

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 NYSE. All submissions should refer to the SR-NYSE-2001-19 and should be submitted by August 9, 2001.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 01-18065 Filed 7-18-01; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44551; File No. SR-PCX-2001-14]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Generic Listing Standards Applicable to the Listing and Trading of Investment Company Units and Portfolio Depository Receipts Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934

July 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

notice is hereby given that on May 1, 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. On June 19, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On July 12, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to amend its listing requirements for ICUs and PDRs to permit its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation") to list and trade, or trade pursuant to unlisted trading privileges ("UTP"), certain products of ICUs (PCXE Rule 5) or PDRs (PCXE Rule 8) pursuant to Rule 19b-4(e) under the Act.<sup>5</sup> The Exchange also proposes a related amendment to PCXE's minimum price variation rule (PCXE Rule 7, Commentary .05).<sup>6</sup> The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, or the PCX.

#### 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

<sup>3</sup> See Letter from Peter D. Bloom, Director, Regulatory Projects, Regulatory Policy, PCX, to Lisa N. Jones, Attorney, Division of Market Regulation ("Division"), Commission (June 18, 2001) ("Amendment No. 1"). Amendment No. 1, among other things, revises the proposal to: (1) Modify the initial listing requirement of the minimum number of Units, that may be outstanding at commencement of trading to 100,000 Units, consistent with the other exchanges; (2) amend the proposed rule text language relating to minimum price variations for Investment Company Units ("Units") and Portfolio Depository Receipts ("PDRs"); and (3) amend proposed rule text and add cross-references for clarification purposes.

<sup>4</sup> See Letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Lisa N. Jones, Attorney, Division, Commission (July 12, 2001) ("Amendment No. 2"). Amendment No. 2 corrects typographical errors in the proposed rule text.

<sup>5</sup> 17 CFR 240.19b-4(e), Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). See Securities Exchange Act Release No. 40761 (December 8, 1998) 63 FR 70952 (December 22, 1998).

<sup>6</sup> See note 3, *supra*.

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's current rules for the initial and continued listing of ICUs and PDRs are set forth in PCXE Rules 5.2(j)(3)<sup>7</sup> and 8.100,<sup>8</sup> respectively.<sup>9</sup> The exchange proposes to amend these rules by adopting generic listing requirements to provide standards that permit the trading, whether by listing or pursuant to unlisted trading privileges ("UTP"),<sup>10</sup> of various ICUs and PDRs products pursuant to Rule 19b-4(e) under the Act.<sup>11</sup> The Exchange believes that the Commission's approval of the proposed generic listing requirements for ICUs and PDRs will allow PCXE to begin trading qualifying products without the need for notice and comment and commission approval. The Exchange further believes that application of Rule 19b-4(e) to these securities potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities.

The Commission has previously approved requests by the American Stock Exchange LLC ("Amex"), Chicago Stock Exchange, Inc. ("CHX") and the Chicago Board Options Exchange, Inc. ("CBOE") to provide generic standards to list and trade ICUs and PDRs.<sup>12</sup> The Exchange believes that

<sup>7</sup> The Exchange's definition of "Unit" for ICUs is contained in PCXE Rule 5.1(b)(5).

<sup>8</sup> The Exchange's definition of a "PDR" is contained in PCXE Rule 8.100(a).

<sup>9</sup> See Securities Exchange Act Release No. 39461 (December 17, 1997), 62 FR 67674 (December 29, 1997) (approving SR-PCX-97-35 relating to listing and trading criteria for PDRs) and Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (approving SR-PCX-98-29 relating to listing and trading criteria for ICUs).

<sup>10</sup> See 17 CFR 240.12f-5.

<sup>11</sup> See note 4, *supra*.

<sup>12</sup> See Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approving SR-Amex-00-14 relating to the generic listing standards for PDRs and Index Fund Shares); Securities Exchange Act Release No. 42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (approving SR-CHX-00-14 relating to generic listing standards for ICUs and PDRs); and Securities Exchange Act Release No. 44046 (March 7, 2001), 66 FR 15152

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the proposed generic listing requirements for ICUs and PDRs are substantially similar to the listing requirements at the Amex, CHX and CBOE.

*Criteria for Initial and Continued Listing and Trading.* The Exchange is proposing to implement generic listing requirements that are intended to ensure that a substantial portion of the weight of an index or portfolio underlying ICUs or PDRs is composed of securities with substantial market capitalization and trading volume. The Exchange proposed to amend its current listing standards for a series of ICUs or PDRs, contained in PCXE Rules 5.2(j)(3) and 8.100, respectively, to provide standards that permit the listing and trading, or trading pursuant to UTP, of various ICUs or PDRs products, pursuant to Rule 19b-4(e) under the listing requirements as described below.

