanese Yen on demand deposit in two Japanese Yen-denominated accounts at JPMorgan Chase Bank, N.A., London Branch; an interest-bearing primary deposit account and a non-interest bearing secondary account. The Trust will not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in the Japanese Yen owned by the Trust, plus accrued and unpaid interest less accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the Japanese Yen and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the Trust.

Because the Shares will be traded on the NYSE, investors will be able to access the Japanese Yen foreign currency market through a traditional brokerage account which will provide investors with an efficient means of implementing investment tactics and strategies that involve Japanese Yen.

#### Foreign Currency Regulation

Most trading in the global over-the-counter (OTC) foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.

Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities. In addition, in the U.S., the SEC regulates trading of options on foreign currencies on the Phlx and the Commodity Futures Trading Commission ("CFTC") regulates trading of futures, and options on

futures on foreign currencies on regulated futures exchanges.<sup>10</sup>

The Exchange states that the Phlx and CME have authority to perform surveillance on their members' trading activities, review positions held by members and large-scale customers, and monitor the price movements of options and/or futures markets by comparing them with cash and other derivative markets' prices.

#### Foreign Exchange Markets<sup>11</sup>

The Exchange represents that the average daily turnover of the USD in the foreign exchange market is approximately \$1.57 trillion, which makes it the most-traded currency in the world, accounting for approximately 89% of global foreign exchange transactions.

The Japanese Yen is the official currency of Japan and the currency of the Bank of Japan, the central bank of Japan. The average daily turnover in the foreign exchange markets is approximately \$1.9 trillion. Japanese Yen was on one side of 20% of all currency transactions. The USD/Japanese Yen pair has an average daily turnover of approximately \$296 billion, which makes it the second most traded currency pair, accounting for approximately 17% of global foreign exchange transactions. From the beginning of 2002 to the end of 2005, the Noon Buying Rate for Japanese Yen as reported by the Federal Reserve Bank of New York ranged from 102.50 on January 14, 2005 to 134.71 on February 8, 2002. As of November 20, 2006, the Noon Buying Rate for the Japanese Yen was 118.16.

#### The Sponsor

The Sponsor of the Trust is Rydex Specialized Products LLC, a Delaware limited liability company that is wholly-owned by PADCO Advisors II, Inc., a Maryland corporation, a privately-held company owned by Rydex Holdings, Inc., a Maryland Corporation, which is

<sup>10</sup> The CFTC is an independent government agency with the mandate to regulate commodity futures and options markets in the United States under the Commodity Exchange Act. In addition to its oversight of regulated futures exchanges, the CFTC has jurisdiction over certain foreign currency futures, and options on futures transactions occurring other than on a regulated exchange and involving retail customers. Both the SEC and CFTC have established rules designed to prevent market manipulation, abusive trading practices and fraud, as do the exchanges on which the foreign currency products trade.

<sup>11</sup> The primary source of the statistical information in this section is the Bank of International Settlements Survey, note 7, *supra*. Other information came from the websites of the central banks for the applicable countries and other sources the Sponsor believes to be reliable.

and Derivatives Market Activity in April 2004, September 2004 (Tables 2 and 6).

<sup>9</sup> For the period January through October, 2006, Japanese Yen and E-mini Japanese Yen futures contract volume on the CME was 15,687,056 and 7,629 contracts, respectively. For the same period, Japanese Yen options volume on the Phlx was 3,228 contracts.

controlled by two irrevocable trusts. The Sponsor and its affiliates collectively do business as "Rydex Investments."

The Sponsor is responsible for establishing the Trust and for the registration of the Shares. The Sponsor generally oversees the performance of the Trustee and the Trust's principal service providers, but does not exercise day-to-day oversight over the Trustee or such service providers. The Sponsor regularly communicates with the Trustee to monitor the overall performance of the Trust. The Sponsor, with assistance and support from Rydex affiliates who also do business as "Rydex Investments," the Trustee and outside professionals, are responsible for preparing and filing periodic reports on behalf of the Trust with the SEC.<sup>12</sup> The Sponsor will designate the auditors of the Trust and may from time to time employ legal counsel for the Trust.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trust, preparing marketing materials on the Shares, executing the marketing plan for the Trust and providing strategic and tactical research on the global foreign exchange markets. The Sponsor will not enter into an agreement with the Distributor covering these services, because the Distributor is an affiliate and will not be paid any compensation by the Sponsor for performing these services.

The Sponsor with the Distributor's assistance maintains a public Web site on behalf of the Trust, [www.currencyshares.com](http://www.currencyshares.com), which contains information about the Trust and the Shares, and oversees certain Shareholder services, such as a call center and prospectus delivery.

The Sponsor may direct the Trustee in the conduct of its affairs, but only as provided in the Depositary Trust Agreement. For example, the Sponsor may direct the Trustee to sell Japanese Yen to pay certain extraordinary expenses, to suspend a redemption order, postpone a redemption settlement date, or to terminate the Trust if certain criteria are met. The Sponsor anticipates that, if the market capitalization of the Trust is less than \$300 million for five consecutive trading days beginning after the first anniversary of the Trust's

inception, then the Sponsor will, in accordance with the Depositary Trust Agreement, direct the Trustee to terminate and liquidate the Trust.

The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the Japanese Yen in the Trust (including all unpaid interest but excluding unpaid fees, each as accrued through the immediately preceding day) and is paid monthly.

#### *The Trustee*

The Bank of New York, the Trustee, is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include selling Japanese Yen held by the Trust if needed to pay the Trust's expenses, calculating the Net Asset Value ("NAV") of the Trust and the NAV per Share, receiving and processing orders from Authorized Participants to create and redeem Baskets (as discussed below) and coordinating the processing of such orders with the Depository and DTC. The Trustee will earn a monthly fee that will be paid by the Sponsor.

The Trustee intends to regularly communicate with the Sponsor to monitor the over-all performance of the Trust. The Trustee, along with the Sponsor, consults with the Trust's legal, accounting and other professional service providers as needed. The Trustee assists and supports the Sponsor with the preparation of all periodic reports required to be filed with the SEC on behalf of the Trust.

Affiliates of the Trustee may from time to time act as Authorized Participants, purchase or sell foreign currency, or Shares for their own account.

