

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52221; File No. SR-PCX-2005-74)

August 8, 2005

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto to Trade Shares of Certain Vanguard International Equity Index Funds Pursuant to Unlisted Trading Privileges

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 June 22, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE” or “Corporation”), 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. PCX amended the proposed rule change on July 28, 2005.³ The Commission is publishing this notice and order to solicit comments on the proposal, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

The Exchange, through its wholly owned subsidiary PCXE, proposes to trade shares of the following exchange traded funds (“ETFs”) based on three Vanguard International Equity Indices pursuant to unlisted trading privileges (“UTP”) based on PCXE Rule 5.5(j)(3):

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange modified the trading hours in which it proposes to trade these exchange traded funds.

- Morgan Stanley Capital International Inc. (“MSCI”) Europe Index (ticker symbol: VGK)
- MSCI Pacific Index (ticker symbol: VPL); and
- MSCI Emerging Markets Select Index (ticker symbol: VWO).

The text of the proposed rule change is available from the Exchange’s Web site (www.pacificex.com), at the principal office of the Exchange, 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 received on 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 Exchange proposes to trade, pursuant to UTP, Vanguard Index Participation Equity Receipts, which are securities issued by the three funds (“VIPER Shares”). The MSCI Europe Index and the MSCI Pacific Index are market-capitalization-weighted indices that are designed to measure developed market equity performance in Europe and the Pacific region, respectively. Each MSCI country index is created separately and then aggregated, without change, into the larger regional index. The MSCI Europe

Index is comprised of securities from 16 of 50 countries for which MSCI has indices.⁴ The MSCI Pacific Index is comprised of securities from 5 of the 50 countries for which MSCI has indices.⁵ The MSCI Emerging Markets Select Index is comprised of securities from 18 of the 50 countries for which MSCI has indices.⁶ The Commission previously approved the original listing and trading of the VGK, VPL, and VWO on the American Stock Exchange (“Amex”).⁷

The Exchange deems these VIPER Shares to be equity securities, thus rendering trading in these securities subject to the Exchange's existing rules governing the trading of equity securities. PCX will trade these ETFs during the hours that the Intraday Indicative Value (“IIV”) is disseminated.⁸

The Exchange understands that the listing exchange, Amex, will disseminate the following information for each ETF on a daily basis through the facilities of the Consolidated Tape Association (“CTA”): recent net asset value (“NAV”), shares

⁴ Currently, the MSCI Europe Index includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

⁵ Currently, the MSCI Pacific Index includes Australia, Hong Kong, Japan, New Zealand, and Singapore.

⁶ Currently, the MSCI Emerging Markets Select Index includes Argentina, Brazil, Chile, China, Czech Republic, Hungary, India, Indonesia, Israel, Korea, Mexico, Peru, Philippines, Poland, South Africa, Taiwan, Thailand, and Turkey. This information on countries represented in the indices is current as of February 25, 2005. Telephone conversation between Tania J.C. Blanford, Staff Attorney, PCX, and Natasha Cowen, Attorney, Division of Market Regulation, Commission, on July 13, 2005.

⁷ See Securities Exchange Act Release No. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (SR-Amex-2004-05) (“Original Listing Order”).

⁸ The IIV is the estimated net asset value, which is disseminated by Amex every 15 seconds throughout the trading day. The IIV is designed to give investors a sense of the relationship between a basket of securities that are representative of those owned in the ETF and the share price of the ETF on an intraday basis.

outstanding, and estimated cash amount and total cash amount per creation unit. In addition, the Exchange understands that Amex will make the following information available on its Web site: daily trading volume, closing price, NAV, and final dividend amounts to be paid for each VIPER Share. The closing prices of the deposit securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

To provide updated information relating to each ETF for use by investors, professionals, and persons wishing to create or redeem the VIPER Shares, Amex disseminates through the facilities of the CTA: (1) continuously throughout the trading day, last sale information for each ETF; and (2) every 15 seconds throughout the trading a day, the estimated IIV of each ETF as calculated by a third party.

The IIV may not reflect the value of all securities included in the applicable underlying index. In addition, the IIV does not necessarily reflect the precise composition of each index at a particular point in time. Therefore, the IIV on a per-share basis disseminated during Amex's regular trading hours should not be viewed as a real-time update of the NAV of a particular fund, which is calculated only once a day. While the IIV disseminated by Amex at the start of the trading day is expected to be generally close to the value of the particular fund's holdings on a per-share basis, it is possible that the value of the portfolio of securities held by a fund may diverge from the value of the deposit securities during any trading day. In such case, the IIV would not precisely reflect the value of the fund portfolio. The Exchange expects, however, that during the

trading day, while the relevant foreign markets are open for trading, the IIV of a fund can be expected to closely approximate the value per share of the portfolio of securities for each fund, except under unusual circumstances.

