

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48662; File No. SR-PCX-2003-41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Trade, Either by Listing or Pursuant to Unlisted Trading Privileges, Fixed Income Exchange Traded Funds

October 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 2, 2003, the Pacific Exchange, Inc. ("PCX" 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 Exchange. On October 14, 2003, PCX 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, and to grant accelerated approval.

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

PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. With this filing, PCX proposes to amend PCXE Rule 5.2(j)(3) to permit trading, either by listing or pursuant to unlisted trading privileges ("UTPs"), certain fixed income Exchange Traded Funds ("ETFs"). The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

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Rule 5.2(j)(3)—No change.

(A) Original Unit Listing Standards.

(i) The Investment Company must:

(a)[(I)] hold securities (*including fixed income securities*) comprising, or otherwise based on or representing an interest in, an index or portfolio or securities; or

(b)[(II)] hold securities in another registered investment company that

holds securities as described in (a) above.

An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

(ii) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the "Deposit") consisting of either:

(a)[(I)] a specified number of shares of securities (*or, if applicable, a specified portfolio of fixed income securities*) that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or

(b)[(II)] shares of a registered investment company, as described in subsection (A)(i)(a)[(I)] above, and/or a cash amount.

(iii) Units must be redeemable, directly or indirectly, from the Investment Company for securities (*including fixed income securities*) and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges.

(iv)—No change.

(B)–(D)—No change.

Commentary

.01—No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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. 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

Purpose

The Exchange proposes to amend PCXE Rule 5.2(j)(3) to permit the listing and trading of fixed income ETFs. Additionally, PCXE seeks approval to trade, on a UTP basis, the following series of the iShares Trust: iShares 1–3 Year Treasury Index Fund, iShares 7–10

Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, and iShares GS \$ InvesTop™ Corporate Bond Fund.

1. Listing and Trading ETFs

PCXE Rule 5.2(j)(3) provides standards for listing an Investment Company Unit ("ICU"), which is defined as "a security that represents an interest in a registered investment company ("Investment Company") that could be organized as a unit investment trust, open-end management investment company or similar entity." In addition to being registered under the Investment Company Act of 1940 ("1940 Act"), these securities are also registered under the Exchange Act. The Exchange proposes to amend this definition to permit the listing and trading of index-based fixed income investment products (*e.g.*, ETFs) that are based on an index of fixed income securities. Examples of such products include U.S. government securities and corporate and non-corporate (other than U.S. government) debt securities. As amended, PCXE Rule 5.2(j)(3) would accommodate the listing and trading of units of trading ("Units")⁴ based on an index of U.S. government debt securities (*e.g.*, securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity). Other products that could be listed or traded under this rule, as amended, could include Units based on an index of corporate and/or non-corporate debt securities.⁵ The Commission has approved the requests of the American Stock Exchange LLC ("Amex"), the New York Stock Exchange ("NYSE") and the Chicago Stock Exchange ("CHX") to list and trade fixed income ETFs.⁶ The Exchange believes that its proposed rule change is substantially similar to those filed and approved for the Amex, NYSE and CHX.

Accordingly, the Exchange proposes to amend PCXE Rule 5.2(j)(3) to specify

⁴ See PCXE Rule 5.1(b)(15) for the definition of "Unit".

⁵ ICUs based on a fixed income securities index are not currently eligible for listing or trading under the Exchange's generic listing criteria (*See* PCXE Rule 5.2) pursuant to Rule 19b-4(e) of the Exchange Act. The Exchange understands that it must make separate rule filings for any additional series of such ICUs based on fixed income indices prior to listing or trading those products, even if the Exchange is only trading the product on a UTP basis.

⁶ *See* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR-Amex-2001-35) ("Amex Approval Order"); Securities Exchange Act Release No. 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (SR-NYSE-2002-26); and Securities Exchange Act Release No. 46834 (November 14, 2002), 67 FR 70276 (November 21, 2002) (SR-CHX-2002-27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 13, 2003 ("Amendment No. 1").