#### *The Depository*

JPMorgan Chase Bank, N.A., London Branch (the "Bank") is the Depository. The Depository accepts Japanese Yen deposited with it as a banker by Authorized Participants in connection with the creation of Baskets. The Depository facilitates the transfer of Japanese Yen into and out of the Trust through the primary and secondary deposit accounts maintained with it as a banker by the Trust.

The Depository will pay interest on the primary deposit account. Interest on the primary deposit account accrues daily at an initial annual nominal rate of the Bank of Japan Overnight Call Rate minus 27 basis points, and is paid monthly. Each month the Depository will deposit into the secondary deposit account accrued but unpaid interest.

The Depository will not be paid a fee for its services to the Trust. The Depository may earn a "spread" or "margin" over the rate of interest it pays to the Trust on the Japanese Yen deposit balances.

The Depository is not a trustee for the Trust or the Shareholders. The Depository and its affiliates may from time to time act as Authorized Participants or purchase or sell Japanese Yen or Shares for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

#### *The Distributor*

Rydex Distributors, Inc. is the Distributor. The Distributor is a registered broker-dealer with the SEC and is a member of NASD.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trust on an ongoing basis, preparing marketing materials regarding the Shares, including the content on the Trust's Web site, [www.currencyshares.com](http://www.currencyshares.com), executing the marketing plan for the Trust, and providing strategic and tactical research on the global foreign exchange market. The Distributor and the Sponsor are affiliates of one another. There is no written agreement between them, and no compensation is paid by the Sponsor to the Distributor in connection with services performed by the Distributor for the Trust.

#### *Description of the Trust*

According to the Registration Statement for the Trust, the Trust will be formed under the laws of the State of New York as of the date the Sponsor and the Trustee sign the Depositary Trust Agreement and the Initial Purchaser makes the initial deposit for the issuance of three Baskets. A Basket is a block of 50,000 Shares. The Trust holds Japanese Yen<sup>13</sup> and is expected

<sup>13</sup> The Exchange notes that, in addition to the CurrencyShares Trusts (See note 4, *supra*), the Commission has previously permitted the listing of securities products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. See, e.g., Securities Exchange Act Release Nos. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (approving listing of iShares® GSCI Commodity Indexed Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (approving listing and trading on NYSE of StreetTRACKS® Gold Shares); 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (SR-Phlx-81-4) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995) (SR-Phlx-95-42) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995), 60 FR 46653 (September 7, 1995) (SR-NYSE-94-41) (approving listing standards for,

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<sup>12</sup> The Sponsor has obtained a no-action letter from the SEC Division of Corporation Finance with respect to the Euro Currency Trust pursuant to which the Sponsor's principal executive officer and principal financial officer will provide any certifications that are required from a "registrant's" principal executive officer and principal financial officer. See No-Action Letter from Charles Kwon, Special Counsel, Division of Corporation Finance, Commission, dated March 22, 2006. The Sponsor will be requesting the same type of no-action ruling for the Trust.

from time to time to issue Baskets in exchange for deposits of Japanese Yen and to distribute Japanese Yen in connection with redemptions of Baskets. The investment objective of the Trust is for the Shares to reflect the price USD of Japanese Yen. The Shares represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The Trust is not managed like a business corporation or an active investment vehicle. Japanese Yen held by the Trust will only be sold: (1) If needed to pay Trust expenses, (2) in the event the Trust terminates and liquidates its assets or (3) as otherwise required by law or regulation. The sale of Japanese Yen by the Trust is a taxable event to Shareholders.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act and is not required to register under such Act.

The Trust's assets will consist only of Japanese Yen on demand deposit in two Japanese Yen-denominated accounts at JPMorgan Chase Bank, N.A., London Branch; an interest-bearing primary deposit account and a non-interest bearing secondary account. The Trust will not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in Japanese Yen owned by the Trust, plus accrued but unpaid interest, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of the Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of Japanese Yen and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the Trust.

Investors may obtain, 24 hours a day, foreign exchange pricing information based on the spot price of Japanese Yen from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. In addition, the Trust's Web site will provide ongoing pricing information for Japanese Yen spot prices and the Shares. Market prices for the Shares are available from a variety of sources, including brokerage firms, financial information Web sites and other information service providers. One such Web site is hosted by Bloomberg, [http://www.bloomberg.com/markets/currencies/asiapac\\_currencies.html](http://www.bloomberg.com/markets/currencies/asiapac_currencies.html), and it regularly reports current foreign exchange pricing information. The NAV

among other things, currency and currency index warrants).

of the Trust is published by the Sponsor on each day that the NYSE is open for regular trading and will be posted on the Trust's Web site.

The Trust will terminate upon the occurrence of any of the termination events listed in the Depositary Trust Agreement and will otherwise terminate on February 1, 2047.

The Sponsor, on behalf of the Trust, will rely on relief previously granted by the Division of Market Regulation<sup>14</sup> from certain trading requirements of the Act.<sup>15</sup> The Sponsor also intends to request guidance from the Commission on the application of the certification rules for quarterly and annual reports adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. In addition, the Trust will not be subject to the Exchange's corporate governance requirements, including the Exchange's audit committee requirements.<sup>16</sup>

#### *Trust's Expenses*

The Trust's only ordinary recurring expense is expected to be the Sponsor's fee. The Sponsor is obligated under the Depositary Trust Agreement to pay the following administrative and marketing expenses for the Trust: the Trustee's monthly fee, the Distributor's fee, NYSE listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses and up to \$100,000 per annum in legal fees and expenses. The Sponsor is also obligated to pay the costs of the Trust's organization and the

costs of the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the Japanese Yen in the Trust. Each month, the Trust will first withdraw Japanese Yen the Trust has earned as interest to pay the Sponsor's fee and any other Trust expenses that have been incurred. If that interest is not sufficient to fully pay the Sponsor's fee and Trust expenses, then the Trustee will withdraw Japanese Yen from the primary deposit account as needed. If the Trust incurs expenses in USD (which is not anticipated), Japanese Yen will be converted to USD at the prevailing market rate at the time of conversion to pay expenses.

