

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52809; File No. SR-PCX-2005-108]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing Standards for Investment Company Units and Dissemination of Intraday Optimized Portfolio Value

November 18, 2005.

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 September 26, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposal from interested persons and also approving the proposal 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 amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE. With this filing, the Exchange proposes to amend its listing standards for Investment Company Units (“ICUs”) to provide that PCXE may approve a series of ICUs for trading if one or more major market data vendors disseminates for each series of ICUs listed on ArcaEx an estimate of the value of a share of each series of ICUs, sometimes referred to as the Intraday Optimized Portfolio Value (“IOPV”), at least every 15 seconds during the time these ICUs trade on ArcaEx. The text of the proposed rule change is available on the Exchange’s Internet Web site (<http://www.pacificex.com>), at the Exchange’s principal office, 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

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

The Exchange rules for ICUs currently provide that the Reporting Authority<sup>5</sup> will disseminate for each series of ICUs (in the case of PCXE Rule 5.2(j)(3)) an estimate, updated every 15 seconds, of the value of a share of the series. The IOPV may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.<sup>6</sup>

<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>5</sup> PCXE Rule 5.1(b)(16) provides that the term “Reporting Authority” in respect of a particular series of ICUs means the Corporation, a subsidiary of the Corporation, or an institution or reporting service designated by the Corporation or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of ICUs; the amount of any dividend equivalent payment or cash distribution to holders of ICUs, net asset value, or other information relating to the issuance, redemption or trading of ICUs. The rule further states that: (i) Nothing in PCXE Rule 5.2(j)(3) implies that an institution or reporting service that is the source for calculating and reporting information relating to ICUs must be designated by the Corporation and (ii) the term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

<sup>6</sup> PCXE Rule 5.2(j)(3), Commentary .01(c).

The Exchange believes that, rather than identifying specifically in its rules the Reporting Authority as the dissemination service, it is preferable to reflect in the rules a requirement for wide dissemination of the IOPV. This proposed rule change would make clear that the IOPV must be widely disseminated by a reputable dissemination service, such as the Consolidated Tape Association, Reuters, or Bloomberg. The Exchange believes that naming the Reporting Authority as the dissemination service is not necessary and that the purpose of the rule 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 IOPV relating to a particular series of ICUs.

The Exchange therefore proposes to change the listing standards for ICUs to provide that PCXE may approve a series of ICUs for trading if one or more major market data vendors disseminates for each series of ICUs listed on ArcaEx the IOPV every 15 seconds during the time that these ICUs trade on ArcaEx.

##### 2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> 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 and perfect the mechanisms 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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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-2005-108 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-2005-108. 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-2005-108 and should be submitted on or before December 20, 2005.

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

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In

<sup>9</sup>In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of the 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.

Under the proposed rule change, the Exchange would modify its "generic" listing standards under PCXE Rule 5.2(j)(3) applicable to ICUs to remove the requirement that the Reporting Authority disseminate estimated values for each series every 15 seconds. Instead, the proposal would impose a requirement to have one or more major market vendors to disseminate such information during the time that ICUs trade on ArcaEx. For the purposes of this rule, the Exchange notes that its definition of major market data vendor includes the Consolidated Tape and services such as Reuters and Bloomberg.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that it previously approved a similar rule change for the New York Stock Exchange, Inc. ("NYSE").<sup>11</sup>

The Commission believes that granting accelerated approval of the proposal will allow the Exchange to implement, without undue delay, these listing standards for dissemination of the estimated values for ICUs. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-PCX-2005-108) is hereby approved on an accelerated basis.

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

<sup>11</sup> See Securities Exchange Act Release No. 52081 (July 20, 2005), 70 FR 43488 (July 27, 2005) (SR-NYSE-2005-44).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**

Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52814; File No. SR-PCX-2005-85]

#### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 2 and 3 Thereto Relating to Exposure of Orders in the PCX Plus Crossing Mechanism

November 21, 2005.

On July 19, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to reduce the exposure period in the Crossing Mechanism of the PCX Plus System from 30 seconds to 10 seconds. The PCX filed Amendment No. 1 to the proposed rule change on September 20, 2005 and subsequently withdrew Amendment No. 1. The PCX filed Amendment Nos. 2 and 3 to the proposed rule change on September 23, 2005 and September 27, 2005, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on October 7, 2005.<sup>3</sup> The Commission received no comments on the proposal.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and in particular with Section 6(b)(5) of the Act.<sup>6</sup> The Commission believes that, in the electronic environment of PCX Plus, reducing the exposure period to 10 seconds could facilitate the prompt execution of orders, while providing participants in the PCX Plus System

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 52542 (September 30, 2005), 70 FR 58773.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).