

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51067; File No. SR-PCX-2004-132)

January 21, 2005

Self-Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Trading, Either by Listing or Pursuant to Unlisted Trading Privileges, Commodity-Based Trust Shares and Trading, Pursuant to Unlisted Trading Privileges, iShares® COMEX Gold Trust

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 December 28, 2004, the Pacific Exchange, Inc. (“PCX” 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 prepared by the Exchange. On January 13, 2005, PCX amended the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1, dated January 13, 2005 (“Amendment No. 1”). In Amendment No. 1, the Exchange proposed new PCXE Rules 8.201(g) – (i), which set forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered Market Makers in Commodity-Based Trust Shares, explained in further detail below. In addition, the Exchange proposed changes to Commentary .04 to PCXE Rule 8.201 for the purpose of clarifying that the Exchange will submit separate rule filings under Section 19(b)(2) of the Act in connection with the listing and/or trading of each Commodity-Based Trust Shares. Further, in Amendment No. 1 the Exchange represented that (1) as provided in the Registration Statement to the Trust, the trustee will charge a transaction fee in connection with the redemption and/or creation of Baskets; (2) Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 Shares of the Trust to compose the initial Baskets; and (3) the Exchange’s surveillance procedures are adequate to properly monitor the trading of the Shares.

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

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. With this filing, PCX proposes new PCXE Rule 8.201 in order to permit trading, either by listing or pursuant to unlisted trading privileges ("UTP"), trust issued receipts based on commodity interests ("Commodity-Based Trust Shares") and trading, pursuant to UTP, iShares® COMEX⁴ Gold Trust Shares ("Gold Shares").⁵ The text of the proposed rule change is available at the PCX's Web site

http://www.pacificex.com/legal/legal_pending.html, the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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 these statements may be examined at the places specified in Item III below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁴ COMEX is a division of the New York Mercantile Exchange, Inc. ("NYMEX") where gold futures contracts are traded.

⁵ Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 21, 2005 (regarding scope of proposed rule change).

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new PCXE Rule 8.201 in order to permit trading, either by listing or pursuant to UTP, of Commodity-Based Trust Shares. The Exchange also proposes to trade pursuant to UTP the Gold Shares.

Introduction

PCXE Rule 8.201 will permit ArcaEx to list and trade Commodity-Based Trust Shares. Under the rule, for each series of Commodity-Based Trust Shares, the Exchange will submit for Commission review and approval a filing pursuant to Section 19(b) of the Act.⁶ Proposed PCXE Rule 8.201(e) sets forth initial and continued listing and trading criteria for Commodity-Based Trust Shares on ArcaEx.⁷ This rule proposal is based on the rules of the American Stock Exchange, LLC (“Amex”).⁸

The Exchange initially proposes to trade, pursuant to UTP, iShares® COMEX Gold Trust Shares that represent beneficial ownership interests in the net assets of the Trust consisting

⁶ 15 U.S.C. 78s(b). Because of the nature of the Gold Trust, representing an interest in underlying gold, the Exchange’s existing listing and trading rules that permit the listing and trading of TIRs pursuant to Rule 19b-4(e) under the Securities Act of 1934 (“Act”) (“Generic Listing Standards”) cannot be used to list or trade pursuant to UTP this product.

⁷ Proposed PCXE Rule 8.201 for Commodity-Based Trust Shares tracks but is not identical to current PCXE Rule 8.200 relating to TIRs. The initial listing standards set forth in PCXE Rule 8.201 provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section “Criteria for Initial and Continued Listing,” the Exchange represents the minimum number of Gold Shares required to be outstanding at the time of trading to be 150,000. See Amendment No. 1, supra note 3.

