rules,[15] and that such proposed interpretation raises no new issues or regulatory concerns.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–NSX–2005–06) and Amendment Nos. 1 and 2, thereto be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6562 Filed 11–25–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52780; File No. SR–NYSE–2004–64]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to Exchange Rule 342 (''Offices—Approval, Supervision and Control'')

November 16, 2005.

I. Introduction

On November 2, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NYSE Rule 342.30 (''Annual Reports'') primarily to require each member organization (''Member Organization'') and each member not associated with a member organization (''Member'') to file with the Exchange annual reports and to file a yearly statement confirming the adequacy of their compliance processes and procedures. On July 11, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[3] On August 12, 2005, the NYSE filed Amendment No. 2 to the proposed rule change (''Amendment No. 2'').[4] The proposed rule change was published for comment in the **Federal Register** on August 22, 2005.[5] The Commission received two comments on the proposal, as amended.[6] On October 31, 2005, the Exchange filed a response to the comment letters,[7] and on the same day the Exchange filed Amendment No. 3 to the proposed rule change (''Amendment No. 3'').[8] This order approves the proposed rule change, as amended by Amendments Nos. 1 and 2, grants accelerated approval to Amendment No. 3 to the proposed rule change, and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposed Rule Change

A. Description of the Proposal

1. Background

NYSE Rule 342 requires supervision of the offices, departments and business activities of Members and Member Organizations. NYSE Rule 342.30, which was adopted on May 27, 1988, requires Members and Member Organizations to prepare an Annual Report addressing specified compliance issues by April 1 of each year. Currently, Member Organizations are required to submit this report only to their Chief Executive Officer (''CEO'') or managing partner and Members are required only to prepare, but are not required to submit, the report.

2. Provisions of the Proposed Rule Change

The proposed rule change makes the following changes relating to the Annual Reports:

- The Annual Reports must be filed with the Exchange by April 1 of each year.
- The anti-money laundering compliance programs required by Exchange Rule 445[9] have been added to the list of specific areas of compliance that must be discussed in the Annual Reports.
- Member Organizations must designate a principal officer or general partner as Chief Compliance Officer (''CCO'').[10]
- Each Member, and the CEO (or equivalent officer) of each Member Organization, must submit a certification attesting to the adequacy of their organization's compliance policies and procedures.[11]

3. Regulatory Purpose of Proposed Rule Change's Provisions

(a) Submission of Annual Reports to the Exchange.

Filing the Annual Reports with the Exchange will provide timely information about the compliance efforts of Members and Member Organizations, thereby strengthening and making more efficient the Exchange's regulatory oversight, and facilitating the required annual certifications (see below).

Because submission of the Annual Reports to the Exchange was previously not required, the reports were typically provided to the Exchange at the time of, or in connection with, examinations of Member Organizations and Members.[12] Consequently, the Exchange did not always receive important information in a timely, efficient manner. Providing the reports to Exchange staff at annual intervals will afford the Exchange a timely picture of the Members' and Member Organizations' compliance issues from the preceding year, a tool for planning surveillance and examinations, and more comprehensive information for evaluation of

[15] *See* Securities Exchange Act Release No. 44139 (March 30, 2001), 66 FR 18339 (April 6, 2001) (approving proposed rule change SR–NYSE–94–34, including Supplementary Material .10 of NYSE Rule 92).

[16] 15 U.S.C. 78s(b)(2).

[17] 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, which supplemented the original filing, the Exchange added its proposed Interpretive Handbook Interpretations 342.30(d)/01 and 342.30(e)/01 for purposes of clarifying issues related to the designation of a Chief Compliance Officer and the Annual Certification, respectively. The text of interpretations 342.30(d)/01 and 342.30(e)/01 is available on the NYSE's Web site *(http://www.NYSE.com)*, at the NYSE's principal office, and at the Commission's Public Reference Room.

[4] In Amendment No. 2, which supplemented the original filing, the Exchange modified proposed interpretation 342.30(e)/01 in order to clarify the obligations of Members and Member Organizations in the preparation of annual certifications.

