

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44182; File No. SR-PCX-2001-01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trust Issued Receipts

April 16, 2001.

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 January 8, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 to the proposed rule change was filed on April 18, 2001.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant approval to the proposed rule change on an accelerated basis.

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

The Exchange proposes to adopt generic listing requirements for Trust Issued Receipts ("TIRs") that would permit its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "the Corporation") to trade, either by listing or pursuant to unlisted trading privileges ("UTP"), specified series of TIRs pursuant to Rule 19b-4(d) under the Act. Below is the text of the proposed rule change. *Italics* indicate text to be added.

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PCX Equities, Inc. Trust Issued Receipts

Rule 8.200(a). The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule.

(b) Definitions. A Trust Issued Receipt is a security (1) that is issued by a trust ("Trust") which holds specific securities deposited with the Trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other

distributions on the deposited securities, if any are declared and paid to the trustee ("Trustee") by an issuer of the deposited securities.

(c) Designation. The Corporation may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Corporation or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(d) Initial and Continued Listing and/or Trading. Trust Issued Receipts will be traded on the Corporation subject to application of the following criteria:

(1) Commencement of Trading—For each Trust, the Corporation will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Trading—Following the initial twelve month period following formation of a Trust and commencement of trading on the Corporation, the Corporation will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(A) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(B) if the Trust has fewer than 50,000 receipts issued and outstanding;

(C) if the market value of all receipts issued and outstanding is less than 1,000,000; or

(D) if any other event shall occur or condition exists which, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Trust Issued Receipts issued in connection with such trust be removed from listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(3) Term—The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee—The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, as qualified trust company or banking institution must be appointed co-trustee.

(5) Voting—Voting rights shall be as set forth in the Trust prospectus.

(e) ETP Holders and ETP Firms. ETP Holders and ETP Firms shall provide to all

purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(f) Applicability. This Rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

Commentary:

.01 The Corporation may approve trust issued receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided that the following criteria are satisfied:

(a) each security underlying the trust issued receipt must be registered under Section 12 of the Exchange Act;

(b) each security underlying the trust issued receipt must have a minimum public float of at least \$150 million;

(c) each security underlying the trust issued receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security;

(d) each security underlying the trust issued receipt must have an average daily trading volume of at least 100,000 shares during the preceding, sixty-day trading period;

(e) each security underlying the trust issued receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(f) the most heavily weighted security in the trust issued receipt cannot initially represent more than 20% of the overall value of the trust issued receipt.

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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, the Exchange 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. The Exchange 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 Exchange is proposing to adopt generic listing requirements to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the PCX made certain technical changes relating to numbering of proposed rule text. See letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Andrew Shipe, Attorney, Division of Market Regulation, SEC, dated April 16, 2001 ("Amendment No. 1").

accommodate the trading, whether by listing or UTP, of TIRs 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-4,⁵ if the Commission has approved, pursuant to Section 19(b) of the Act,⁶ the SRO's trading rules, procedures and listing requirements for the product class that include the new derivative securities product, and the SRO has a surveillance program for the product class.⁷ The Exchange believes that the Commission's approval of the proposed listing requirements for TIRs will allow PCXE to begin trading qualifying products without the need for notice and comment and Commission approval under section 19(b) of the Act.⁸ The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities.

The Commission has previously approved requests of the American Stock Exchange ("Amex") and the Chicago Stock Exchange ("CHX") to provide generic standards to list and/or trade TIRs.⁹ The Exchange believes that its proposed listing requirements for TIR are substantially similar to the listing requirements at the Amex and CHX. The information provided below is intended to provide a description of how TIRs are created traded and is similar to that discussed in the original Amex TIRs Approval Order.¹⁰

a. *General.* TIRs are negotiable receipts that are issued by a trust in which securities of issuers are deposited and held on behalf of the holders of the TIRs. They are designed to allow investors to hold interests in a variety of companies in a particular industry through a single, exchange-listed and traded instrument that represents beneficial ownership in the deposited securities. Holders may cancel their TIRs at any time to receive their *pro rata* share of the underlying securities.