⁸ See Securities Exchange Act Release No. 50792 (December 3, 2004) 69 FR 71446 (December 9, 2004) (SR-Amex-2004-38) (“Amex Notice”); Securities Exchange Act Release No. 51058 (January 19, 2005)(“Amex Order”).

primarily of gold. As explained further herein, Gold Shares will be issued in baskets. Initially, each basket of 50,000 shares will correspond to 5,000 troy ounces of gold. Thus, each Gold Share will correspond to one-tenth of a troy ounce of gold.⁹ The Gold Shares will conform to the initial and continued listing criteria under PCXE Rule 8.201(e). The Gold Trust will be formed under a depositary trust agreement, among Bank of New York (“BNY”) as Trustee, Barclays Global Investors, N.A. (“Barclays”) as the Sponsor, all depositors,¹⁰ and the holders of Gold Shares.¹¹

In effect, purchasing Gold Shares in the Trust will provide investors a new mechanism to participate in the gold market. The Trustee will not actively manage the gold held by the Trust. Information about the liquidity, depth, and pricing mechanisms of the international gold market, management and structure of the Trust, and description of the Gold Shares follows below.

Description of the Gold Market

In its filing with the Commission, the PCX made the following representations regarding the worldwide gold market, citing the proposal of the Amex to list the Gold Shares.¹² The gold market is a global marketplace consisting of both over-the-counter (“OTC”) transactions and exchange-traded products. The OTC market generally consists of transactions in spot, forwards, options and other derivatives, while exchange-traded transactions consist of futures and options on futures.

⁹ The amount of gold associated with each basket (and individual Gold Share) is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

¹⁰ Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 Shares of the Trust to compose the initial Baskets. See Amendment No. 1, supra note 3.

¹¹ The Trust is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (“1940 Act”).

¹² See Amex Notice.

(a) The OTC Market

The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads – the differential between a dealer’s buy and sell prices. The period of greatest liquidity in the gold market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in London, New York, and other centers coincides with futures and options trading on the COMEX.¹³ This period lasts for approximately four (4) hours each New York business day morning.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are in London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world’s major bullion dealers are either members or associate members of the London Bullion Market Association (“LBMA”), a trade association of participants in the London Bullion market.

There are no authoritative published figures for overall worldwide volume in gold trading. There are published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.¹⁴

¹³ The open outcry trading hours of the COMEX gold futures contract is from 8:20 a.m. to 1:30 p.m. New York time Monday through Friday. NYMEX ACCESS®, an electronic trading system, is open for trading on COMEX gold futures contracts from 2:00 p.m. Monday afternoon until 8:00 a.m. Friday morning New York time; and from 7:00 p.m. Sunday night until Monday morning at 8:00 a.m. New York time.

¹⁴ Information regarding clearing volume estimates by the LBMA can be found at http://www.lbma.org.uk/clearing_table.htm. The three measures published by the LBMA are: volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day.

The monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day. Through September 2004, the monthly average daily volume has ranged from a high of 17 million to a low of 12.4 million. The COMEX also publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold futures and options contracts was 4.89 million (48,943 contracts) and 1.7 million (17,241 contracts) troy ounces per day, respectively. Through October 2004, the average daily volume for gold futures and options was 6.08 million (60,817 contracts) and 2.01 million (20,173 contracts), respectively.¹⁵

(b) Futures Exchanges

The most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange (“TOCOM”).¹⁶ Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded.

The daily settlement price for COMEX gold futures contracts is publicly available on the NYMEX Web site at <http://www.nymex.com>.¹⁷ The Exchange will provide a hyperlink on its

The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

¹⁵ Information regarding average daily volume estimates by the COMEX can be found at http://www.nymex.com/jsp/markets.md_annual-volume6.jsp#2. The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

¹⁶ There are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange and the Hong Kong Chinese Gold & Silver Exchange Society.

¹⁷ The COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of trading of regular trading on the COMEX. NYMEX Rule 3.43 sets forth the composition of the subcommittee requiring that it consist of three (3) members that represent the gold market. Specifically, the Rule calls for the subcommittee to include a floor broker, a floor trader, and one who

Web site (<http://www.pacificex.com>), via the ArcaEx Web site (<http://www.archipelago.com>), to the NYMEX Web site for the purpose of disclosing gold futures contract pricing.¹⁸ In addition, the PCX represents that COMEX gold futures prices, options on futures quotes, and last sale information are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. The PCX further represents that complete real-time data for COMEX gold futures and options is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site at <http://www.nymex.com>. The contract specifications for COMEX gold futures contracts are also available from the NYMEX at its Web site at <http://www.nymex.com>, as well as other financial informational sources.