Upon the initial listing of a serious ICUs or PDRs, the Exchange proposes that the component stocks contained in the aggregate account for at least 90% of the weight of the underlying index or portfolio must have a minimum market value of at least \$75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. The most heavily weighted component stock in an underlying index or portfolio cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio must include a minimum of 13 stocks,<sup>13</sup> and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market (including, the Nasdaq SmallCap Market). Furthermore, the Exchange proposes that any series of ICUs or PDRs traded pursuant to generic listing requirements must meet these eligibility criteria as the date of initial deposit of

securities and cash into the trust or fund.

Under the proposed amendments to PCXE Rules 5.2(j)(3) (for ICUs) and 8.100 (for PDRs), the underlying index or portfolio must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index or portfolio, and the index must be calculated by a third party who is not a broker-dealer.

The hours during which ICUs transactions may be made on the Exchange are 6:30 a.m. (Pacific Time ("PT")) until 1:30 p.m. (PT) for each series of Units. The hours during which PDRs transactions may be made on the Exchange are 6:30 (PT) until 1:30 p.m. (PT) for each series of PDRs.

The current index value must be disseminated every 15 seconds over the Consolidated Tape Association's Network, as well as an estimate of the net asset value per share of each series of ICUs or PDRs.<sup>14</sup> Additionally, the Reporting Authority must disseminate for each series of ICUs or PDRs an estimate, updated every 15 seconds, of the value of a share of each series. This estimate may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A series of ICUs or PDRs will be registered in book-entry form through the Depository Trust Company. A minimum of 100,000 shares of a series of ICUs or PDRs is required to be outstanding at the time trading begins. The Exchange represents that it believes that this minimum number is sufficient to establish a liquid Exchange market at the start of trading. The minimum price variation for quoting and entry of orders in a series of ICUs or PDRs will be \$0.01.

*PCXE Rules Applicable to Trading of ICUs and PDRs.* The Exchange proposes to trade ICUs and PDRs pursuant to the PCXE's existing equity trading rules. Specifically, all series of ICUs and PDRs listed under Rule 19b-4(e) will be subject to PCXE's general dealing and settlement rules, including its rules on clearance and settlement of securities transactions and its equity margin rules.

<sup>14</sup> The PCX notes the information described in this section will be disseminated by or through the primary exchange or another entity working with that exchange.

Other generally applicable PCXE equity rules and procedures will also apply, including, among others, rules governing the Intermarket Trading System, priority of orders, operational and regulatory trading halts, and responsibilities of specialists.

The Exchange will implement written surveillance procedures for the ICUs and PDRs that it trades pursuant to Rule 19b-4(e). The Exchange intends to use its existing surveillance technology and procedures adopted for PDRs<sup>15</sup> to conduct surveillance of trading activity in series of ICUs or PDRs. The Exchange believes these procedures will effectively monitor the trading activity in ICU or PDR products so as to ensure full compliance with Exchange rules and the federal securities laws. In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b-4(e),<sup>16</sup> and will file Form 19b-4(e) for each series of ICUs or PDRs within five business days of commencement of trading.

*Notice to Members and Member Organizations.*<sup>17</sup> The Exchange proposes to issue and distribute an information circular to its members and member organizations for each series of ICUs or PDRs to be listed pursuant to Rule 19b-4(e). The circular will describe the special characteristics of the securities and will inform members or member organizations of any obligation to deliver a written product description prospectus, as applicable, to purchasers of ICUs or PDRs. In addition, the circular will inform members or member organizations that all series of ICUs and PDRs listed under Rule 19b-4(e) will be subject to Exchange procedures and rules comparable to those applied to existing products.

*Disclosure to Customers.* The proposed rule amendment requires members and member organizations to provide purchasers of a series of ICUs with a product description of the terms and characteristics of such securities in a form approved by the Corporation or prepared by the open-end management investment company issuing the securities, not later than the time a confirmation of the first transaction in such series is delivered to the

<sup>15</sup> PCXE currently trades, pursuant to unlisted trading privileges, PDRs based on the S&P 500 Index, the S&P MidCap 400 Index, and the Nasdaq-100 Index.

<sup>16</sup> 17 CFR 240.19b-4(e).

<sup>17</sup> Under PCX Equities, Inc. rules, the terms "ETP Holder," "Equity ASAP Holder" and "ETP Firm" have status as a "member" of the PCX as that term is defined in Section 3 of the Act. Therefore, for purposes of this rule filing notice, the terms "member" and "member organization" are synonymous with the terms ETP Holder, Equity ASAP Holder and ETP Firm, if applicable.

(March 15, 2001) (approving SR-CBOE-00-51 relating to generic listing standards for Index Portfolio Shares ("ISPs") and Index Portfolio Receipts ("IPRs")).