Beneficial owners of the receipts have the same rights, privileges, and

obligations as they would if they beneficially owned the underlying securities outside the TIRs program. Holders of the receipts have the right to instruct the trustee to vote their *pro rata* share of the underlying securities evidenced by the receipts. They will receive reports, proxy solicitations, and other information distributed by the issuers of the deposited securities to their security holders, and will receive their *pro rata* share of the dividends and other distributions declared and paid by the issuers to the trustee.

b. *Creation of the Trust.* TIRs will be issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities in the trust. An investor will be permitted to withdraw the underlying securities upon delivery to the trustee of one or more round lots of 100 TIRs. Conversely, an investor may deposit the necessary securities and receive TIRs in return.

c. *The Trust Issued Receipts Portfolio.* The companies represented by securities in the portfolio underlying the TIRs must meet the following minimum criteria: (1) The companies' common stock must be registered under section 12 of the Act;¹¹ (2) the minimum public float of each company included in the portfolio must be at least \$150 million; (3) each security must either be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) the average daily trading volume for each security must be at least 100,000 shares during the preceding sixty-day trading period; (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period must be at least \$1 million; and (6) the most heavily weighted security in the TIR cannot initially represent more than 20% of the overall value of the TIR.

d. *Criteria for Initial and Continued Listing.* The Exchange intends to list or trade pursuant to UTP, specified series of TIRs that currently are listed on other exchanges and that are developed from time to time. Under the proposed rules, the Exchange may list or trade pursuant to Rule 19b-4(e),¹² a series of TIRs that meet the specified criteria and such series has the requisite level of TIRs outstanding at the time of commencement of trading on the

PCXE.¹³ The minimum number of receipts that must be outstanding at commencement of trading on PCXE will be included in any required submission under Rule 19b-4(e).

The Exchange believes that the proposed initial listing requirements will ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The Exchange also believes that these criteria will ensure sufficient liquidity for those investors seeking to purchase and deposit the underlying securities with the trustee to create a new TIR.

In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, a series of TIRs when any of the following circumstances arise: (1) The trust has more than sixty days remaining until termination and there are fewer than 50 record and/or beneficial holders of TIRs for 30 or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than \$1 million; (4) such other event occurs or conditions exists which, in the opinion of the Exchange, makes further dealings on PCXE inadvisable.

These flexible criteria will allow the Exchange to avoid delisting TIRs (and possibly terminating the trust) due to relatively brief fluctuations in market conditions that may cause the numbers of holders to vary. The Exchange will not, however, apply these delisting criteria for the initial 12-month period following the formation of a trust and commencement of trading on the PCXE. In addition, if the number of companies represented by the deposited securities drops to fewer than nine, and each time the number of companies is reduced thereafter, the Exchange will consult with the Commission to confirm the appropriateness of the continued listing of the TIRs.

e. *PCXE Rules Applicable to Trading of TIRs.* Dealings in TIRs on the PCXE will be conducted pursuant to the PCXE's equity trading rules. PCXE's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable PCXE equity rules and procedures will also apply, including, among others, rules governing the Intermarket Trading System, priority of orders, operational

¹³ The Exchange anticipates requiring a minimum of 150,000 outstanding receipts before trading can commence.

⁴ 17 CFR 240.19b-4(e).

⁵ 17 CFR 240.19b-4(c)(1).

⁶ 15 U.S.C. 78s(b).

⁷ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

⁸ 15 U.S.C. 78s(b).

⁹ See Securities Exchange Act Release No. 43496 (September 29, 2000), 65 FR 60230 (October 10, 2000).

¹⁰ See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

¹¹ 15 U.S.C. 78(1).

¹² 17 CFR 240.19b-4(e).

and regulatory trading halts, and responsibilities of specialists.¹⁴

The Exchange's surveillance procedures for TIRs will be similar to the procedures for portfolio depository receipts and will incorporate and rely upon existing surveillance systems.

f. *Disclosure and Dissemination of Information.* The Exchange will distribute an information circular to its members in connection with the trading of TIRs. It will discuss the special characteristics and risks of trading this type of security, including the fact that TIRs are not individually redeemable. Specifically, the circular, among other issues, will discuss what TIRs are, how they are created, the requirement that member and member firms deliver a prospectus to investors purchasing TIRs prior to or concurrently with the confirmation of a TIRs transaction, applicable PCXE rules, dissemination information, trading information, and the applicability of suitability rules. In addition, the circular will inform members of specific PCXE policies, such as trading halts and market conditions particular to such securities.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁵ in general, and furthers the objectives of section 6(b)(5),¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to enhance competition 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.

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

¹⁴ PCXE's rules relating to odd lot executions will not apply because the trust issued receipts will be traded only in round lots or round lot multiples. In addition, the Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a-1 under the Act (17 CFR 240.10a-1) for transactions in securities issued under the TIRs program. See S.E.C. Exemption Letter, 1999 WL 1038048 (S.E.C.). the Exchange will issue a notice to its members detailing the terms of the exemption.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2001-01 and should be submitted by May 22, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act¹⁷ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal to provide standards to permit listing and trading of trust issued receipts pursuant to Rule 19b-4(e)¹⁸ furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval. By establishing listing standards, the proposals should reduce PCX's regulatory burden, as well as benefit the public interest, by enabling PCX to bring qualifying products to the market more quickly. Accordingly, the Commission finds that PCX's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.¹⁹

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 17 CFR 240.19b-4(e).