For the MSCI Pacific Index, there is no overlap in trading hours between the foreign markets and Amex. Therefore, for this fund, the IIV utilizes closing prices (in applicable foreign currency prices) in the principal foreign market for securities in the fund portfolio, and converts the price to U.S. dollars. Those values are updated every 15 seconds during Amex trading hours to reflect changes in exchange rates between the U.S. dollar and the applicable foreign currency.

The MSCI Europe Index and Emerging Markets Select Index, both of which include companies trading in markets with trading hours overlapping regular Amex trading hours, the third-party calculator updates the applicable IIV every 15 seconds to reflect price changes in the principal foreign market and converts such prices into U.S. dollars based on the current exchange rate. When the foreign market or markets are closed but Amex is open for trading, the IIV is updated every 15 seconds to reflect changes in exchange rates after the foreign markets close.

The Exchange represents that, if the MSCI ceases to maintain or to calculate the value of the index on a periodic basis or if the value of the index ceases to be widely available, the Exchange would cease trading these VIPER Shares.

In connection with the trading of these three ETFs, PCX would inform its Equity Trading Permit (“ETP”) Holders in an Information Circular of the special characteristics and risks associated with trading these ETFs, including how the VIPER Shares are created and redeemed, the requirement that ETP Holders deliver a prospectus or product description to investors purchasing any of these ETFs prior to or concurrently with the

confirmation of a transaction, applicable Exchange rules, how information about the value of the underlying index is disseminated, trading information, and the applicability of suitability rules. The Information Circular will also discuss any applicable exemptive, no-action, and interpretive relief granted by the Commission.

Before an ETP Holder recommends a transaction in one of the proposed ETFs, the ETP Holder must determine that the ETF is suitable for the customer as set forth in PCXE Rule 9.2(a)-(b).

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in these ETFs. The Exchange believes that these procedures are adequate to monitor such trading.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁹ in general and Section 6(b)(5) of the Act¹⁰ 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 and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act¹¹ because it deems the VIPER Shares to be equity securities, thus rendering trading in the VIPER Shares subject to the Exchange's existing rules governing the trading of equity securities.

⁹ 15 U.S.C. 78s(b).

¹⁰ 15 U.S.C. 78s(b)(5).

¹¹ 17 CFR 240.12f-5.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-74 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-PCX-2005-74. 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 also will be available for inspection and copying at the principal offices of the Exchange. 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-2005-74 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

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.¹² In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹³ which requires that an exchange have rules designed, among other things, 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

¹² In approving this rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

market system, and in general to protect investors and the public interest. The Commission believes that this proposal will benefit investors by increasing competition among markets that trade VGK, VPL, and VWO.

In addition, the Commission believes that the proposal is consistent with Section 12(f) of the Act,¹⁴ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁵ The Commission notes that it previously approved the listing and trading of these three ETFs on Amex.¹⁶ The Commission also believes that the proposal is consistent with Rule 12f-5 under the Act,¹⁷ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems these VIPER Shares to be equity securities, thus rendering trading in these VIPER Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁸ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and

¹⁴ 15 U.S.C. 78j(f).

¹⁵ Section 12(a) of the Act, 15 U.S.C. 78j(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

¹⁶ See Original Listing Order, supra note 7.

¹⁷ 17 CFR 240.12f-5.

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding these ETFs are disseminated through the facilities of the CTA. Furthermore, Amex disseminates the estimated IIV of each ETF every 15 seconds throughout the trading day. The Exchange represents that if MSCI ceases to maintain or to calculate the value of an index or if the value of an index ceases to be widely available, it would cease trading an ETF based on the index.

Finally, the Commission notes that, if any of these ETFs should be delisted by Amex, the original listing exchange, PCX would no longer have authority to trade the ETF pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. PCX surveillance procedures are adequate to properly monitor the trading of these ETFs on a UTP basis.
2. Prior to the commencement of trading of these ETFs on the Exchange, PCX will distribute an information circular to its members explaining the terms, characteristics, and risks of trading these ETFs.
3. PCX will require an ETP Holder with a customer that purchases shares of any of these ETFs on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the information circular.

This approval order is conditioned on PCX's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of these three ETFs on

Amex to be consistent with the Act.¹⁹ The Commission presently is not aware of any issue that should cause it to revisit that earlier finding or preclude the trading of these ETFs on PCX pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these ETFs.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-PCX-2005-74), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland
Deputy Secretary

¹⁹ See Original Listing Order, supra note 7.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).