

Accordingly, PCX believes that the pricing of the bonds included in the Portfolio Deposit (and in the Redemption Basket) will be transparent to anyone with access to Bloomberg systems. Because the arbitrageurs of ETF shares are generally large institutional investors, including broker-dealers, the Commission believes that these investors likely will have access to Bloomberg systems, as well as other bond pricing information sources that should permit efficient arbitrage to occur. While the Commission believes that differences in the liquidity and pricing transparency of the underlying fixed income markets, as compared to the equity markets, may result in the Funds trading at slightly higher discounts and premiums, the Commission does not believe that this effect is likely to be so substantial as to undermine the benefits that Funds will provide to the markets and to investors. The Commission expects the Exchange to review the discounts or premiums for these products and to respond appropriately if there is in fact a significant pricing disparity.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser. Instead, under the exemption and under PCX's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares.⁴¹ The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under PCXE Rule 5.2(j) the Exchange issues a circular to its members explaining the unique characteristics and risks of the

security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under PCXE Rule 9.2(a) which generally requires that members use due diligence to learn the essential facts relative to every customer. The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with Section 6(b)(5) of the Exchange Act.⁴²

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Investment Company Unit listing standards in PCXE Rules 5.2(j) and 5.5(g)(2), and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Investment Company Units, including Funds. Funds will be deemed equity securities subject to PCX rules governing the trading of equity securities. These rules include: Business Conduct and Equity Trading Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to PCXE Rule 7.12, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, handling of orders and reports, duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans;⁴³ and Conducting Business with the Public Rules, such as conduct of accounts, margin rules, and advertising.⁴⁴ PCX also will consider halting trading in any series of Investment Company Units under

certain other circumstances regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development and maintenance of a stock index upon which an ETF is based. Previously, the Commission noted the importance of an exchange adopting adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a fixed income securities index.⁴⁵ In the Amex Approval Order, the Commission noted that Goldman and Lehman each have procedures in place to prevent the misuse of material, non-public information regarding changes to component stocks to the Funds.⁴⁶ The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices.

The Commission also believes that PCX has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

PCX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. PCX has requested accelerated approval because the 1940 Act Application relating to the Funds has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.⁴⁷ The Application disclosed the characteristics and risks associated with the Funds. No comments were submitted and the Commission granted the relief requested in the Application.⁴⁸ The Funds will trade on the Exchange in the same

The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

⁴¹ When the Commission approved Nasdaq listing standards for ETFs, it clarified that NASD members trading equity ETFs through electronic communication networks ("ECNs") would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. See Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of Funds.

⁴² 15 U.S.C. 78f(b)(f).

⁴³ PCXE Rules 6.1-7.64.

⁴⁴ PCXE Rules 9.1-9.28.

⁴⁵ See Amex Approval Order, *supra* note 6.

⁴⁶ The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

⁴⁷ Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

⁴⁸ Investment Company Act Release No. 25622 (June 25, 2002).