¹⁹ 15 U.S.C. 78f(b)(5). In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

As described above, the Commission has previously approved similar Amex and CHX rules that permit the listing and trading of individual trust issued receipts.²⁰ In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the Exchanges' rules and surveillance programs that govern their trading. The Commission concluded then that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts. The Commission notes that PCX's proposed standards are substantially similar to the Amex and CHX standards. The Commission therefore believes that trust issued receipts that satisfy PCX's proposed standards should produce the same benefits to PCX and to investors.

The Commission further believes that adopting listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those products that satisfy the listing standards to start trading without the need for notice and comment and Commission approval. PCX's ability to rely on Rule 19b-4(e) potentially reduces the time frame for bringing these securities to the market, or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that PCX's proposal contains adequate rules and procedures to govern the listing and trading of trust issued receipts pursuant to Rule 19b-4(e) on the PCX, or pursuant to UTP. All trust issued receipt products listed under the standards will be subject to the full panoply of PCX rules and procedures that now govern both the trading of trust issued receipts and the trading of equity securities on the Amex and CHX, including, among

²⁰ See e.g., Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (CHX); Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (Amex).

others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

The Commission further finds that: (1) By requiring that the underlying securities in a trust issued receipt be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq, and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those trust issued receipts listed and traded pursuant to Rule 19b-4(e). The Commission believes that these listing criteria will help to ensure that no security underlying a trust issued receipt will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various trust issued receipts to meet investors' needs. The Commission further believes that these criteria should serve to ensure that the underlying securities of such trust issued receipts are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new trust issued receipts under Rule 19b-4(e). Accordingly, the Commission finds that these criteria are consistent with section 6(b)(5) of the Act,²¹ because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

Additionally, as the Commission noted in its previous review and approval of CHX and Amex Rules, the Exchange's delisting criteria allows it to consider the suspension of trading and the delisting of a trust issued receipt if an event occurs that makes further dealings in such securities inadvisable. This will give the Exchange flexibility to delist trust issued receipts if circumstances warrant.

The Commission notes that, in connection with its previous review and approval of CHX and Amex Rules, it approved similar applicable minimum price increments, surveillance procedures, and disclosure and prospectus delivery requirements for

trust issued receipts.²² In accord with these previous findings, the Commission believes that PCX's proposed rules will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission believes that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading trust issued receipts.

Finally, PCX will file Form 19b-4(e) with the Commission within five business days of commencement of trading a trust issued receipt under the listing standards and will comply with all Rule 19b-4(e) recordkeeping requirements.

The Commission finds good cause for approving the proposed rule change (SR-PCX-2001-01) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is similar to rules previously approved by the Commission for Amex and CHX, and that is concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.²³ The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Moreover, the Commission believes that approving the listing and trading of TIRs on the PCX will increase industry competitiveness by providing an additional venue for the trading of such issues, to the benefit of the investor. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,²⁴ to approve the proposal on an accelerated basis, and before expiration of the period for filing comments.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-PCX-2001-01) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,
Deputy Secretary.

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²² See note 22, *supra*.

²³ 15 U.S.C. 78s(b).

²⁴ 15 U.S.C. 78f(b)(6).

²⁵ 15 U.S.C. 78s(6)(2).

²⁶ 17 CFR 200.30-3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44216; File No. SR-PCX-00-48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Auto-Ex Between-the-Quotes

April 24, 2001.

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 December 13, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment Nos. 1 and 2 to the proposed rule change were filed on January 3, and April 2, 2001, respectively.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve it on an accelerated basis.

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

The PCX is proposing to effect a change to its Automatic Execution System ("Auto-Ex") that will allow small-sized customer option orders that improve the PCX best bid or offer ("BBO") to be automatically executed by the Auto-Ex System. Below is the text of the proposed rule change. New text is in *italics*.

Pacific Exchange, Inc. Constitution and Rules

* * * * *

Rule 6 Options Trading Automatic Execution System

¶ 5231

Rule 6.87(a)-(1)—No change.

(m) Auto-Ex-Between-the-Quotes. Lead Market Makers may, at their discretion, employ the Auto-Ex-Between-the-Quotes

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the PCX re-designated the filing as a submission pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), rather than section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). In Amendment No. 2, the PCX added rule text to provide that the Auto-Ex-Between-the-Quotes feature would not permit execution of orders at prices that trade through other markets. See letters from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated January 2, 2001 ("Amendment No. 1"), and March 29, 2001 ("Amendment No. 2").

²¹ 15 U.S.C. 78f(b)(5).