(c) Gold Market Regulation

There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur. In the United Kingdom, responsibility for the regulation of financial market participants, including the major

represents the trade. Rule 3.02 provides restrictions on Committee members and others who possess material, non-public information. A Committee Member is prohibited from disclosing for any purpose other than the performance of official duties relating to the Committee, material, non-public information obtained as a result of such person's participation on the Committee. In addition, no person may trade for his own account or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information that such person knows was obtained from such Committee member in violation of Rule 3.02. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 18, 2005.

¹⁸ Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005.

participating members of the LBMA, falls under the authority of the Financial Services Authority (“FSA”) as provided by the Financial Services and Market Act of 2000 (“FSM Act”). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

Participants in the U.S. OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the U.S., the Commodity Futures Trading Commission (“CFTC”), an independent governmental agency with the mandate to regulate commodity futures and options markets in the U.S., regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

TOCOM has authority to perform financial and operational surveillance on its members’ trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets’ prices.

Trust Management and Structure

Initially, the Exchange proposes to trade pursuant to UTP on ArcaEx Gold Shares, which represent units of fractional undivided beneficial interest in and ownership of the Trust. The purpose of the Trust is to hold gold bullion.¹⁹ The Exchange states that the investment objective of the Trust is for the Gold Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Exchange states that the Trust is not a registered investment company under the 1940 Act and is not required to register under such Act. The Sponsor (Barclays), Trustee (BNY), and Custodian (The Bank of Nova Scotia) are not affiliated with one another or with the Exchange.

Trust Expenses and Management Fees

Generally, the assets of the Trust (e.g., gold bullion) will be sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of an investor's Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include (1) fees paid to the Sponsor, (2) fees paid to the Trustee, (3) fees paid to the Custodian, and (4) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration

¹⁹ The Commission has previously approved the listing of 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. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

fees, and Amex listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value ("NAV") of the Trust.

Description and Characteristics of the Gold Shares

(i) Liquidity

The Exchange represents that a minimum of 150,000 Gold Shares will be outstanding at the start of trading.²⁰ The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of trust issues receipts, Portfolio Depository Receipts and Index Fund Shares.

While the Gold Shares will trade on the Amex and ArcaEx until 4:15 p.m. New York time, liquidity in the OTC market for gold will be reduced after the close of the COMEX at 1:30 p.m. New York time when daily trading at COMEX and other world gold trading counters ends. Trading spreads and the resulting premium or discount on the Gold Shares may widen as a result of reduced liquidity in the OTC gold market. The Exchange does not believe that the Gold Shares will trade at a material discount or premium to the value of the underlying gold held by the Trust because of arbitrage opportunities.²¹

(ii) Creation and Redemption of Trust Shares

Gold Shares will be issued only in baskets of 50,000 shares or multiples thereof (such aggregation referred to as the "Basket Aggregation" or "Basket"). The Trust will issue and redeem the Gold Shares on a continuous basis, by or through participants that have entered into

²⁰ See Amendment No. 1, supra note 3.

²¹ PCX represents that Gold Shares will only trade on ArcaEx during Amex trading hours for this product of 9:30 a.m. to 4:15 p.m., New York time. These are the hours during which Amex disseminates the Indicative Trust Value. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 21, 2005.

participant agreements (each, an “Authorized Participant”)²² with the Sponsor, Barclays, and the Trustee, BNY, at the NAV per share next determined after an order to purchase or redeem Gold Shares in a Basket Aggregation is received in proper form. Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Gold Shares for resale.

