

All submissions should refer to File Number SR–NASD–2006–008. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2006–008 and should be submitted on or before March 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53253; File No. SR–PCX–2005–123]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Currency Trust Shares.

February 8, 2006.

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 November 11, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities,

Inc. (“PCXE” or “Corporation”), 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 January 13, 2006, PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On January 13, 2006, PCX 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, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange, through PCXE, proposes to amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE. The Exchange proposes new PCXE Rule 8.202 in order to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”), shares issued by a trust that holds a specified non-U.S. currency (“Currency Trust Shares”). In addition, the Exchange proposes to trade, pursuant to UTP, Euro Shares (“Shares” or “Euro Shares”), which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust (the “Trust”), which is sponsored by Rydex Specialized Products LLC.

The text of the proposed rule change appears below. Additions are in italics. Deleted items are in [brackets].

\* \* \* \* \*

Rule 8.202.

Currency Trust Shares

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

*(b) Applicability. This Rule is applicable only to Currency Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Currency Trust Shares are included within the definition of “security” or “securities” as such terms*

<sup>3</sup> In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal. Amendment No. 1 replaces and supplements the information provided in various sections of the Exchange's Form 19b–4.

<sup>4</sup> In Amendment No. 2, the Exchange further clarified and supplemented certain aspects of its proposal.

*are used in the Bylaws and Rules of the Corporation.*

*(c) Currency Trust Shares. The term “Currency Trust Shares” as used in the Rules shall, unless the context otherwise requires, mean a security that (a) is issued by a trust (“Trust”) that holds a specified non-U.S. currency deposited with the Trust; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive the specified non-U.S. currency; and (c) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the Trust.*

*(d) Designation of Non-U.S. Currency. The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency. Each issue of Currency Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.*

*(e) Initial and Continued Listing. Currency Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:*

*(1) Initial Listing —the Corporation will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.*

*(2) Continued Listing —following the initial 12 month period following commencement of trading on the Corporation of Currency Trust Shares, the Corporation will consider the suspension of trading in or removal from listing of such series under any of the following circumstances:*

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

*(ii) if the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding; or*

*(iii) if the market value of all Currency Trust Shares issued and outstanding is less than \$1,000,000; or*

*(iv) if the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;*

*(v) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis; or*

<sup>10</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

(vi) if such 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 Currency Trust Shares issued in connection with such entity Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of 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 following requirements apply:

(i) The trustee of a Trust 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, a qualified trust company or banking institution must be appointed co-trustee.

(ii) No change is to be made in the trustee of a listed issue without prior notice to and approval of the Corporation.

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

(f) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable non-U.S. currency value; the current value of the applicable non-U.S. currency required to be deposited to the Trust in connection with issuance of Currency Trust Shares; net asset value; or any other information relating to the purchase, redemption, or trading of the Currency Trust Shares, resulting from any negligent act or omission by the Corporation, or any agent of the Corporation; or any act, condition or cause beyond the reasonable control of the Corporation, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an applicable non-U.S. currency.

(g) Information Barrier. An ETP Holder acting as a registered Market

Maker or Market Maker Authorized Trader in Currency Trust Shares is obligated to comply with PCXE Rule 7.26 pertaining to limitations on dealings when such Market Maker or Market Maker Authorized Trader, or affiliate of such persons, engages in Other Business Activities. For purposes of Currency Trust Shares only, Other Business Activities shall include trading in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency.

(h) Market Maker Accounts. An ETP Holder acting as a registered Market Maker in Currency Trust Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, which the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, in an account in which a Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Currency Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, as may be requested by the Exchange.

(i) In connection with trading the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency (including Currency Trust Shares), the ETP Holder acting as a Market Maker in Currency Trust Shares shall not use any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency.

Commentary:

.01 A Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency deposited with the Trust.

.02 The Corporation requires that ETP Holders provide all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

.03 Transactions in Currency Trust Shares will occur during the trading hours specified in PCXE Rule 7.34.