[5] *See* Exchange Act Release No. 52259 (Aug. 15, 2005), 70 FR 48997 (Aug. 22, 2005) (the ''Notice'').

[6] *See* letter from Scott C. Kursman, Senior Vice President & Chief Counsel for Global Compliance, Lehman Brothers, Inc. (''Lehman Letter''), dated September 14, 2005, and letter from John Polanin, Jr., Chairman, SIA Self-Regulation and Supervisory Practices Committee, dated Sept. 14, 2005 (''SIA Letter'').

[7] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated October 31, 2005.

[8] In Amendment No. 3, which supplemented the original filing, the Exchange amended the proposed rule text to respond to certain of the commenters' concerns.

[9] NYSE Rule 445 requires Members and Member Organizations to develop and implement written anti-money laundering programs consistent with the Bank Secrecy Act (31 U.S.C. 5311, *et seq.* and 31 CFR 103.120 thereunder).

[10] The Commission recently approved a similar requirement in NASD's Rule 3013. Securities Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR–NASD–2003–176).

[11] The Commission recently approved a similar requirement in NASD's new Rule 3013. *See id.*

[12] Some Member Organizations already submit the Annual Reports to the Exchange and/or make them available to Exchange examiners.

compliance systems and programs and identification of potential regulatory problems.

(b) Addition of Anti-Money Laundering Discussion to Annual Report.

The USA Patriot Act [13] substantially expanded federal anti-money laundering regulations, and led to the enhancement of Exchange anti-money laundering requirements through the adoption of NYSE Rule 445 in April 2002. The Exchange considers anti-money laundering compliance programs to be important enough to warrant consideration and discussion in the Annual Reports, and so the proposed rule change adds these programs to the list of specific areas of compliance that must be discussed in the Annual Reports.

The addition of anti-money laundering compliance programs to the aforementioned list continues the Exchange's practice of incrementally supplementing the list to reflect changes in the evolving regulatory environment. A similar augmentation recently occurred through NYSE Rule 342.23, which added Members' and Member Organizations' internal controls to the Annual Report's list of required compliance discussions.[14]

(c) Designation of CCO.

The Exchange strongly believes that Member Organizations' compliance with federal laws and Exchange regulations should be of the utmost priority. In furtherance of that belief, the Exchange previously addressed the critically important role of the compliance function by requiring the Series 14 (NYSE Compliance Official) examination and registration, which are intended to ensure the qualifications of key compliance professionals.[15]

In further recognition of the increasing importance of the compliance function, the proposed rule change requires each Member Organization to formally designate a principal executive officer or general partner of the Member Organization as its CCO. This requirement is consistent with NYSE Rule 311(b)(5), which mandates that ''principal executive officers'' exercise responsibility over each of the prescribed business areas of a Member Organization (*e.g.*, compliance). Currently, each principal executive officer and general partner is generally required to pass an examination acceptable to the Exchange that pertains to knowledge of his or her functional responsibility.[16] Based on the type of business that individual conducts, and the structure of his or her organization, acceptable examinations include the Series 9/10 (General Securities Sales Supervisor), Series 14, Series 24 (General Securities Principal), Series 27 (Financial and Operations Principal), or Series 28 (Introducing Broker/Dealer Financial and Operations Principal).[17]

The CCO designation requirement does not apply to Members, because such members, whose activities are limited to interaction with other members on the Floor of the Exchange, generally lack the organizational infrastructure or scope of business activities that would necessitate designation of a CCO.[18]

(d) CEO Certification.

