

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52806; File No. SR-PCX-2005-88)

November 18, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Dissemination of Index Values

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 July 27, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), 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 PCX. The PCX filed Amendment Nos. 1 and 2 to the proposal on September 16, 2005, and October 27, 2005, respectively.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

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

The PCX, through its wholly owned subsidiary PCXE, proposes to amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE.

Specifically, the PCX proposes to amend the listing standards for Investment Company Units

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarified the time during which the current value of an index underlying a Portfolio Depositary Receipt or Investment Company Unit must be disseminated. Amendment No. 2, which replaced and superseded the original filing and Amendment No. 1 in their entirety, retained the clarification proposed in Amendment No. 1 and, in addition, revised the proposal to provide that the last official calculated index value must remain available during any period when the official index value does not change.

("ICUs") and Portfolio Depositary Receipts ("PDRs") to provide that the current value of an index underlying a series of ICUs or PDRs must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ICU or PDR trades on ArcaEx. The proposed rules also provide that the last official calculated index value must remain available during any period when the official index value does not change. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>) 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX 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

PCXE Rule 5.2(j)(3), Commentary .01 and PCXE Rule 8.100, Commentary .01 provide listing standards for ICUs and PDRs, respectively, to permit the listing and trading of these securities pursuant to Rule 19b-4(e) under the Act.⁴ Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") will not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the

⁴ 17 CFR 240.19b-4(e).

Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.⁵

The Exchange's rules for ICUs and PDRs currently provide that the current value of an index underlying a series of ICUs or PDRs will be disseminated every 15 seconds over the consolidated tape. The Exchange believes that, rather than identifying specifically in its rules the index dissemination service (that is, the consolidated tape), it is preferable to reflect in its rules a requirement for wide dissemination of the underlying index values. Accordingly, the proposal revises the PCXE's rules to provide that the value of the underlying index must be widely disseminated by a reputable index dissemination service, such as the Consolidated Tape Association, Reuters, or Bloomberg. The Exchange believes that the specific identity of the index dissemination service is not necessary, and the purpose of the rules would be achieved, as long as the service used for dissemination is reputable, accepted in the investment community, and effects appropriately wide dissemination of the particular index.

The Exchange therefore proposes to revise the listing standards for ICUs and PDRs to provide that the value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the ICU or PDR trades on ArcaEX.

As currently is the case, if the official index value does not change during some or all of the period when trading is occurring (as is typically the case with pre-market-open and after-hours trading, and also with foreign indexes because of time zone differences or holidays in the

⁵ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

countries where such indexes' components trade), then the last official calculated index value must remain available during the time the ICU or PDR trades on ArcaEx.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because 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.

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, 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-88 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-88. 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, 100 F Street, NE, 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 publicly available. All submissions should refer to File Number SR-PCX-2005-88 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 requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.⁹ The proposal amends the PCXE's rules to provide that the current value of an index underlying a series of ICUs or PDRs must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ICU or PDR trades on ArcaEx. In its proposal, the PCX states that "one or more major market data vendors" would include the Consolidated Tape Association or private vendors, such as Reuters or Bloomberg. The Commission believes, however, that it is critical that such service widely disseminate such index values to market participants. The Commission notes that the rules of several other SROs contain an identical index dissemination requirement,¹⁰ and that the proposed index dissemination requirement is similar to the index dissemination requirement used in the listing

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ See, e.g., Amex Rules 1000, Commentary .03; and 1000A, Commentary .02 (listing standards for PDRs and Index Fund Shares); NASD Rule 4420(i) and (j) (listing standards for PDRs and Index Fund Shares); and Phlx Rule 803(i) and (l) (listing standards for Trust Shares and Index Fund Shares). See also Amex Order, Phlx Order, and NASD Order at note 13, infra.

standards for narrow-based index options.¹¹ The Commission believes that the index dissemination requirement will help to ensure the transparency of current index values for indexes underlying series of ICUs and PDRs.

The PCX's rules also provide that the last official calculated index value must remain available during any period when the official index value does not change. As stated above, the PCX notes that periods when the official index value underlying an ICU or PDR do not change occur at the pre-market-open, during after-hours trading sessions, and for certain foreign indexes underlying an ICU or PDR, based on the time zone differences or foreign holidays.¹² The Commission notes that this provision is consistent with other SRO proposals that the Commission has approved recently.¹³

¹¹ See e.g., Chicago Board Options Exchange Rule 24.2(b); International Securities Exchange Rule 2002(b); Pacific Exchange Rule 5.13; and Philadelphia Stock Exchange Rule 1009A(b) (listing standards for narrow-based index options requiring that, among other things, the current underlying index value be reported at least once every 15 seconds during the time the index option trades on the exchange).

¹² Nothing herein is meant to address the situation of whether the ICU or PDR can actually remain trading when the primary market has halted or suspended trading in the underlying components or the official index provider ceases to disseminate and/or calculate the official index value during official day time trading hours. Rather, the provision is merely meant to address those times that the underlying value is unavailable on a real time basis because the marketplace for the component securities is not open for trading for legitimate business reasons, such as due to the time difference between the foreign and U.S. markets.

¹³ See, e.g., Securities Exchange Act Release Nos. 52572 (October 7, 2005), 70 FR 60125 (October 14, 2005) (notice of filing and order granting accelerated approval to File No. SR-PHLX-2005-57) ("Phlx Order"); 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (notice of filing and order granting accelerated approval to File No. SR-Amex-2005-044) ("Amex Order"); and 51559 (April 15, 2005), 70 FR 20787 (April 21, 2005) (notice of filing of File No. SR-NASD-2005-024) (all noting that, if the official index value does not change during some or all of the time when trading is occurring, as is typically the case with pre-market open and after-hours trading, and also with foreign indexes due to time zone differences or holidays in the countries where the indexes' components trade, then the last official calculated index value must remain available

The PCX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the Federal Register. As noted above, the Commission has approved identical index dissemination requirements for other SROs.¹⁴ The Commission received no comments regarding these proposals. The Commission believes that granting accelerated approval of the PCX's proposal will allow the PCX to implement the same index dissemination requirement that the Commission has approved for other SROs, thereby helping the PCX to compete with these markets. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b) of the Act, to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

throughout the market's trading hours). The Commission subsequently approved the NASD's proposal, as well as the proposals by the American Stock Exchange and the Philadelphia Stock Exchange. See Securities Exchange Act Release No. 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (order approving File No. SR-NASD-2005-024) ("NASD Order").

¹⁴ See Amex Order, NASD Order, and PHLX Order, supra note 13.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-PCX-2005-88), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz
Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).