Basket Aggregations will be issued in exchange for a corresponding amount of gold, measured in fine ounces (the “Basket Gold Amount”). The Basket Gold Amount will be determined at or about 4:00 p.m. each business day by the Trustee, BNY.²³ Initially, creation of a Basket will require delivery of 5,000 fine ounces of gold. This Basket Gold Amount will change from day to day and decrease over the life of the Trust due to the payment or accrual of fees and other expenses payable by the Trust. On each day that the Amex is open for regular trading, the BNY will adjust the quantity of gold constituting the Basket Gold Amount as appropriate to reflect sales of gold, any loss of gold that may occur, and accrued expenses.²⁴ The BNY will determine the Basket Gold Amount for a given business day by multiplying the NAV

²² An “Authorized Participant” is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company (“DTC”) Participant or an Indirect Participant, and (iii) has in effect a valid Authorized Participant Agreement.

²³ At the same time the BNY will also determine an “Indicative Basket Gold Amount” that Authorized Participants can use as an indicative amount of gold to be deposited for issuance of the Gold Shares on the next business day. The Trustee will disseminate daily the Indicative Basket Gold Amount on the Trust Web site. Because the creation/redemption process is based entirely on the physical delivery of gold (and does not contemplate a cash component), the actual number of fine ounces required for the Indicative Basket Gold Amount will not change intraday, even though the value of the Indicative Amount may change based on the market price of gold.

²⁴ The Trust’s expense ratio, in the absence of any extraordinary expenses and liabilities, is established at 0.40% of the net assets of the Trust. As a result, the amount of gold by which the Basket Gold Amount will decrease each day will be predictable (i.e. 1/365th of the net asset value of the Trust multiplied by 0.40%).

for each Gold Share by the number of Gold Shares in each Basket (50,000) and dividing the resulting product by that day's COMEX settlement price for the spot month gold futures contract. Authorized Participants that submitted an order prior to 4:00 p.m. to purchase a Basket must transfer the Basket Gold Amount to the Trust in exchange for a Basket.

Gold Shares are not individually redeemable, and Authorized Participants that wish to redeem a Basket (i.e., 50,000 Gold Shares) will receive the Basket Gold Amount in exchange for each Basket surrendered. Upon the surrender of the Gold Shares and payment of the applicable Trustee's fee and any expenses, taxes or charges, the BNY will deliver to the redeeming Authorized Participant the amount of gold corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, gold will then be delivered to the redeeming Authorized Participants in the form of physical bars only.²⁵ Thus, although Authorized Participants place orders to purchase or redeem Gold Shares throughout the trading day, the actual Basket Gold Amount is determined at 4:00 p.m. or shortly thereafter.

The Bank of Nova Scotia ("BNS") will be the custodian for the Trust and responsible for safekeeping the gold.²⁶ Gold deposited with BNS must either (a) meet the requirements to be delivered in settlement of a COMEX gold futures contract pursuant to the rules adopted by the COMEX or (b) meet the specifications for weight, dimensions, fineness (or purity), identifying

²⁵ If the amount of gold corresponding to the Basket Gold Amount results in an amount that is less than a full gold bar denomination, the Authorized Participant has the ability to take and/or deliver fractional gold bar amounts. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 18, 2005.

²⁶ If the total value of the Trust's gold held by the custodian exceeds \$2 billion, then the custodian will be under no obligation to accept additional gold deliveries. In such a case, the Trustee will retain an additional custodian.

marks and appearance of gold bars as set forth in “The Good Delivery Rules for Gold and Silver Bars” published by the LBMA.

Shortly after 4:00 p.m. each business day, the BNY will determine the NAV for the Trust. The BNY will calculate the NAV by multiplying the fine ounces of gold held by the Trust (after gold has been sold for that day to pay that day’s fees and expenses) by the daily settlement value of the COMEX spot month gold futures contract.²⁷ At any point in time, the spot month contract is the futures contract then closest to maturity. If a COMEX settlement price for a spot month gold futures contract is not announced, the Trustee will use the most recently announced spot month COMEX settlement price, unless the Trustee (BNY), in consultation with the Sponsor (Barclays), determines that such price is inappropriate. Once the value of the gold is determined, the BNY will then subtract all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets), expenses, and other liabilities of the Trust from the total value of gold and all other assets of the Trust. This adjusted NAV is then used to