The proposed rule change's CEO certification requirement reflects the Exchange's belief that Member Organizations' senior executives, particularly CEOs, should focus the highest degree of attention and resources on the compliance function. While subordinates with supervisory responsibility for specific business lines remain accountable for the discharge of compliance policies and written supervisory procedures, the Exchange considers CEOs ultimately to be accountable for the compliance and supervision of their Member Organizations.[19] In keeping with those principles, the CEO certification requirement is intended to promote and expand dialogue between Member Organization CEOs and their officers who are responsible for compliance with federal laws and Exchange regulations.[20]

The required annual certification consists of four elements:

(i) Each Member or each Member Organization's CEO (or equivalent officer) must certify that processes are in place to: Establish and maintain policies and procedures designed to achieve compliance with Exchange rules and applicable federal securities laws and regulations; modify such policies and procedures as business, regulatory and legislative changes dictate; and test the effectiveness of such policies and procedures on a periodic basis. This requirement goes to the essential nature of compliance, and assures an appropriately heightened attention to its details.

(ii) Each Member Organization's CEO (or equivalent officer) must certify that he or she has conducted one or more meetings with the CCO during the preceding 12 months, during which they discussed and reviewed the matters described in the certification. Such meetings, which must entail discussion and review of the Member Organization's compliance efforts as of that date, should aid in the identification and resolution of significant ongoing and future compliance problems.

(iii) Each Member Organization's CEO (or equivalent officer) must certify that his or her Member Organization's compliance processes are evidenced in a written report that was reviewed by the Member Organization's CEO, CCO, and such other officers as the Member Organization deems necessary, and submitted to the Member Organization's board of directors and audit committee, if any. The report must be produced prior to the execution of the proposed certification, must describe the manner in which the compliance processes are administered, and must identity the officers and supervisors who are responsible for its administration.[21]

(iv) Each Member Organization's CEO (or equivalent officer) must certify that he or she has consulted with the CCO, such other officers of the Member Organization as the Member

[13] Public Law 107–56, 115 Stat. 272 (2001).

[14] *See* Securities Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR–NYSE–2002–36).

[15] The Series 14 Examination is a qualification examination intended to ensure that the individuals designated as having day-to-day compliance responsibilities for their respective firms, or who supervise ten or more people engaged in compliance activities, have the knowledge necessary to carry out their job responsibilities. NYSE Rule 342.13(b) requires Members' and Member Organizations' compliance supervisors to pass the Series 14 Examination. *See* Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988).

[16] *See NYSE Interpretation Handbook*, Rule 304A(a), (c)/01.

[17] In proposed interpretations 342.30(d)/01 and 342.30(e)/01, the Exchange also proposes guidance regarding: The designation of CCOs; the interaction between CCOs and other executives during preparation of Annual Reports; the scope and subjects of the Annual Reports; and the reporting and certification process. *See supra* note 3.

[18] This exemption is consistent with other provisions of NYSE Rule 342. For example, under certain circumstances, some compliance officials at Member Organizations are exempt from the Series 14 requirement. *See NYSE Interpretation Handbook*, Rule 342(a)(b)/02.

[19] Attestations similar to the yearly CEO certification requirement proposed herein are also required by Exchange Rule 351(f), which calls for annual confirmation of compliance with Exchange Rule 472 (''Communications with the Public''). *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (SR–NYSE–2002–09).

[20] The proposed rule change's CEO certification requirement corresponds in substance to NASD Rule 3013, which the Commission favorably described as seeking ''to provide a mechanism to compel substantial and purposeful interaction between senior management and compliance personnel to enhance the quality of members' supervisory and compliance systems.'' Securities Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR–NASD–2003–176).

[21] *See* proposed interpretation 342.30(e)/01.

Organization deems necessary, and, to the extent the Member Organization's CEO (or equivalent officer), CCO and such other officers deem appropriate in order to attest to the statements in the certification, outside consultants, lawyers and accountants. This requirement recognizes that the CCO's expertise in the matters underlying the certification make his or her role in the process critical, and make the CCO an indispensable party to the CEO's certification.

The sentence ''[I]f any of these areas do not apply to the member or member organization, the report should so state,'' which currently concludes Rule 342.30, has been repositioned in the amended rule text to avoid the ambiguity that otherwise would have resulted from the addition of Rules 342.30(d) and 342.30(e). In response to commenters' concerns, the Exchange submitted Amendment No. 3, which clarified the parameters of the CEO's certification requirements.

