

more than 40,000,000 shares during a month.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,<sup>8</sup> in general, and section 15A(b)(5)<sup>9</sup> of the Act, in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. According to Nasdaq, the proposed rule change applies to non-members that use Nasdaq's Brut Facility. The same fee change is also being implemented for NASD members that use the Nasdaq Market Center and/or Nasdaq's Brut Facility. Accordingly, the proposed change, as amended, promotes an equitable allocation of fees between members and non-members using Nasdaq's order execution facilities.

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

Nasdaq does not believe that the proposed rule change will result in 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-072 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-NASD-2005-072. 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 Nasdaq's Office of the Secretary. 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-NASD-2005-072 and should be submitted on or before August 17, 2005.

## 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 self-regulatory organization.<sup>10</sup> Specifically, the Commission believes that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the Act,<sup>11</sup> which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal, which would modify pricing for non-NASD members using the Nasdaq's Brut facility, would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective as of June 1, 2005, pursuant to SR-NASD-2005-071.

The Commission finds good cause for approving the proposed rule change, as

amended, prior to the 30th day of the date of publication of the notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2005-071, which implemented those fees for NASD members and which became effective as of June 1, 2005. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,<sup>12</sup> to approve the proposed change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-NASD-2005-072), as amended, is approved on an accelerated basis.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52081; File No. SR-NYSE-2005-44]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to an Amendment to Section 703.16 of the Listed Company Manual Regarding Dissemination of Index Value and Indicative Value

July 20, 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 June 23, 2005, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. The

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

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

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

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

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

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

<sup>10</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The NYSE proposes to amend section 703.16 (B)(3) of the Listed Company Manual ("Company Manual") to provide that if a series of Investment Company Units ("ICUs") is listed, or traded on the NYSE pursuant to unlisted trading privileges in reliance upon Rule 19b-4(e) under the Act,<sup>3</sup> the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the Consolidated Tape at least every 15 seconds during trading hours on the NYSE. The Exchange similarly seeks approval for the intraday "estimate" of a series of ICUs, sometimes known as the Intraday Indicative Value ("IIV") or Intraday Optimized Portfolio Value ("IOPV") to be widely disseminated by one or more major market data vendors or disseminated over the Consolidated Tape at least every 15 seconds during NYSE trading hours for ICUs, currently 9:30 a.m. to 4:15 p.m.<sup>4</sup> In addition, the Exchange proposes to make a technical amendment to section 703.16(E) of the Company Manual to reflect that ICUs trade in increments of \$.01 rather than in fractions. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the principal office of the NYSE, 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 NYSE 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 NYSE 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 NYSE has adopted NYSE Rule 1100 (Investment Company Units) and Section 703.16 of the Company Manual, which set forth listing standards applicable to ICUs, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis. In 1996, the Commission approved section 703.16 of the Company Manual, which sets forth the rules related to the listing of ICUs.<sup>5</sup> In 2000, the Commission also approved the Exchange's "generic" listing standards for listing and trading pursuant to Rule 19b-4(e) of the Act, or the trading pursuant to UTP, of ICUs under section 703.16 of the Company Manual and NYSE Rule 1100.<sup>6</sup>

Section 703.16 of the Company Manual enumerates the criteria that must be met in order to commence trading ICUs pursuant to Rule 19b-4(e) of the Act. ICUs include securities representing an interest in a registered investment company organized as a unit investment trust or an open-end management investment company (commonly referred to as "Exchange-Traded Funds" or "ETFs"). Among these criteria is the requirement that the current value of the index underlying a series of ICUs be disseminated over the Consolidated Tape every 15 seconds during trading hours. Additionally, an estimated value for the ICU shares (sometimes called the IIV or IOPV) must be updated every 15 seconds on the Consolidated Tape during NYSE trading hours. The IIV (or IOPV) reflects an estimate of the value of the Fund's shares and may be based on the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.<sup>7</sup>

<sup>5</sup> See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR-NYSE-95-23).

<sup>6</sup> See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (March 13, 2000) (SR-NYSE-00-46).

<sup>7</sup> The IIV reflects the current value of the Deposit Securities and the Cash Balancing Amount. For Funds that utilize a representative sampling strategy, the IIV may not reflect the value of all securities included in the Underlying Indexes. In addition, the IIV does not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular point in time. Therefore, the IIV on a per Fund share basis disseminated during the Exchange's trading hours should not be viewed as a real time update of the net asset value ("NAV") of the Funds, which is calculated only once a day. Telephone conversation

Widespread dissemination of the index value and IIV relating to a particular series of ICUs is important information for the investing public to have. However, the Exchange believes it is unnecessary that such dissemination be over the Consolidated Tape (Tape A or Tape B) in order to permit listing or trading under the expedited procedures permitted by Rule 19b-4(e) of the Act. Index values and other index information, such as the IIV (as calculated by an independent third party, known as a "Value Calculator"), are widely available to the public and market participants through major vendors of financial information and market data, such as Reuters, ILX, and Bloomberg.

The NYSE, therefore, proposes to amend the generic listing standards in Section 703.16 to permit listing or trading a series of ICUs under Rule 19b-4(e) of the Act<sup>8</sup> if the current index value and IIV for that series is widely disseminated by one or more major market vendors or is disseminated over the Consolidated Tape at least every 15 seconds during trading hours on the Exchange. Major market vendors would encompass those vendors that are well-known, accepted and reputable among securities market participants. The Exchange believes that the proposed rule change will continue to assure ready, widespread access to index information by the financial community and the investing public.

In addition, the NYSE proposes to make a technical amendment to Section 703.16(E) of the Company Manual to reflect that ICUs currently trade in increments of \$.01 rather than in fractions.

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed 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.

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

The Exchange does not believe that the proposed rule change would impose

between Mike Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on July 12, 2005.

<sup>8</sup> 17 CFR 240.19b-4(e).

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

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

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

<sup>4</sup> Telephone conversation between Mike Cavalier, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on July 12, 2005.

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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-44 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-NYSE-2005-44. 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 NYSE. 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-NYSE-2005-44 and should be submitted on or before August 17, 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>11</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>12</sup> which requires among other things, that the rules of the Exchange are 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. The Commission believes that the proposed change would continue to provide for widespread availability of index information in connection with listing or trading ICUs under the generic standards in Section 703.16 of the Company Manual and will facilitate the utilization of the generic standards, while maintaining comparable or increased public availability of index information.<sup>13</sup>

The NYSE 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 has recently approved similar proposals regarding the dissemination of the underlying index value for ICU's traded on Nasdaq and the American Stock Exchange LLC ("Amex").<sup>14</sup> The Commission believes that granting accelerated approval of the proposal will allow the NYSE to immediately implement these listing standards for dissemination of the underlying index value that already are in place on Nasdaq and the Amex, along with dissemination of the IIV through one or more major market vendors. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>15</sup> for approving the proposed

<sup>11</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See Securities Exchange Act Release Nos. 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (SR-NASD-2005-024); and 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (SR-Amex-2005-44).

<sup>14</sup> *Id.*

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

rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NYSE-2005-44) be, and hereby is, approved on an accelerated basis.

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

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. E5-4000 Filed 7-26-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52070; File No. SR-PCX-2005-61]

### Self-Regulatory Organizations; The Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Establishing a De Minimis Exception to the 80/20 Test

July 20, 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 April 26, 2005, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On June 29, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</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 Exchange proposes to modify the "80/20 Test" in determining limitations on Principal Order access under the rules imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>4</sup> and related rules.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</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> Amendment No.1 added clarifying language to the proposed rule text.

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options