²⁷ As previously stated, the COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of trading in New York. The daily settlement price for each contract (delivery month) is derived from the daily settlement price for the most active futures contract month that is not necessarily the spot month. This settlement price is the average of the highest and lowest priced trades reported during the last one (1) minute of trading during regular trading hours. For all other gold futures contract months (which may include the spot month), the settlement prices are determined by COMEX based upon differentials reflected in spread trades between adjacent months, such differentials being directly or indirectly related to the most active month. These differentials are the average of the highest and lowest spread trades (trades based upon the differential between the prices for two contract months) reported during the last fifteen (15) minutes of trading during regular trading hours. In the case that there were no such spread trades, the average of the bids and offers for spread transactions during that last fifteen (15) minute period are used. In the case where there are no bids and offers during that time, the contracts are settled at prices consistent with the differentials for other contract months that were settled by the first or second method. If the third method is used, the subcommittee of the COMEX members establishing those settlement prices provides a record of the differentials from other contract months that formed the basis for those settlements.

compute all fees (including the Trustee and Sponsor fees) that are calculated from the value of Trust assets. To determine the NAV, the BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. The BNY will calculate the NAV per share by dividing the NAV by the number of Gold Shares outstanding.

Availability of Information Regarding Gold Shares

The Web site for the Trust at <http://www.ishares.com>, which will be publicly accessible at no charge, will contain the following information about Gold Shares: (a) the prior business day's NAV, Basket Gold Amount, the reported closing price, and the present day's Indicative Basket Gold Amount; (b) the mid-point of the bid-ask price²⁸ in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Prospectus; and (f) other applicable quantitative information, such as expense ratios, trading volumes, and the total return of the Gold Shares.²⁹ The Exchange will provide a hyperlink on its Web site (<http://www.pacificex.com>), via the ArcaEx Web site (<http://www.archipelago.com>), to the Trust's Web site at <http://www.ishares.com>.³⁰

²⁸ The bid-ask price of Gold Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

²⁹ Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005 (as to examples of "other quantitative information").

³⁰ Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005.

The Exchange will also provide a hyperlink on its Web site (<http://www.pacificex.com>), via the ArcaEx Web site (<http://www.archipelago.com>), to the Amex Web site at <http://www.amex.com> on which Amex will make available daily trading volume, closing prices, and the NAV from the previous day of Gold Shares.³¹ Amex will also disseminate during regular Amex trading hours from 9:30 a.m. to 4:15 p.m. New York time through the facilities of the Consolidated Tape Association (“CTA”) the last sale price for Gold Shares on a real-time basis.³² In addition, Amex will disseminate each day the prior day’s NAV and shares outstanding through the facilities of the CTA. Amex will also disseminate the Indicative Trust Value on a per Gold Share basis every 15 seconds through the facilities of the CTA during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time.³³ Shortly after 4:00 p.m. each business day, the BNY, Amex, and Barclays (Sponsor) will disseminate the NAV for the Gold Shares, the Basket Gold Amount (for orders placed during the day), and the Indicative

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Id.

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Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005 (as to real-time dissemination of last sale price).

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The Indicative Trust Value will be calculated based on the estimated amount of gold required for creations and redemptions on that day (e.g., Indicative Basket Gold Amount) and a price of gold derived from the most recently reported trade price in the active gold futures contract. The prices reported for the active contract month will be adjusted based on the prior day’s spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract will not be adjusted.

The Indicative Trust Value will not reflect changes to the price of gold between the close of trading at the COMEX, typically 1:30 p.m. New York time, and the open of trading on the NYMEX ACCESS market at 2:00 p.m. New York time. While the market for the gold futures is open for trading, the Indicative Trust Value can be expected to closely approximate the value per share of the Indicative Basket Gold Amount. The Indicative Trust Value on a per Gold Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

Basket Gold Amount (for use by Authorized Participants contemplating placing orders the following business day). The Basket Gold Amount, the Indicative Basket Gold Amount, and the NAV are communicated by the BNY to all Authorized Participants via facsimile or electronic mail message and will be available on the Trust's Web site at <http://www.ishares.com>.