.04 The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before trading, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares.

## 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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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

#### 1. Purpose

The Exchange proposes to add new PCXE Rule 8.202 in order to permit trading, either by listing or pursuant to UTP, of Currency Trust Shares.<sup>5</sup> The Exchange also proposes to trade the Shares of the Trust pursuant to UTP. The New York Stock Exchange, Inc. (the "NYSE") has recently proposed to list and trade the Shares.<sup>6</sup> The Commission

<sup>5</sup> Currency Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the non-U.S. currency deposited into the trust. The Exchange notes that the Commission has approved the listing and trading pursuant to UTP of other securities products for which the underlying interest was not a security trading on a regulated market. See Securities Exchange Act Release Nos. 51067 (January 21, 2005), 70 FR 3952-01 (January 27, 2005) (approving general standards for the listing and trading of Commodity-Based Trust Shares and trading of shares of the iShares COMEX Gold Trust pursuant to UTP); and 51245 (February 23, 2005), 70 FR 10731-01 (March 4, 2005) (approving the trading of shares of the streetTRACKS Gold Trust pursuant to UTP). Unlike Commodity-Based Trust Shares under PCXE Rule 8.201, which hold one or more physical commodities, Currency Trust Shares hold non-U.S. currency.

<sup>6</sup> See Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (order granting accelerated approval to SR-NYSE-2005-65) ("NYSE Order").

previously approved the original listing and trading of the Shares by the New York Stock Exchange, Inc. ("NYSE").<sup>7</sup>

The investment objective of the Trust is for the Shares to reflect the value of the euro. The Shares represent beneficial ownership interests in the net assets of the Trust consisting only of euro on demand deposit in a euro-denominated, interest-bearing account, less the expenses of the Trust.

#### (a) Currency Trust Shares

PCXE Rule 8.202 is intended to accommodate possible future listing and trading of trusts based on non-U.S. currencies in addition to the euro. Any new listing or trading of an issue of Currency Trust Shares will be subject to approval of a proposed rule change by the Commission pursuant to Section 19(b)(2)<sup>8</sup> of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder.<sup>9</sup>

A description of the euro, foreign exchange industry, foreign currency regulation, operation of the Trust, and the Shares is set forth in the NYSE Order. Issuances of Shares will be made only in baskets of 50,000 Shares or multiples thereof ("Basket"). The Trust will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an "Authorized Participant")<sup>10</sup> with the trustee, the Bank of New York ("Trustee"), at the net asset value ("NAV") per Share next determined after an order to purchase a Basket is received in proper form.

When calculating NAV, the Trustee will value the euros held by the Trust on the basis of the day's announced Noon Buying Rate, as determined by the Federal Reserve Bank of New York. If the Noon Buying Rate is not announced by 2 p.m. (Eastern time ("ET")), the Trustee will use the most recently announced Noon Buying Rate, unless the Trustee, in consultation with the Sponsor, determines to apply an alternative basis for evaluation as a result of extraordinary circumstances. The calculation methodology for the NAV is described in more detail in the NYSE Order.

Baskets will be issued in exchange for an amount of euros ("Basket Euro

Amount") based on the combined NAV per Share of the number of Shares included in the Baskets being created. The Basket Euro Amount and NAV will be determined by the Trustee "as promptly as practicable" after the Federal Reserve announces the Noon Buying Rate and published on the Trust's Web site on each Business Day.<sup>11</sup> Authorized Participants that wish to purchase a Basket must transfer the Basket Euro Amount to the Trust in exchange for a Basket. Baskets are then separable upon issuance into the Shares that will be traded on ArcaEx on a UTP basis.<sup>12</sup>

The Shares will not be individually redeemable but will only be redeemable in Baskets. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket (*i.e.*, 50,000 Shares). Authorized Participants that wish to redeem a Basket will receive the Basket Euro Amount in exchange for each Basket surrendered. The operation of the Trust and creation and redemption process is described in more detail in the NYSE Order.