In certain exceptional cases the following expenses may be charged to the Trust in addition to the Sponsor's fee: (1) Expenses and costs of any extraordinary services performed by the Trustee or the Sponsor on behalf of the Trust or action taken by the Trustee or the Sponsor to protect the Trust or interests of Shareholders; (2) indemnification of the Sponsor; (3) taxes and other governmental charges; and (4) expenses of the Trust other than those the Sponsor is obligated to pay pursuant to the Depositary Trust Agreement, including legal fees and expenses over \$100,000. If these additional expenses are incurred, the Trust will be required to pay these expenses by withdrawing deposited Japanese Yen and the amount of Japanese Yen represented by a Share will decline at such time. Accordingly, the Shareholders will effectively bear the cost of these other expenses, if incurred.

In order to pay the Trust's expenses, the Trustee will first withdraw Japanese Yen the Trust has earned as interest. In the event the Sponsor's fee and any other Trust expenses exceed the interest earned, additional Japanese Yen will be withdrawn from the primary deposit account as required to cover the expenses. For expenses not payable in Japanese Yen, the Trustee will direct that Japanese Yen be converted to USD as necessary for the Trustee to pay the Trust's expenses. The Trustee will direct that the smallest amount of Japanese Yen required to purchase amounts of U.S. Dollars sufficient to pay Trust expenses and the costs of currency conversion be withdrawn from the Trust.

#### *Liquidity*

The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced

<sup>14</sup> See letter from Racquel L. Russell, Branch Chief, SEC Division of Market Regulation, to George T. Simon, Foley & Lardner, dated June 21, 2006 ("June 21, 2006 letter") (granting relief from certain rules under the Act for the CurrencyShares Trusts); letter from James A. Brigagliano, Assistant Director, SEC Division of Market Regulation to Michael Schmidberger, Sidley, Austin, Brown & Wood, dated January 19, 2006 ("January 19, 2006 Letter") (granting relief from certain rules under the Act for the DB Commodity Index Tracking Master Fund). The Sponsor is relying on the June 21, 2006 Letter regarding Rule 10a-1, Rule 200(g) of Regulation SHO, and Rules 101 and 102 of Regulation M under the Act, and is relying on the January 19, 2006 Letter regarding Section 11(d)(1) of the Act and Rule 11d1-2 thereunder.

<sup>15</sup> See *infra* note 30.

<sup>16</sup> See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR-NYSE-2002-33, SR-NASD-2002-77, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts). See also Securities Exchange Act Release No. 47654 (April 25, 2003), 68 FR 18787 (April 16, 2003) (noting in Section II(F)(3)(c) that "SROs may exclude from Exchange Act Rule 10A-3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.")

by non-concurrent trading hours between the major foreign currency markets and the NYSE. The period of greatest liquidity in the Japanese Yen market is typically that time of the day when trading in the European time zones or Japan overlaps with trading in the United States, which is when OTC market trading in London, New York, and other centers coincides with futures and options trading on those currencies. While the Shares will trade on the NYSE until 4:15 p.m. (New York time), liquidity in the OTC market for the Japanese Yen will be slightly reduced after the close of the London foreign currency markets and before the opening of the Tokyo foreign currency market. Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the value of underlying currency held by the Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts and can be expected to operate efficiently in the case of the Shares and Japanese Yen. If the price of the Shares deviates enough from the price of Japanese Yen to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to Japanese Yen, an Authorized Participant, either on its own behalf or acting as agent for investors, arbitrageurs or traders, may buy the Shares at a discount, immediately redeem them in exchange for Japanese Yen and sell Japanese Yen in the cash market at a profit. If the Shares are expensive compared to Japanese Yen that underlies them, an Authorized Participant may sell the Shares short, buy enough Japanese Yen to create the number of Shares sold short, acquire the Shares through the creation process and deliver the Shares to close out the short position.<sup>17</sup> In both instances the arbitrageur serves efficiently to correct price discrepancies between the Shares and Japanese Yen.

<sup>17</sup> The Exchange notes that the Trust, which will only hold Japanese Yen as an asset in the normal course of its operations, differs from index-based exchange-traded funds, which may involve a trust holding hundreds or even thousands of underlying component securities, necessarily involving in the arbitrage process movements in a large number of security positions. See, e.g., Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR-NYSE-2002-28) (approving the UTP trading of Vanguard Total Market VIPERs based on the Wilshire 5000 Total Market Index).

### *Description of the Shares*

According to the Registration Statement, the Shares are not a traditional investment. They are dissimilar from the "shares" of a corporation operating a business enterprise, with management and a board of directors. Trust Shareholders do not have rights normally associated with owning shares of a business corporation, including, for example, the right to bring "oppression" or "derivative" actions. Shareholders have only those rights explicitly set forth in the Depositary Trust Agreement. All Shares are of the same class with equal rights and privileges. Each Share is transferable, is fully paid and non-assessable and entitles the holder to vote on the limited matters upon which Shareholders may vote under the Depositary Trust Agreement. The Shares do not entitle their holders to any conversion or pre-emptive rights or, except as provided in the Registration Statement, any redemption or distribution rights.

### *Distributions*

Each month the Depository will deposit into the secondary deposit account accrued but unpaid interest and the Trustee will withdraw Japanese Yen from the secondary deposit account to pay the accrued Sponsor's fee for the previous month plus other Trust expenses, if any. In the event the Sponsor's fee and any other Trust expenses exceed the interest earned on the primary deposit account, additional Japanese Yen will be withdrawn from the primary deposit account as required to cover the expenses. In the event that the interest deposited exceeds the sum of the Sponsor's fee for the prior month plus other Trust expenses, if any, then the Trustee will direct that the excess be converted into U.S. Dollars at a prevailing market rate and the Trustee will distribute the U.S. Dollars as promptly as practicable to Shareholders on a pro rata basis (in accordance with the number of Shares that they own).

### *Fees and Expenses*

Under the Deposit Account Agreement, the Depository is entitled to invoice the Trustee or debit the secondary deposit account for out-of-pocket expenses. The Trust has also agreed to reimburse the Depository for any taxes, levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings in connection with the Deposit Accounts, except for such items imposed on the overall net income of the Depository. Except for the reimbursable expenses just described,

the Depository will not be paid a fee for its services to the Trust. The Depository may earn a "spread" or "margin" on the Japanese Yen deposit balances it holds.