Information about Underlying Gold Holdings

There is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. In most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically 20 minutes). The Exchange states that investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. In addition, an organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers.

As previously stated, the Exchange states that complete real-time data for gold futures and options prices traded on the COMEX is available by subscription from Reuters and Bloomberg. The closing price and settlement prices of the COMEX gold futures contracts are publicly available from the NYMEX at <http://www.nymex.com>, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in proposed PCXE Rule 8.201(e) for initial and continued trading of Gold Shares. The continued trading criteria provides for the removal from trading of the Gold Shares under any of the following circumstances:

(a) Following the initial twelve (12) month period from the date of commencement of trading of the Gold Shares: (i) if the Trust has more than sixty (60) days remaining until termination and there are fewer than fifty (50) record and/or beneficial holders of the Gold Shares for thirty (30) or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Gold Shares issued and outstanding; or (iii) if the market value of all Gold Shares is less than \$1,000,000.

(b) If the value of the underlying gold is no longer calculated or available on at least a 15 second delayed basis from a source unaffiliated with the sponsor, trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated gold value.

(c) The Indicative Trust Value is no longer made available on at least a 15 second delayed basis.

(d) If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

ArcaEx Trading Rules and Policies

Gold Shares are equity securities subject to Exchange Rules governing the trading of equity securities, including among others, rules governing priority, parity and precedence of

orders, and customer suitability (PCXE Rule 9.2). Initial equity margin requirements of 50% will apply to transactions in Gold Shares. Gold Shares will trade on ArcaEx during the Amex trading hours until 4:15 p.m. New York time, and will trade in a minimum price variation of \$0.01 pursuant to PCXE Rule 7.6. Trading rules pertaining to odd-lot trading in Exchange equities (PCXE Rule 7.38) will also apply.³⁴

Gold Shares will be deemed “Eligible Securities,” as defined in PCXE Rule 7.55(a)(3), for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade-through provisions of PCXE Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Unless exemptive or no-action relief is available, Gold Shares will be subject to the short sale requirements of Rule 10a-1 and Regulation SHO under the Act.³⁵ If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

PCXE has proposed Rule 8.201(g), which addresses potential conflicts of interest in connection with acting as a market maker in the Gold Shares. Specifically, Rule 8.201(g) will

³⁴ Rules applicable to the Amex Specialist trading of the Gold Shares, e.g., Amex Rules 154, Commentary .04(c); 190; and 170, are not applicable to ETP Holders, functioning as market makers in the Gold Shares. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 21, 2005.

³⁵ The Gold Trust has requested exemptive relief in connection with the trading of Gold Shares from the operation of certain short sale requirements of Rule 10a-1 and may seek no-action relief from Rule 200(g) of Regulation SHO under the Act. See 17 CFR 240.10a-1; 17 CFR 240.200(g). The requested relief is currently pending with the Commission staff in the Division of Market Regulation. If granted, Gold Shares would be exempt from Rule 10a-1, permitting sales without regard to the “tick” requirements of Rule 10a-1. Rule 10a-1(a)(1)(i) provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an “uptick”) or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a “zero-plus tick”). No-action relief from the marking requirements of Rule

provide that an ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares is obligated to comply with PCXE Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate, engages in certain “Other Business Activities.” Such “Other Business Activities” will be deemed to include trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives. Pursuant to PCXE Rule 7.26, a Market Maker may engage in “Other Business Activities” only if there is an information barrier between the market making activities and the “Other Business Activities.”³⁶

Surveillance

PCX represents that its surveillance procedures applicable to trading of Gold Shares on ArcaEx are adequate to deter manipulation and will be similar to those applicable to TIRs, exchange-traded funds (“ETFs”) currently trading on ArcaEx. In addition, the Exchange has entered into an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to COMEX gold futures contracts.

