

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52806; File No. SR-PCX-2005-88]

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

November 18, 2005.

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 (“ICUs”) and Portfolio Depository 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 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 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 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.

³⁵ 17 CFR 200.30-3(a)(12).

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 Depository 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.

⁴ 17 CFR 240.19b-4(e).

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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-2005-88 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 December 19, 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, 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 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

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*.

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).

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

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

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 No. 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 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.

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**.

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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52777; File No. SR-Phlx-2004-37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to Increase the Size of the Audit Committee

November 16, 2005.

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 May 20, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 Exchange. On October 20, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 amend the Phlx By-Laws, Article X, Sections 10-9(a)-(b) to: (i) Allow the Board of Governors the ability to increase the size of the Audit Committee beyond its current three persons to a maximum of five persons, and (ii) to require the members of the Audit Committee to be independent directors. Additionally, the proposed amendment to the Phlx By-Laws incorporates enhanced Audit Committee responsibilities. The text of the proposed rule change, as amended, is below. Proposed deletions are bracketed; proposed insertions are in *italics*.

* * * * *

PHLX BY-LAWS

Article 10, Sec. 10-9, Audit Committee SEC. 10-9.

(a) The Audit Committee shall consist of *at least* three (3) members, *the exact number to be determined from time to time by the Board of Governors*. [who] *All members* shall [all] be [public] [independent non-industry Governors who have no material business relationship with the Exchange. A majority of the members, but not less than three (3) members shall be public Governors] *independent directors who have no material relationship with the Exchange*. [Audit Committee members shall not serve in a management capacity with the Exchange or any affiliate thereof and must be free of any other relationships that, by decision of the Board of Governors, would interfere with the exercise of independent judgment.] *The term "independent director" will be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. The term "material relationship" will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.*

(b) The Audit Committee shall have responsibility for dealings with the Exchange's [independent public accountants including] *external auditors, which includes: (i) [making recommendations to the Board of Governors as to] sole responsibility for the appointment, retention and [dismissal of such public accountants] replacement of such auditors; (ii) direct oversight over such auditors; (iii) review,*

at least annually, of the qualification and performance of such auditors; [reviewing the scope of their services and fees; (iii) reviewing the audit plan;] (iv) direct authority to resolve disagreements between management and such auditors regarding financial reporting [reviewing internal controls]; (v) responsibility to ensure the rotation of the lead and concurrent auditors every five years and certain other auditors every seven years, with time out periods; (vi) evaluation of the independence of external auditors, including ensuring that, other than deferred tax and compliance services, external auditors do not engage in certain non-audit services, as identified in the Audit Committee Charter, when they conduct audits for the Exchange, and approval of non-audit services where appropriate; (vii) [reviewing] review of the "management letter" and reply thereto; and (viii) [having] the ability to meet with [the public accountants] external auditors without Exchange officers or employees.

The Audit Committee shall have responsibility for the Exchange's Internal Audit Department, which shall report to the Audit Committee. Such responsibility will include review of policies and procedures for and significant reports produced by the Internal Audit Department.

The Audit Committee shall review any legal matters that may materially impact the Exchange's financial statements and all examination, inspection or other reports made by any regulatory agency with regulatory oversight for the Exchange and the Exchange's responses thereto.

The Audit Committee shall review, at least annually, compliance with the Exchange's Code of Conduct with the assistance of the General Counsel's office.

The Audit Committee shall have the authority to conduct special reviews of any alleged improper conduct with respect to Exchange related activity, operations, finance or regulation.

The Audit Committee shall establish procedures for the receipt, retention, and treatment of complaints received by the Exchange regarding accounting, internal accounting controls, or other auditing matters and confidential anonymous submissions by Exchange employees regarding questionable accounting practices.

The Audit Committee may select and engage its own [counsel, consultants, accountants or other experts] *advisor(s)* to assist [in such reviews] *it in carrying out its duties.*

The Audit Committee shall determine the appropriate amount of funding to be

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the proposed rule text to add a definition of "independent director" and to make certain technical changes, and also revised the purpose section to reflect these changes and to enhance the description of the proposal generally.