### *Voting and Approvals*

Shareholders have no voting rights under the Depositary Trust Agreement, except in limited circumstances. If the holders of at least 25% of the Shares outstanding for the Trust determine that the Trustee is in material breach of its obligations under the Depositary Trust Agreement, they may provide written notice to the Trustee (or require the Sponsor to do so) specifying the default and requiring the Trustee to cure such default. If the Trustee fails to cure such breach within 30 days after receipt of the notice, the Sponsor, acting on behalf of the Registered Owners, may remove the Trustee for the Trust. The holders of at least 66⅔% of the Shares outstanding may vote to remove the Trustee. The Trustee must terminate the Trust at the request of the holders of at least 75% of the outstanding Shares.

### *Book-Entry Form*

The Sponsor and the Trustee will apply to DTC for acceptance of the Shares in its book-entry settlement system. If the Shares are eligible for book-entry settlement, all Shares will be evidenced by global certificates issued by the Trustee to DTC and registered in the name of Cede & Co., as nominee for DTC. The global certificates will evidence all of the Shares outstanding at any time. In order to transfer Shares through DTC, Shareholders must be DTC Participants. The Shares will be transferable only through the book-entry system of DTC. A Shareholder that is not a DTC Participant will be able to transfer its Shares through DTC by instructing the DTC Participant holding its Shares. Transfers will be made in accordance with standard securities industry practice.

### *Issuance of the Shares*

The Trust creates and redeems Shares in Baskets on a continuous basis. A Basket is a block of 50,000 Shares. The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of Japanese Yen represented by the Baskets being created or redeemed. This amount is based on the combined NAV per Share of the number of Shares included in the Baskets being created or redeemed, determined on the day the order to create or redeem Baskets is accepted by the Trustee.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. An Authorized

Participant is a DTC Participant that is a registered broker-dealer or other securities market participant such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions and has entered into a Participant Agreement with the Trustee. Only Authorized Participants may place orders to create or redeem Baskets. Before initiating a creation or redemption order, an Authorized Participant must have entered into a Participant Agreement with the Sponsor and the Trustee. The Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of foreign currency required for creations and redemptions. The Participant Agreements may be amended by the Trustee, the Sponsor and the relevant Authorized Participant. Authorized Participants pay a transaction fee of \$500 to the Trustee for each order that they place to create or redeem one or more Baskets. Authorized Participants who make deposits with the Trust in exchange for Baskets receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust. No Authorized Participant has any obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

Certain Authorized Participants are expected to have the facility to participate directly in the global foreign exchange market. In some cases, an Authorized Participant may acquire foreign currency from, or sell foreign currency to, an affiliated foreign exchange trading desk, which may profit in these instances. The Sponsor believes that the size and operation of the foreign exchange market make it unlikely that an Authorized Participant's direct activities in the foreign exchange and securities markets will impact the price of Japanese Yen or the price of Shares. Each Authorized Participant will be registered as a broker-dealer under the Act and will be regulated by the National Association of Securities Dealers, Inc., or else will be exempt from being (or otherwise will not be required to be) so registered or regulated, and will be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants may be regulated under federal and state banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls and information barriers as it determines to

be appropriate in light of its own regulatory regime.

Authorized Participants may act for their own accounts or as agents for broker-dealers, depositories and other securities or foreign currency market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

#### *Creation and Redemption*

In order to create a Basket, the Authorized Participant deposits the applicable Basket Amount with the Depository and orders Shares from the Trustee.<sup>18</sup> The Trustee directs DTC to credit Shares to the Authorized Participant. The Authorized Participant will then be able to sell Shares to Purchasers on the NYSE or any other market in which the Shares may trade.

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. The creation or redemption of Shares can occur only in a Basket of 50,000 Shares or multiples thereof. For purposes of processing both purchase and redemption orders, a "business day" means any day other than a day when the NYSE is closed for regular trading. Purchase orders placed by 4:00 p.m. (New York time) on a business day will have that date as the purchase order date. By placing a purchase order, an Authorized Participant agrees to deposit Japanese Yen with the Trust. Before the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

The total deposit required to create each Basket, called the Basket Amount, is an amount of Japanese Yen bearing the same proportion to the number of Baskets to be created as the total assets of the Trust (net of estimated accrued but unpaid expenses) bears to the total number of Baskets outstanding on the date that the order to purchase is properly received. The amount of the required deposit is determined by

<sup>18</sup> The Trustee shall determine the Basket Amount "as promptly as practicable" after the Federal Reserve Bank of New York announces the Noon Buying Rate on each day that the NYSE is open for regular trading. Ordinarily, this will occur by 2 p.m. (New York time). The Basket Amount will be published on the Trust's Web site every day the NYSE is open for regular trading. The Registration Statement, the Participant Agreement and the Trust Agreement do not state a precise time each day for publication of the Basket Amount. It will be published simultaneously with the NAV. The Sponsor for the Trust has represented to the Exchange that the NAV and the Basket Amount for the Trust will be available to all market participants at the same time.

dividing the number of units of Japanese Yen held by the Trust (net of estimated accrued but unpaid expenses) by the number of Baskets outstanding. All questions as to the composition of a Basket Amount are finally determined by the Trustee. The Trustee's determination of the Basket Amount shall be final and binding on all persons interested in the Trust.

An Authorized Participant who places a purchase order is responsible for delivering the Basket Amount to the Trust's primary deposit account with the Depository as directed in the Authorized Participant's Participant Agreement. Authorized Participants will use the SWIFT system to make timely deposits through their bank correspondents in London. Upon receipt of a Japanese Yen deposit from an Authorized Participant, the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of Japanese Yen until such currency has been received by the Depository shall be borne solely by the Authorized Participant.

In order to redeem Shares, an Authorized Participant must send the Trustee a Redemption Order specifying the number of Baskets that the Authorized Participant wishes to redeem. The Trustee then instructs the Depository to send the Authorized Participant the Japanese Yen and directs DTC to cancel the Authorized Participant's Shares that were redeemed.