<sup>13</sup> Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets and must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of the fund's total assets.

purchaser.<sup>18</sup> This requirement applies only if the particular series has been granted relief from the prospectus delivery requirements of Section 24(d) of the Investment Company Act of 1940,<sup>19</sup> and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. In addition, members and member organizations are required to include the product description with any sales materials relating to a series of ICUs that are provided to the public. Any other written materials provided to customers by a member or member organization referring to a series of ICUs must include a statement relating to the product description, in substantially the form set forth in the proposed amendment to PCXE Rule 5.2(j)(3).

The Exchange also proposes to amend PCXE Rule 8.100(c) to clarify that the disclosure provisions of this subparagraph are only applicable to a series of PDRs if, among other things, that series is not subject to prospectus delivery requirements under the Securities Act of 1933.<sup>20</sup> In addition, the Exchange proposes to amend PCXE Rule 8.100(c) to provide that the descriptive disclosure document required by this Rule must be in a form approved by the Exchange or prepared by the unit investment trust issuing the subject PDRs.<sup>21</sup>

The proposal also provides that a member or member organization carrying an omnibus account for a non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm is required to inform such non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm that execution of an order to purchase a series of ICUs for such account will be deemed to constitute agreement by the non-member to make such product description available to its customers on the same terms as are directly applicable to members and member organizations under the proposed amendment to PCXE Rule 5.2(j)(3). The proposal also requires that a member or member organization must provide a prospectus for a particular series of ICUs upon the customer's request.

<sup>18</sup> The Exchange notes that the current PCXE Rule 8.100 relating to the listing and trading of PDRs already requires its ETP Holders, Equity ASAP Holders and ETP Firms to provide all purchasers of a series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Corporation. See PCXE Rule 8.100(c).

<sup>19</sup> 15 U.S.C. 80a-24(d).

<sup>20</sup> *Id.*

<sup>21</sup> PCXE Rule 8.100(c) currently states that the descriptive disclosure document required by this Rule must be in a form approved by the Corporation only.

*Definition of Reporting Authority.* The Exchange proposes to adopt proposed PCXE Rule 5.1(b)(16) that defines the term "Reporting Authority." This definition was adapted from PCXE Rule 8.100(a)(2) and is intended to ensure uniformity in the use of this term in the rules pertaining to both ICUs and PDRs.

Moreover, under proposed PCXE Rule 5.2(j)(3)(D), specific limitations of liability are provided to protect the Exchange, index proprietors, calculators and vendors. The proposed rules also state that there are no express or implied warranties with respect to ICUs. The Exchange represents that these provisions are based on similar provisions already contained in the rules of the Exchange regarding PDRs.<sup>22</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>23</sup> of the Act, in general, and furthers the objectives of Section (b)(5),<sup>24</sup> 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

## 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. 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-2001-14 and should be submitted by August 9, 2001.

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

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.<sup>25</sup> Specifically, the Commission finds that the PCX proposal to establish generic listing standards to permit the listing and trading of ICUs and PDRs pursuant to Rule 19b-4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act. Thus, by establishing generic listing standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange'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.<sup>26</sup>

In general, ICUs represent an interest in a registered investment company that holds securities based on, or representing an interest in, an index or portfolio of securities. The Exchange currently trades a number of securities pursuant to UTP under its ICU and PDR listing standards.<sup>27</sup>

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> *Id.* In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>27</sup> See note 11, *supra*. These listing standards are similar to those maintained by other exchanges. See, e.g., Amex Rules 1000 (Portfolio Depository Receipts) and 1000A (Index Fund Shares).

<sup>22</sup> See PCXE Rule 8.100(f).

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

PDRs, in contrast, represent interests in a unit investment trust that holds securities, which comprise an index or portfolio. Each trust is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid, on the underlying portfolio of securities, less certain expenses, as described in the applicable trust prospectus.

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO shall 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 include the new derivative securities product and the SRO has a surveillance program for the product class.<sup>28</sup>

As noted above, the Commission has previously approved PCX rules that permit the listing and trading of ICUs and PDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the PCX rules that govern their trading. Moreover, the Exchange has separately filed proposed rule changes pursuant to Rule 19b-4 for each of the series of ICUs or PDRs currently trading on the Exchange.

The Commission's approval of the proposed generic listing standards for these securities will allow those series of PDRs and ICUs that satisfy those standards to start trading under Rule 19b-4(e), without the need for notice and comment and Commission approval. 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 or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that PDRs and ICUs trading under the existing Exchange rules would allow investors to: (1) Respond quickly to market changes through intra-

day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.<sup>29</sup> The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for PDRs and ICUs should produce the same benefits to investors.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of PDRs and ICUs under Rule 19b-4(e). All series of PDRs and ICUs listed under the generic standards will be subject to the full panoply of PCXE rules and procedures that now govern the trading of existing PDRs and ICUs on the Exchange or pursuant to UTP.