Further, PCX has proposed new PCXE Rules 8.201(g) – (i), which set forth certain restrictions on ETP Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.³⁷ PCXE Rule 8.201(h) will require that the ETP Holder acting

200(g) of Regulation SHO would permit broker-dealers, subject to certain conditions, to mark short sales in the Gold Shares “short,” rather than “short exempt.”

³⁶ Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005.

³⁷ See Amendment No. 1, *supra* note 3. ETP Holders acting as registered Market Makers in Commodity-Based Trust Shares are not specialists. Nevertheless, to enhance PCX’s surveillance capabilities, PCX has put in place the additional responsibilities set forth in PCXE Rules 8.201(g) – (i) to aid their surveillance of trading in this product.

as a registered Market Maker in the Gold Shares provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivative.³⁸ PCXE Rule 8.201(i) will prohibit the ETP Holder acting as a registered Market Maker in the Gold Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Gold Shares).³⁹ In addition, as stated above, PCXE Rule 8.201(g) will prohibit the ETP Holder acting as a registered Market Maker in the Gold Shares from being affiliated with a market maker in physical gold, gold futures, or options on gold futures unless adequate information barriers are in place, as provided in PCXE Rule 7.26.⁴⁰

Information Circular

The Exchange will distribute an information circular (“Information Circular”) to its ETP Holders in connection with the trading of Gold Shares. The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the Gold Shares are, how a basket is created and redeemed, the requirement that ETP Holders deliver a prospectus to investors purchasing the Gold Shares prior to or concurrently with the confirmation of a transaction, applicable PCXE rules, dissemination information regarding the per share Indicative Trust Value, trading information, and applicable suitability rules. The Information Circular will also explain that the Gold Trust is subject to various fees and expenses described in the Registration Statement and

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

that the number of ounces of gold required to create a basket or to be delivered upon redemption of a basket will gradually decrease over time because the Gold Shares comprising a basket will represent a decreasing amount of gold due to the sale of the Gold Trust's gold to pay Trust expenses. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical gold and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

The Information Circular will also notify ETP Holders about the procedures for purchases and redemptions of Gold Shares in baskets and that Gold Shares are not individually redeemable but are redeemable only in basket size aggregations or multiples thereof. The Information Circular will advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in Gold Shares. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Circular will disclose that the NAV for Gold Shares will be disseminated shortly after 4:00 p.m. ET each trading day based on the COMEX daily settlement value, which is disseminated shortly after 1:30 p.m. ET each trading day.

Suitability

As stated, the Information Circular referenced above will inform ETP Holders of the characteristics of the Gold Trust and of applicable Exchange rules, as well as of the requirements of PCXE Rule 9.2.

Pursuant to PCXE Rule 9.2(a), every ETP Holder, through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP

Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

Trading Halts

PCXE Rule 7.12 sets forth the trading parameters, i.e., “circuit breakers,” applicable to Gold Shares during periods of extraordinary volatility. In addition to the parameters set forth in PCXE Rule 7.12, the Exchange will halt trading in Gold Shares if trading in the underlying COMEX gold futures contract is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴² in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and 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.

⁴¹ 15 U.S.C. 78f(b).

⁴² 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-132 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-132. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available on PCX's Web

site (http://www.pacificex.com/legal/legal_pending.html) and for inspection and copying at the principal offices of PCX. 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-PCX-2004-132 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act⁴³ and the rules and regulations thereunder applicable to a national securities exchange.⁴⁴

A. Surveillance

Information sharing agreements with markets trading securities underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. Although an information sharing agreement with the OTC gold market is not possible, the Commission believes that the unique liquidity and depth of the gold market, together with the Exchange's information sharing agreement with NYMEX (of which COMEX is a division) and PCXE Rules 8.201(g) – (i) create the basis for PCX to monitor for fraudulent and manipulative practices in the trading of the Gold Shares.⁴⁵

⁴³ 15 U.S.C. 78f(b).