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 p.m. (New York time) on a business day. A redemption order so received will have that day as the order redemption date and will normally be effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Depository as directed in the Authorized Participant's Participant Agreement. Before the delivery of the redemption distribution for a

redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

#### *Determination of Redemption Distribution*

The redemption distribution from the Trust is a wire transfer, to an account of the redeeming Authorized Participant identified by the Authorized Participant, in the amount of Japanese Yen held by the Trust evidenced by the Shares being redeemed, giving effect to all estimated accrued but unpaid interest and expenses. Redemption distributions are subject to the deduction of any applicable tax or other governmental charges that may be due.<sup>19</sup> All questions as to the amount of a redemption distribution are finally determined by the Trustee. The Trustee's determination of the amount shall be final and binding on all persons interested in the Trust.

#### *Delivery of Redemption Distribution*

The redemption distribution due from the Trust is delivered to the Authorized Participant as directed in the Authorized Participant's Participant Agreement.

The Depository wires the redemption amount from the Deposit Account to an account of the redeeming Authorized Participant identified by the Authorized Participant. The Authorized Participant and the Trust are each at risk in respect of Japanese Yen credited to their respective accounts in the event of the Depository's insolvency.

The Trustee will reject a redemption order if the order is not in proper form as described in the Participant Agreement or if the fulfillment of the order, in the opinion of its counsel, might be unlawful.

#### *Valuation of Japanese Yen, Definition of Net Asset Value and Adjusted Net Asset Value*

The Trustee will calculate, and the Sponsor will publish, the Trust's NAV each business day. To calculate the NAV, the Trustee will add to the amount of Japanese Yen in the Trust at the end of the preceding day accrued but unpaid interest, Japanese Yen receivable under pending purchase orders and the value of other Trust

assets, and will subtract the accrued but unpaid Sponsor's fee, Japanese Yen payable under pending redemption orders and other Trust expenses and liabilities, if any.

The result is the NAV of the Trust for that business day. The Trustee shall also divide the NAV of the Trust by the number of Shares outstanding for the date of the evaluation then being made, which figure is the "NAV per Share." The NAV will be expressed in USD based on the Noon Buying Rate as determined by the Federal Reserve Bank of New York. If, on a particular evaluation day, the Noon Buying Rate has not been determined and announced by 2 p.m. (New York time), then the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate shall be used to determine the NAV of the Trust unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate to use as the basis for such valuation. In the event that the Trustee and the Sponsor determine that the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate is not an appropriate basis for valuation of the Trust's Japanese Yen, they shall determine an alternative basis for such evaluation to be employed by the Trustee. Such an alternative basis may include reference to other exchange traded securities that reflect the value of the Japanese Yen relative to the USD. The use of any alternative basis to determine NAV would be disclosed on the Trust's Web site. The Trustee also determines the NAV per Share, which equals the NAV of the Trust divided by the number of outstanding Shares. The Sponsor will publish the NAV and NAV per Share on each day that the NYSE is open for regular trading on the Trust's Web site, [www.currencyshares.com](http://www.currencyshares.com).

#### *Clearance and Settlement*

The Sponsor and the Trustee will apply to DTC for acceptance of the Shares in its book-entry settlement system. If the Shares are eligible for book-entry settlement, all Shares will be evidenced by one or more global certificates that the Trustee will issue to DTC. The Shares will be available only in book-entry form. Shareholders may hold their Shares through DTC, if they are DTC Participants, or through Authorized Participants or Indirect Participants.

If the Shares are eligible for book-entry settlement, individual certificates will not be issued for the Shares. Instead, global certificates will be signed by the Trustee and the Sponsor on behalf of the Trust, registered in the

name of Cede & Co., as nominee for DTC, and deposited with the Trustee on behalf of DTC. The representations, undertakings and agreements made on the part of the Trust in the global certificates will be made and intended for the purpose of binding only the Trust and not the Trustee or the Sponsor individually.

Upon the settlement date of any creation, transfer or redemption of Shares, DTC will credit or debit, on its book-entry registration and transfer system, the amount of the Shares so created, transferred or redeemed to the accounts of the appropriate DTC Participants. The Trustee and the Authorized Participants will designate the accounts to be credited and charged in the case of creation or redemption of Shares.

Beneficial ownership of the Shares is limited to DTC Participants, Indirect Participants and persons holding interests through DTC Participants and Indirect Participants. Ownership of beneficial interests in the Shares will be shown on, and the transfer of ownership will be effected only through, records maintained by DTC (with respect to DTC Participants), the records of DTC Participants (with respect to Indirect Participants) and the records of Indirect Participants (with respect to Shareholders that are not DTC Participants or Indirect Participants). A Shareholder is expected to receive from or through the DTC Participant maintaining the account through which the Shareholder purchased its Shares a written confirmation relating to the purchase.

DTC may discontinue providing its service with respect to Baskets or the Shares (or both) by giving notice to the Trustee and the Sponsor. Under such circumstances, the Trustee and the Sponsor would either find a replacement for DTC to perform its functions at a comparable cost or, if a replacement is unavailable, terminate the Trust.

#### *Risk Factors To Investing in the Shares*

An investment in the Shares carries certain risks. The following risk factors are taken from and discussed in more detail in the Registration Statement:

- The value of the Shares relates directly to the value of the Japanese Yen held by the Trust. Fluctuations in the price of Japanese Yen could materially and adversely affect the value of the Shares.
- The Japanese Yen/USD exchange rate, like foreign exchange rates in general, can be volatile and difficult to predict. This volatility could materially

<sup>19</sup> Authorized Participants are responsible for any transfer tax, sales or use tax, recording tax, value added tax or similar tax or governmental charge applicable to the creation or redemption of Baskets, regardless of whether or not such tax or charge is imposed directly on the Authorized Participant, and agree to indemnify the Sponsor, the Trustee and the Trust if they are required by law to pay any such tax, together with any applicable penalties, additions to tax or interest thereon.

and adversely affect the performance of the Shares.

- If interest earned by the Trust does not exceed expenses, the Trustee will withdraw Japanese Yen from the Trust to pay these excess expenses which will reduce the amount of Japanese Yen represented by each Share on an ongoing basis.