Accordingly, any new series of PDRs and ICUs listed and traded under Rule 19b-4(e) will be subject to PCXE rules governing the trading of equity securities, including, among 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.

In addition, the Exchange has developed specific listing criteria for series of PDRs or ICUs qualifying for Rule 19b-4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of PDRs or ICUs is outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the indexes and portfolios underlying the ICUs and PDRs are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts and are therefore consistent with Section 6(b)(5) of the Act.

In addition, as previously noted, all series of PDRs and ICUs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria. This requirement allows the PCX to consider the suspension of trading and the delisting of a series if an event occurs

that makes further dealings in such securities inadvisable. The Commission believes that this will give the PCX flexibility to delist PDRs or ICUs if circumstances warrant such action.

Furthermore, the Commission finds that the Exchange's proposal to trade ICUs or PDRs in minimum price variations of \$0.01 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, all of which benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the PDRs or ICUs, thereby protecting customers and the public interest consistent with Section 6(b)(5) of the Act.<sup>30</sup>

The Commission believes that the hours of trading proposed for both ICUs and PDRs transactions are reasonable. In addition, the Exchange represents that the Reporting Authority will disseminate for each series of PDRs or ICUs an estimate, updated every 15 seconds, of the value of a share of each series. The Exchange further represents that the information that is reported will be disseminated by or through the primary exchange or another entity working with that exchange, when the PCX trades one of these products pursuant to UTP. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Exchange has developed surveillance procedures for PDRs and ICUs listed under the generic standards that incorporate and rely upon existing PCX surveillance procedures governing PDRs, ICUs, and equities traded on PCXE. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs and ICUs under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.<sup>31</sup> The Exchange represents that it will file Form 19b-4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply

<sup>28</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>29</sup> See Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approving SR-Amex-00-14); Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437 (March 28, 2000) (noticing SR-Amex-00-14).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

with all Rule 19b-4(e) recordkeeping requirements.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs or ICUs is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

Finally, the Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs and ICUs. Members and member organizations will be required to provide to all purchasers of ICUs or PDRs a written description of the terms and characteristics of these securities, to include their product description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by a customer. The proposal also requires a member or member organization carrying an omnibus account for a non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm, to notify the non-ETP Holder, non-Equity ASAP Holder, or non-ETP Firm that execution of an order to purchase an ICU or PDR constitutes an agreement by the non-member to provide the product description to its customers.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any PDRs or ICUs under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs or ICUs. The circular also will inform members of these securities. The Commission believes that these requirements ensure adequate disclosure to investor about the terms and characteristics of a

particular series and is consistent with section 6(b)(5) of the Act.<sup>32</sup>

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the generic listing standards in Amex Rule 1000 *et seq.* (PDRs) and 1000A *et seq.* (Index Fund Shares), which the Commission previously approved after soliciting public comment on the proposal pursuant to Section 19(b)(1) of the Act.<sup>33</sup> The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the Amex filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>34</sup> to approve the proposal on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR-PCX-2001-14) and Amendment Nos. 1 and 2 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>36</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-18068 Filed 7-18-01; 8:45 am]

**BILLING CODE 8010-01-M**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed During Week Ending July 6, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the applications.

*Docket Number:* OST-2001-10051.

*Date Filed:* July 3, 2001.

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> See note 28 *supra*. The Commission notes that the PCX proposal is also based on the generic listing standards at the CHX and the CBOE. See note 11, *supra*.

<sup>34</sup> 15 U.S.C. 78s(b)(5).

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</sup> 17 CFR 200.30-3(a)(12).

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC COMP 0834 dated July 3, 2001  
Mail Vote 131—Resolution 010f  
Special Passenger Amending  
Resolution (remove certain  
exceptional cost increases adopted  
at the February/November, 2000  
meetings)

Intended effective date: July 15, 2001

**Dorothy Y. Beard,**

*Federal Register Liaison.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Notice of Application for Certificates of Public Convenience and Necessity

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the week ending July 6, 2001. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST-2001-10052.

*Date Filed:* July 3, 2001.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 24, 2001.

*Description:* Application of DHL Airways, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting a renewal and an amendment of its certificate of public convenience and necessity for Route 725, Segments 1 through 6, to provide scheduled foreign air transportation of property and mail between points in the United States and points in Mexico.

*Docket Number:* OST-2001-10068.

*Date Filed:* July 6, 2001.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 27, 2001.

*Description:* Application of Amerijet International, Inc., pursuant to 49 U.S.C.