B. Comment Summary and NYSE's Response

1. Comments Received

The proposal was published for comment in the **Federal Register** on August 22, 2005.[22]

We received two comments on the proposal.[23] Both commenters generally supported the NYSE's proposed rule change and commended the NYSE for its promotion of compliance efforts. However, both commenters were concerned with certain aspects of the NYSE's proposal. Commenters also generally expressed concern with the differences between the NYSE's compliance certification and reporting requirements and the NASD's requirements in NASD Rule 3013.[24] Both commenters were concerned with the language in the proposed rule change suggesting that the CEO would be required to certify to the ''adequacy'' of the firm's compliance policies and procedures. The commenters were concerned that the word ''adequacy'' created obligations inconsistent with the goals behind the certification and conflicted with the NASD's requirements, and both observed that the NASD had opted to remove similar ''adequacy'' language from Rule 3013. Both commenters were concerned about the subjectivity of certification as to the ''adequacy'' of the compliance processes and procedures, and both commenters requested that the NYSE remove the adequacy standard from the proposed language.[25]

Both commenters were also concerned that the proposal created ambiguity about the role of compliance officers. Both commenters stated that the NYSE's statements in the proposed rule change might make it appear that the NYSE intended to treat compliance officers as ''business line'' supervisors. One commenter said that this was contrary to the common understanding of the role of compliance officers,[26] while the other commenter requested that the Exchange clarify that the CCO does not have business-line responsibility.[27]

One of the commenters also requested that the Exchange determine why it would require that the certification be filed with the Exchange when this would diverge from the NASD's requirements.[28] The commenter asked that regulators gain additional experience with the NASD's CCO filing before improving on the requirement, and requested consistency between the Exchange's and the NASD's requirements in the filing of the reports.

2. NYSE's Response to Comments

The NYSE responded to the commenters' concerns by filing an amendment to the proposed rule text to remove the language ''the adequacy of.'' The Exchange noted in its response, however, that in order to emphasize the necessity of the CEO's belief that the processes attested to in the certification could reasonably achieve the goals of the rule, and that the CEO has an informed basis for the certification, the Exchange added the words ''and review'' to proposed Rule 342(e)(i)(A).

In response to commenters'' concerns that the proposed rule change might create business line responsibility for compliance officers, the Exchange responded that it sought to recognize the importance of the compliance function. The Exchange stated that the rule as written and intended would not vest the CCO with business-line responsibility. The Exchange noted that the language in the proposed rule change regarding ''business areas'' differs from that in Rule 311(b)(5), which sets forth the areas of responsibility of a CEO, and uses the phrase ''areas of the business.'' The Exchange stated that it had no intention of addressing the relationship of a CCO to such covered ''areas of the business.'' The Exchange also stated that the proposed rule change does not affect the determination of whether a compliance manager is a business-line manager, which the Exchange instead described as a fact-specific determination. The Exchange stated that the proposed rule change and filing should not be read as an alteration to the existing standards of determining whether a compliance manager is a business-line supervisor.

With respect to the filing requirement, the Exchange observed not only that the proposed rule change required members and member organizations to file the report previously required to be prepared during the preceding year, but also that the Exchange understood that NASD would be instituting a similar requirement, thereby creating consistency in requirements between the NYSE and the NASD.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–64 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–2004–64. 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

[22] *See* note 5, *supra*.

[23] *See* note 6, *supra*.

[24] *See* Lehman Letter, SIA Letter.

[25] *See* Lehman Letter, SIA Letter.

[26] *See* Lehman Letter.

[27] *See* SIA Letter.

[28] *See* Lehman Letter.

Room. 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 available publicly. All submissions should refer to File Number SR–NYSE–2004–64 and should be submitted on or before December 19, 2005.

IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) [29] of the Act in general and section 6(b)(5) of the Act [30] in particular, which require that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[31] The proposed rule change facilitates the Exchange's review of Members' and Member Organizations' regulatory programs, strengthens Members' and Member Organizations' oversight of their compliance processes and procedures, and promotes increased involvement of Members and Member Organization CEOs in compliance matters. The Commission believes that the proposed rule change accomplishes these goals by emphasizing the importance of compliance procedures and processes and ensuring that CEOs will give these processes and procedures high priority. The proposal's requirements for designation of CCOs, annual CEO certifications, mandatory meetings of the CCOs and CEOS, annual compliance reports, and provision of the compliance reports to the Exchange should increase members' senior management's focus on the effectiveness of member compliance efforts with applicable NYSE rules and Federal securities laws. The proposed rule change will involve CEOs in the compliance processes by requiring the CEOs to be engaged with the creation of a report and a certification documenting compliance procedures and processes, further enhancing focus on Members' and Member Organizations' compliance and supervision systems, and thereby decreasing the likelihood of fraud and manipulative acts and increasing investor protection. The requirement for annual CEO certifications and preparation of a related report will help motivate firms to keep their compliance programs current with business and regulatory developments.

The proposed requirement of a certification that the Member or Member Organization has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NYSE rules and federal securities laws and regulations will help to ensure that members have in place a compliance framework that will allow the member to adapt its compliance efforts to the ever-changing business and regulatory environment. Especially helpful in this regard is the requirement that the processes in a Member Organization, at a minimum, must include one or more meetings annually between the CEO and CCO to (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the Member Organization's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

The Commission also believes that the proposed rule change will create procedures at the NYSE that are similar to those at the NASD, assisting Members and Member Organizations in their compliance efforts by creating a parallel framework for certifications to and reports on compliance processes and procedures at the NASD and NYSE.

The Commission believes that the commenters' concerns are addressed by the NYSE's responsive amendment as well as the NYSE's letter responding to the comments. The NYSE amended the rule text in Amendment No. 3 to address commenters' concerns that the proposed rule change would require Members and Member Organizations to certify as to the adequacy of their procedures. In its response to comments, the Exchange clarified that determining whether compliance officers are ''business-line'' is a fact-specific determination, and that the proposed rule change was not intended to affect that determination. Lastly, the NYSE's filing requirement requires only that the Member or Member Organization file with the Exchange a report that they are already required to prepare, which will provide the Exchange with useful information in its examinations of Members and Member Organizations. Further, submission of the certification to the Exchange assures timely completion of the Certification and will provide notice of any issues with the completion of the Certification. Further, the NASD has recently amended its Rules 3012 and 3013 to require that its members' reports be provided to its members' boards on a similar time frame to that of the NASD.[32] The commenter's concern with inconsistent timing of requirements between the NYSE and NASD should therefore be addressed by the NASD's proposed rule change.

Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[33] Amendment No. 3 responded to comment letters by amending proposed NYSE Rule 342 to eliminate the words ''the adequacy of'' and to further clarify the rule by requiring that the Member or Member Organization review its procedures and processes. The amendment therefore clarified that although a CEO has no obligation to attest to the adequacy of the compliance processes and procedures, the CEO must nonetheless have an informed basis for the certification. The Commission finds that, given the objections raised with respect to the language ''the adequacy of'' by commenters, and the Exchange's concern that despite deletion of the ''adequacy'' concept, the CEO nonetheless have an informed basis for the certification, it is appropriate and responsive for the Exchange to amend the proposed rule text to reflect these concerns. Furthermore, the Commission believes that deletion of the ''adequacy'' language from the rule text and addition of a review requirement will allow the requirements set forth in the rule to more closely conform to those already instituted by the NASD in its Rule 3013, creating consistency between the two rules. Accordingly, the Commission believes that accelerated approval of Amendment No. 3 is appropriate.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [34] that the proposed rule change (SR–NYSE–2004–64) be, and hereby is, approved.

[29] 15 U.S.C. 78f(b)

[30] 15 U.S.C. 78f(b)(5)

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

[32] *See* Exchange Act Release No. 52727 (Nov. 3, 2005), 70 FR 68122 (Nov. 9, 2005).

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78s(b)(2).

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

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6557 Filed 11–25–05; 8:45 am]

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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 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 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 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 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.

[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).