- If the Trust incurs expenses in USD, the Trust would be required to sell Japanese Yen to pay these expenses. The sale of the Trust's Japanese Yen to pay expenses in USD at a time of low Japanese Yen prices could adversely affect the value of the Shares.

- Purchasing activity in the Japanese Yen market associated with the purchase of Baskets from the Trust may cause a temporary increase in the price of Japanese Yen. This increase may adversely affect an investment in the Shares.

- The Deposit Accounts are not entitled to payment at any office of JP Morgan Chase Bank, N.A. located in the United States.

- Shareholders will not have the protections associated with ownership of a demand deposit account insured in the United States by the Federal Deposit Insurance Corporation or the protection provided under English law.

Japanese Yen deposited in the Deposit Accounts by an Authorized Participant will be commingled with Japanese Yen deposited by other Authorized Participants and will be held by the Depository in either the primary deposit account or the secondary deposit account of the Trust. Japanese Yen held in the Deposit Accounts will not be segregated from the Depository's other assets. If the Depository becomes insolvent, then its assets might not be adequate to satisfy a claim by the Trust or any Authorized Participant. In addition, in the event of the insolvency of the Depository or the U.S. bank of which it is a branch, there may be a delay and costs incurred in recovering the Japanese Yen held in the Deposit Accounts.

- The Shares are a new securities product. Their value could decrease if unanticipated operational or trading problems were to arise.

- Shareholders will not have the protections associated with ownership of shares in an investment company registered under the Investment Company Act of 1940.

- Shareholders will not have the rights enjoyed by investors in certain other financial instruments.

- The Shares may trade at a price that is at, above, or below the NAV per Share.

- The interest rate earned by the Trust, although competitive, may not be the best rate available. If the Sponsor determines that the interest rate is inadequate, then its sole recourse will be to remove the Depository and terminate the Deposit Accounts.

- The Depository owes no fiduciary duties to the Trust or the Shareholders, is not required to act in their best interest and could resign or be removed by the Sponsor with respect to the Trust, triggering early termination of the Trust.

- Shareholders may incur significant fees upon the termination of the Trust.

- Redemption orders are subject to rejection by the Trustee under certain circumstances.

- Substantial sales of Japanese Yen by the official sector could adversely affect an investment in the Shares.

- Shareholders that are not Authorized Participants may only purchase or sell their Shares in secondary trading markets.

- The liability of the Sponsor and the Trustee under the Depository Trust Agreement is limited; and, except as set forth in the Depository Trust Agreement, they are not obligated to prosecute any action, suit or other proceeding in respect to any Trust property.

- The Depository Trust Agreement may be amended to the detriment of Shareholders without their consent.

- The License Agreement with the Bank of New York may be terminated by the Bank of New York in the event of a material breach by the Sponsor. Termination of the License Agreement might lead to early termination and liquidation of the Trust.

#### *Availability of Information Regarding Foreign Currency Prices*

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of foreign currency price and market information available on public Web sites and through professional and subscription services. As is the case with equity securities generally and exchange-traded funds specifically, in most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

Investors may obtain on a 24-hour basis foreign currency pricing information based on the foreign

currency spot price of each applicable foreign currency from various financial information service providers. Complete real-time data for foreign currency futures and options prices traded on the CME and Phlx are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

There are a variety of other public Web sites available at no charge that provide information on the Japanese Yen and other foreign currencies underlying CurrencyShares, which service providers include Bloomberg, (<http://www.bloomberg.com/markets/currencies/fxc.html>), CBS Market Watch ([www.marketwatch.com/tools/stockresearch/globalmarkets](http://www.marketwatch.com/tools/stockresearch/globalmarkets)), Yahoo! Finance ([www.finance.yahoo.com/currency](http://www.finance.yahoo.com/currency)), moneycentral.com, cnfnfn.com and reuters.com, which provide spot price or currency conversion information about the Japanese Yen and other currencies. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays. In addition, major market data vendors regularly report current currency exchange pricing for a fee for the Japanese Yen and other currencies.<sup>20</sup> Like bond securities traded in the OTC market with respect to which pricing information is available directly from bond dealers, current foreign currency spot prices are also generally available with bid/ask spreads from foreign currency dealers.<sup>21</sup>

In addition, the Trust's Web site will provide the following information: (1) The spot price for Japanese Yen,<sup>22</sup>

<sup>20</sup> There may be incremental differences in the Japanese Yen spot price among the various information service sources. While the Exchange believes the differences in the Japanese Yen spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of Japanese Yen or derivatives thereon, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

<sup>21</sup> See, e.g., Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR-Amex-2001-35) (noting that quote and trade information regarding debt securities is widely available to market participants from a variety of sources, including broker-dealers, information service providers, newspapers and Web sites).

<sup>22</sup> The Trust's website's foreign currency spot price will be provided by FactSet Research Systems ([www.factset.com](http://www.factset.com)). The NYSE will provide a link to the Trust's website. FactSet Research Systems is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor or the Exchange. In the event that the Trust's website should cease to provide this foreign currency spot price information

including the bid and offer and the midpoint between the bid and offer for the Japanese Yen spot price, updated every 5 to 10 seconds;<sup>23</sup> which is an essentially real-time basis; (2) an intraday indicative value ("IIV") per share for the Shares calculated by multiplying the indicative spot price of the Japanese Yen by the quantity of Japanese Yen backing each Share, updated at least every 15 seconds;<sup>24</sup> (3) a delayed indicative value (subject to a

20 minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) the NAV of the Trust as calculated each business day by the Trustee; (6) accrued interest per Share; (7) the daily Federal Reserve Bank of New York Noon Buying Rate; (8) the Basket Amount for the Japanese Yen; and (9) the last sale price of the Shares as traded in the U.S. market, subject to

a 20-minute delay, as it is provided free of charge.<sup>25</sup> The Exchange will provide on its own public Web site ([www.nyse.com](http://www.nyse.com)) a link to the Trust's Web site.

#### *Other Characteristics of the Shares*

Set forth below is a table that shows the initial number of currency units per Share, the number of Shares per Basket and the number of currency units per Basket:

| Trust name                              | Currency units per share | Shares per basket | Currency units per basket |
|-----------------------------------------|--------------------------|-------------------|---------------------------|
| CurrencyShares Japanese Yen Trust ..... | 10,000                   | 50,000            | 500,000,000               |

For the Trust, a minimum of three Baskets, representing 150,000 Shares, will be outstanding at the commencement of trading on the Exchange.

