

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50410; File No. SR-PCX-2004-60)

September 17, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Listing Standards for Income Deposit Securities (“IDS”)

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 July 20, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by PCX. 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,<sup>4</sup> which renders the proposal effective upon filing.<sup>5</sup> On September 17, 2004, the Exchange amended the filing.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned

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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> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>5</sup> The Exchange asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See letter from Tania Blanford, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2004 (“Amendment No. 1”). Amendment No. 1 clarified the proposed rule text.

subsidiary PCX Equities, Inc. (“PCXE”), proposes to amend its current listing requirements to specifically provide for the listing of units comprised of common stock and a debt security, sometimes referred to as income deposit securities (“IDS”). Under the proposed rule change, IDS units can be listed on the Exchange if each component of the IDS unit satisfies the initial listing standards applicable to that component. The text of the proposed rule change is below. Proposed new language is italicized.

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**PCX Equities, Inc.**

**Rule 5 – Listings**

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**General**

Rule 5.2(b) – No change.

Commentary:

.01 The Exchange will generally authorize the listing of a unit if each of the component parts meet the applicable requirements for listing as set forth in PCXE Rules 5.2(c) and 5.2(e)(1)-(2).

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**Immediate Public Disclosure of Material Information**

Rule 5.3(i)(2) – No change

(i) – (vii) No Change

(viii) changes to the terms and conditions of a unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of components within the unit. Such public notification should be as soon as practicable in relation to the effective date of the change, and should, at a minimum, include release of an announcement

to the national and business financial news-wire services. In addition, the issuer must also provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component), and the ratio of the components comprising the unit on its website, or if it does not maintain a website, include a description of the current terms and conditions of the components of the unit (including a description of any original issue discount or other significant tax attribute of any component) and the ratio of the components comprising the unit, in its annual report to unit holders.

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## **Section 5. Maintenance Requirements and Delisting Procedures**

### **Maintenance Requirements and Delisting Procedures**

Rule 5.5(a) – No Change.

*Commentary:*

.01 - .03 – No change.

.04 In the case of units, the Exchange will normally consider suspending dealings in, or removing from the list, if any of the component parts do not meet the applicable listing standards as set forth in PCXE Rules 5.5(b) and 5.5(d). However, if one or more of the components is otherwise qualified for listing, that component may remain listed.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange is proposing to amend its current listing requirements in order to provide clarity and transparency regarding the listing standards applicable to IDS units. The proposal is similar to listing standards that the Commission recently approved for the Nasdaq Stock Market, Inc., the New York Stock Exchange, Inc., and the American Stock Exchange, LLC.<sup>7</sup>

The Exchange proposes to amend PCXE Rule 5.2(b) to require that each component of an IDS unit satisfy the initial listing standards applicable to that component in order for the IDS to be eligible for initial listing. Thus, in the case of a unit consisting of a common stock and a bond, the common stock component would be required to satisfy the standards applicable to common stock and the bond would be required to satisfy the standards applicable to bonds.

The PCX also proposes a conforming change to the Exchange's continued listing requirements. The Exchange proposes to amend PCXE Rule 5.5(a) to specify that the Exchange will consider suspending or de-listing any unit trading on the Exchange if any of the component parts do not meet the applicable listing standards. The proposed change to Rule 5.5(b), however, will make clear that if any particular component in a unit

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<sup>7</sup> See Securities and Exchange Act Release No. 34-49746 (May 20, 2004), 69 FR 30356 (May 27, 2004); Securities and Exchange Act Release No. 34-49515 (April 1, 2004), 69 FR 19592 (April 13, 2004); and Securities and Exchange Act Release No. 34-48666 (October 21, 2003), 68 FR 61239 (October 27, 2003), respectively.

is otherwise qualified for listing, such component may remain listed on the Exchange.<sup>8</sup>

Further, the Exchange proposes to amend PCXE Rule 5.3(i)(2) to require the issuer of a unit to immediately publicize any change in the terms of a listed unit, such as changes to the terms and conditions of any of the components or to the ratio of the components within the unit. The issuer must also provide current information in this regard on its Web site, or if it does not maintain a Web site, in its annual report to unit holders. Changes that should be publicized would include those resulting from a stock split or an automatic exchange of one or more components of the unit (e.g., as a result of a secondary offering of units). The issuer would be expected to provide public disclosure as soon as practicable regarding the nature of and effective date of the change. For example, changes resulting from a stock split should be subject to prior disclosure, while changes with respect to original issue discount should be disclosed as soon as such information is available. The Exchange believes that this expanded disclosure requirement will help to ensure that sufficient information regarding the attributes of these securities is publicly available on a timely basis.

## 2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it will promote just

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<sup>8</sup> In contrast to a typical unit, which may trade for a limited amount of time (e.g., thirty days), then automatically separate into its component parts which will be listed and traded, an IDS unit can be expected to trade as a unit for an extended period of time, although holders can have certain rights to separate.

<sup>9</sup> 15 U.S.C. 78f(b).

and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and national market system; and 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

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

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

The PCX has designated the proposed rule change as one that does not significantly affect the protection of investors or the public interest; impose any significant burden on competition; and become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

In accordance with Rule 19b-4(f)(6)(iii) under the Act,<sup>13</sup> this proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay so the proposed rule change will become immediately effective. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved similar proposals by Nasdaq, NYSE and Amex on which the Exchange's proposal is based.<sup>14</sup> The Amex proposal was published for comment and the Commission received no comments on it.<sup>15</sup> Finally, the Commission does not believe the Exchange's proposal raises any new regulatory issues.

For these reasons, the Commission designates the proposal to be effective and

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<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> See Securities and Exchange Act Release No. 34-49746 (May 20, 2004), 69 FR 30356 (May 27, 2004); Securities and Exchange Act Release No. 34-49515 (April 1, 2004), 69 FR 19592 (April 13, 2004); and Securities and Exchange Act Release No. 34-48666 (October 21, 2003), 68 FR 61239 (October 27, 2003), respectively.

<sup>15</sup> See id.

operative upon filing of the proposal with the Commission.<sup>16</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-60 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-2004-60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

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<sup>16</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).



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 for inspection and copying at the principal office of the 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-2004-60 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland  
Deputy Secretary

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