⁴⁴ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴⁵ The Commission notes that it recently reached a similar conclusion with respect to a proposal by the New York Stock Exchange to list and trade trust shares that, as in the PCX proposal, correspond to a fixed amount of gold. See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004). In that recent

The OTC market for gold is extremely deep and liquid. The LBMA estimates that the monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day.⁴⁶ In addition, COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million ounces per day.⁴⁷

Finally, PCXE Rule 8.201(h) will require that the ETP Holder acting as a registered Market Maker in the Gold Shares provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivative.⁴⁸ Although registered Market Makers on PCXE do not have the same informational advantages as specialists on Amex, the Exchange believes these reporting and record-keeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. PCXE Rule

order, the Commission noted that it had previously approved the listing and trading of foreign currency options, for which there is no self-regulatory organization or Commission surveillance of the underlying markets, on the basis that the magnitude of the underlying currency market militated against manipulations through inter-market trading activity. *See id.*, at 64619 (Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

⁴⁶ There are no authoritative published figures for overall worldwide volume in gold trading. The LBMA publishes statistics compiled from the six members offering clearing services. Information regarding clearing volume estimates by the LBMA can be found at http://www.lbma.org.uk/clearing_table.htm.

⁴⁷ Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2. The statistics are based on gold futures contracts, each of which relates to 100 ounces of gold.

⁴⁸ *See* Amendment No. 1, *supra* note 3.

8.201(i) will prohibit the ETP Holder acting as a registered Market Maker in the Gold 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 physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Gold Shares).⁴⁹ In addition, PCXE Rule 8.201(g) will prohibit the ETP Holder acting as a registered Market Maker in the Gold Shares from being affiliated with a market maker in physical gold, gold futures, or options on gold futures unless adequate information barriers are in place and approved by the Exchange.⁵⁰

B. Dissemination of Information about the Gold Shares

The Commission finds that sufficient venues for obtaining reliable gold price information exist so that investors in the Gold Shares can adequately monitor the underlying spot market in gold relative to the NAV of their Gold Shares. As discussed more fully above, the Commission notes that there is a considerable amount of gold price and gold market information available 24 hours per day on public Web sites and through professional and subscription services. The PCX, via the ArcaEx Web site, will link to the Amex and Trust Web sites, which will provide trading information about the Gold Shares. For example, the Trustee will disseminate daily on the Trust Web site an estimated amount representing the Basket Gold Amount. The Amex will also disseminate through the CTA the Indicative Trust Value on a per share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time (except between 1:30 p.m. and 2:00 p.m., the time period from the close of regular trading of the COMEX gold futures contract and the start of trading of COMEX gold futures contracts on NYMEX

⁴⁹ Id.

⁵⁰ Id.

ACCESS). The last sale price for Gold Shares will also be disseminated on a real-time basis through the facilities of CTA.

The Commission also notes that the Trust's Web site at <http://www.ishares.com> is and will be publicly accessible at no charge and will contain the NAV of the Gold Shares and the Basket Gold Amount as of the prior business day, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV. Additionally, the Trust's Web site will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information. The Commission believes that dissemination of this information will facilitate transparency with respect to the Gold Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

Further, the Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Gold Shares are consistent with the Act. For example, Gold Shares will be subject to PCXE rules governing trading halts, responsibilities of the ETP Holders, and customer suitability requirements. In addition, the Gold Shares will be subject to PCXE Rule 8.201(e) for initial and continued trading of Gold Shares.

The Commission believes that listing and delisting criteria for the Gold Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Gold Shares. Finally, the Commission believes that the Exchange's Information Circular adequately will inform members and member organizations about the terms, characteristics, and risks in trading the Gold Shares.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register. The Exchange has requested accelerated approval because this product is similar to another product recently approved by the Commission for listing and trading on Amex.⁵¹ The Commission believes that the Gold Shares will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Gold Shares promptly. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,⁵² to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁵³ that the proposed rule change (SR-PCX-2004-132), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁴

Margaret H. McFarland
Deputy Secretary

⁵¹ See Securities Exchange Act Release No. 51058 (January 19, 2005) (SR-Amex-2004-38), supra, note 9.

⁵² 15 U.S.C. 78s(b)(2).

⁵³ Id.

⁵⁴ 17 CFR 200.30-3(a)(12).