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each business day. The minimum trading increment for Shares on the Exchange will be \$0.01.

#### *Listing Fees*

The Exchange original listing fee applicable to the listing of the Trust will be \$5,000. The annual continued listing fee for the Trust will be \$2,000.

#### *Continued Listing Criteria*

Under the applicable continued listing criteria, the Exchange will commence delisting proceedings with respect to Shares of the Trust as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the Japanese Yen is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Trustee, or the Exchange or the Exchange stops providing a hyperlink

on the Exchange's Web site to any such unaffiliated foreign currency value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

#### *Exchange Trading Rules and Policies*

The Shares are considered "securities" pursuant to NYSE Rule 3 and are subject to all applicable trading rules. Trading in the Shares will be subject to all provisions of Rules 1300A *et seq.*<sup>26</sup> The Exchange does not currently exempt Currency Trust Shares from the Exchange's "Market-on-Close/Limit-on-Close/Pre-Opening Price Indications" Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

The Exchange has adopted Rule 1301A ("Currency Trust Shares: Securities Accounts and Orders of Specialists") to ensure that specialists handling Currency Trust Shares provide the Exchange with all necessary

information relating to their trading in the applicable non-U.S. currency, options, futures contracts and options thereon or any other derivative on such currency.<sup>27</sup> As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations that are members or affiliates of the Intermarket Surveillance Group ("ISG") of which such subsidiary or affiliate is a member.

#### *Surveillance*

The Exchange's surveillance procedures will be comparable to those used for Investment Company Units, and streetTRACKS® Gold Shares and the currently-traded CurrencyShares Trusts and will incorporate and rely upon existing NYSE surveillance procedures governing equities. The

from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will commence delisting proceedings for the Shares.

<sup>23</sup> The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares. For example, assuming a Japanese Yen spot bid of \$.0086 and an offer of \$.0087, the mid point would be calculated as follows: (Japanese Yen spot bid plus ((spot offer minus spot bid) divided by 2)) or (\$.0086 + (\$.0087 - \$.0086/2)) = \$.00865.

<sup>24</sup> The intraday indicative value of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. *See, e.g.,*

Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR-NYSE-2002-51) for a discussion of indicative portfolio value in the context of an exchange-traded fund.

<sup>25</sup> The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

<sup>26</sup> In particular, Rule 1300A provides that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable non-U.S. currency, options, futures or options on futures on such currency, or

any other derivatives based on such currency, except as otherwise provided therein.

<sup>27</sup> Rule 1301A also states that, in connection with trading the applicable non-U.S. currency, options, futures or options on futures or any other derivatives on such currency (including Currency Trust Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures, or any other derivatives on such currency. For purposes of Rule 1301A, "person associated with a member" shall have the same meaning ascribed to it in section 3(a)(21) of the Act.

Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares, to detect violations of Exchange rules, consequently deterring manipulation.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, foreign currency options and foreign currency futures, including Japanese Yen options and futures, through NYSE members, in connection with such members' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. Specifically, the NYSE can obtain such information from the Phlx in connection with Japanese Yen options trading on the Phlx and from the CME in connection with Japanese Yen futures trading on those exchanges.<sup>28</sup>

The Exchange's surveillance procedures will be comparable to those used for investment company units currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities.

#### *Trading Halts*

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in Japanese Yen or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's "circuit breaker" rule.<sup>29</sup> If the value of Japanese Yen updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust or the Exchange; or (2) the IIV per Share updated every 15 seconds is not being

disseminated, the Exchange may halt trading during the day in which the interruption to such dissemination occurs. If the interruption to the dissemination of the value of the Japanese Yen or the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

#### *Due Diligence*

Before a member, member organization, allied member or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to Exchange Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

#### *Information Memo*

The Exchange will distribute an Information Memo to its members in connection with the trading in the Shares. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the indicative price of Japanese Yen and IIV, dissemination information, trading information and the applicability of suitability rules.<sup>30</sup> The Information Memo will also state that the number of units Japanese Yen required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that the Trust is required to withdraw or sell units of foreign currency to pay the Trust's expenses. The Memo also will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Memo also will reference the fact that there is

no regulated source of last sale information regarding foreign currency, and that the Commission has no jurisdiction over the trading of foreign currency. Finally, the Memo also will note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares.

#### *2. Statutory Basis*

The basis under the Act for this proposed rule change, as amended, is the requirement under section 6(b)(5) of the Act<sup>31</sup> that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

#### *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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-03 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.

<sup>28</sup> Phlx is a member of ISG. CME is an affiliate member of ISG.

<sup>29</sup> NYSE Rule 80B.

<sup>30</sup> The Information Memo will discuss exemptive relief granted by the Commission from certain rules under the Act. See note 14, *supra*.

<sup>31</sup> 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR-NYSE-2007-03. 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 will also be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2007-03 and should be submitted by March 13, 2007.

#### IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act<sup>32</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>33</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,<sup>34</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

##### A. Surveillance

The Commission finds that the proposed rule change provides the NYSE with the tools necessary to

monitor trading in the Shares and is designed to prevent fraudulent and manipulative acts and practices. Information sharing agreements with markets trading securities underlying a derivative, or primary markets trading derivatives on the same underlying instruments, are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.<sup>35</sup> Although an information sharing agreement is not possible with the OTC foreign exchange market, the Commission believes that the Exchange's comprehensive surveillance sharing agreements with the Phlx and CME, by virtue of their memberships in the ISG, together with NYSE Rules 1301A and 1300A(b), will allow the NYSE to monitor for fraudulent and manipulative trading practices.<sup>36</sup>

NYSE Rule 1301A requires that the specialist handling the Shares provide the Exchange with information relating to its trading in options, futures or options on futures on the Japanese Yen, or any other derivatives based on the Japanese Yen. These reporting and recordkeeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. NYSE Rule 1301A(c) also prohibits the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Japanese Yen, or options, futures or options on futures on the Japanese Yen, or any other derivatives based on the Japanese Yen (including the Shares). In addition, NYSE Rule 1300A(b) prohibits the specialist in the Shares from being affiliated with a market maker in the Japanese Yen, or options, futures or options on futures on the Japanese Yen,

or any other derivative based on the Japanese Yen, unless information barriers are in place that satisfy the requirements in NYSE Rule 98.

The Exchange also represents that it can obtain, through its ISG membership, information from CME regarding the trading of the Japanese Yen futures, and options on those futures, that trade on CME, and from Phlx regarding the trading of options on the Japanese Yen that trade on Phlx. In addition, the Exchange represents that it is able to obtain information regarding trading in the Shares, and options and futures on the Japanese Yen, through its members, in connection with such members' proprietary or customer trades that they effect on any relevant market.

##### B. Dissemination of Information

The Commission believes that sufficient venues for obtaining reliable information exist so that investors in the Shares can monitor the underlying Japanese Yen spot market relative to the NAV of their Shares. As discussed above, the Exchange represents that there is a considerable amount of foreign currency price and market information available 24 hours a day through public Web sites and through professional and subscription services, including Bloomberg and Reuters.<sup>37</sup> The Exchange further represents that major market data vendors regularly report current currency exchange pricing for a fee for the Japanese Yen underlying the Shares. In addition, the Exchange will provide a link to the Trust's Web site on the NYSE's public Web site. The Trust's Web site will provide, among other things, the Japanese Yen spot prices,<sup>38</sup> including the bids and offers and the midpoints between the bids and offers for the Japanese Yen, updated no less than every 5 to 10 seconds, and the daily Federal Reserve Bank of New York Noon Buying Rate.

The Commission also notes that the Trust's Web site will contain: (1) An IIV per Share for the Shares, updated at least every 15 seconds; (2) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (3) premium/ discount information, calculated on a 20 minute delayed basis; (4) the NAV of the Trust, as calculated

<sup>35</sup> See, e.g., Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving proposal by the NYSE to list and trade trust shares that correspond to a fixed amount of gold).

<sup>36</sup> The Commission notes that it has previously approved the listing and trading of foreign currency options and warrants. See, e.g., Securities Exchange Act Release Nos. 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982) (order approving a Phlx proposal to accommodate the listing and trading of standardized option contracts on five foreign currencies, including the British Pound and Swiss Franc); 22471 (September 26, 1985), 50 FR 40636 (October 4, 1985) (order approving a proposed rule change by the Chicago Board Options Exchange, Inc. ("CBOE") to trade standardized option contracts on six foreign currencies, including the British Pound, Canadian Dollar, and Swiss Franc); 23945 (December 30, 1986), 52 FR 633 (January 7, 1987) (order approving a proposal by the CBOE to trade standardized options on the Australian Dollar); and 35806 (June 5, 1995), 60 FR 30911 (June 12, 1995) (order approving a Phlx proposal to trade currency warrants based on the value of the U.S. dollar in relation to the Mexican Peso).

<sup>37</sup> The Exchange notes that, in most instances, real-time information is available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

<sup>38</sup> As noted above, the spot price for the Japanese Yen published on the Trust's Web site will be provided by FactSet Research Systems, which is not affiliated with the Trust, the Trustee, the Sponsor, the Depository, the Distributor or the Exchange.

<sup>32</sup> 15 U.S.C. 78f.

<sup>33</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

each business day by the Trustee;<sup>39</sup> (5) accrued interest per Share; (6) the Basket Amount for the Japanese Yen; and (7) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.<sup>40</sup> Further, the Exchange represents that real-time information for prices for futures and options on the Japanese Yen traded on CME and Phlx are available from information service providers, and that CME and Phlx provide delayed futures and options information free of charge on their respective Web sites. The Commission believes that the wide availability of such information, as described above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage.

### C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to NYSE rules including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting rules and procedures governing the trading of ICUs on the NYSE. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Memo the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including their prospectus delivery obligations.

### D. Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission has previously granted approval to a NYSE proposal to adopt NYSE Rules 1300A and 1301A that govern the trading of Currency Trust

Shares, and a proposal to list and trade Euro Shares pursuant to such rules.<sup>41</sup> The Shares proposed to be listed and traded in this proposed rule change, are substantially similar in structure and operation to the Euro Shares, will be listed and traded pursuant to the same rules, and do not raise any new issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>42</sup> to approve the proposal, as amended, on an accelerated basis.

### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>43</sup> that the proposed rule change (SR-NYSE-2007-03), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>44</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55281; File No. SR-NYSE-2007-07]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Crossing Session III and IV Pilot

February 12, 2007.

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 January 26, 2007, the New York Stock Exchange LLC ("NYSE" 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 pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it

<sup>41</sup> See Securities Exchange Act Release No. 52843, (November 28, 2005), 70 FR 72486 (December 5, 2005), (SR-NYSE-2005-65) (order granting accelerated approval, after a 15-day comment period, to a NYSE proposal to list and trade Euro Shares, which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 15 U.S.C. 78s(b)(2).

<sup>44</sup> 17 CFR 200.30-3(a)(12).

<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).

effective upon filing with the Commission.<sup>4</sup> 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 NYSE proposes to extend until February 1, 2008 the following pilot programs ("Pilots"): Crossing Session III, for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4:00 p.m. trading session; and Crossing Session IV, whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price ("VWAP") for the subject security. The text of the proposed rule change is available at the NYSE, the Commission's Public Reference Room, and <http://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 NYSE 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

In SR-NYSE-2002-40,<sup>5</sup> the Commission approved an order establishing two new crossing sessions (Crossing Sessions III and IV) in the Exchange's Off-Hours Trading Facility ("OHTF") as a pilot program ("Pilot"), expiring on December 1, 2004. Subsequently, the Commission published two notices of filing and immediate effectiveness of a proposed rule change extending the Pilot until

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

<sup>5</sup> See Securities Exchange Act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003).

<sup>39</sup> According to the Exchange, the Sponsor has represented to the Exchange that the NAV for the Trust will be available to all market participants at the same time. The Exchange further represents that therefore, no market participant will have a time advantage in using such data.

<sup>40</sup> As noted above, the last sale price of the Shares in the secondary market will be disseminated over the Consolidated Tape.