#### (b) Dissemination of Information About the Fund Shares and Underlying Euro

Although the spot price of a foreign currency, such as the euro, is not disseminated over the facilities of Consolidated Tape Association ("CTA"), the last sale price for the Shares, as is the case for all equity securities traded on the Exchange, will be disseminated over the CTA. Investors may obtain on a 24-hour basis euro pricing information based on the euro spot price from various financial information service providers. The foreign exchange market is an over-the-counter dealer marketplace, and current spot prices are also generally available with bid/ask spreads from foreign exchange dealers. Complete real-time data for euro futures and options prices traded on the Chicago Mercantile Exchange ("CME") and the Philadelphia Stock Exchange ("Phlx") are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites. There are a variety of other public Web sites that provide information on foreign currency and the euro, such as

Bloomberg ([http://www.bloomberg.com/markets/currencies/euraftr\\_currencies.html](http://www.bloomberg.com/markets/currencies/euraftr_currencies.html)), which regularly reports current foreign exchange pricing for a fee. Other service providers include CBS Market Watch (<http://www.marketwatch.com/tools/stockresearch/globalmarkets>) and Yahoo! Finance (<http://finance.yahoo.com/currency>). Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.<sup>13</sup> The Exchange states that, like bond securities traded in the over-the-counter market with respect to which pricing information is available directly from bond dealers, current euro spot prices are also generally available with bid/ask spreads from foreign currency dealers. In addition, there is a considerable amount of euro price and euro market information available on public Web sites and through professional and subscription services. Current spot prices are also generally available from foreign exchange dealers.

The Trust's Web site at (<http://www.currencyshares.com>) (to which the Exchange will provide a hyperlink) will be publicly accessible at no charge and will contain the following information: (1) The euro spot price,<sup>14</sup> including the bid and offer and the midpoint between the bid and offer for the euro spot price, updated every 5 to 10 seconds; (2) an intraday indicative value ("IIV") per Share calculated by multiplying the indicative spot price of euro by the quantity of euro backing each Share, on a 5 to 10-second delayed basis; (3) a 20-minute delayed basis indicative value, which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20-minute delayed basis; (5) the NAV of the Trust as calculated each Business Day; (6) accrued interest per Share; (7)

<sup>13</sup> There may be incremental differences in the euro spot price among the various information service sources. While the Exchange believes the differences in the euro spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of euro or foreign currency derivatives, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

<sup>14</sup> The Trust Web site's euro spot price will be provided by The Bullion Desk (<http://www.thebulliondesk.com>), and the time of each calculation is noted on the Trust's Web site. The Exchange will provide a hyperlink to the Trust Web site. The Bullion Desk is not affiliated with the Trust, Trustee, Sponsor, Depository, Distributor, or the Exchange. In the event that the Trust's Web site should cease to provide this euro spot price information from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will halt trading in the Shares and commence delisting proceedings for the Shares.

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 240.19b-4.

<sup>10</sup> An "Authorized Participant" is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) Is a registered broker-dealer, (ii) is a Depository Trust Company Participant or an Indirect Participant, and (iii) has in effect a valid Authorized Participant Agreement.

<sup>11</sup> Ordinarily no later than 2 p.m. (ET).

<sup>12</sup> Shares are separate and distinct from the underlying euro comprising the portfolio of the Trust. The Exchange expects that the number of outstanding Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying euro.

the daily Noon Buying Rate; (8) the Basket Euro Amount; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay. The euro spot price and IIV per Share are provided on an essentially real-time basis and are available during ArcaEx's early and late trading sessions, in addition to ArcaEx's core trading session.<sup>15</sup>

Between 12 p.m. and 2 p.m. (ET) each business day, the Trustee will calculate NAV and Basket Euro Amount based on the combined NAV per Share of the number of Shares included in the Baskets being created of the Shares and will post NAV on the Trust's Web site as soon as valuation of the euro held by the Trust is complete (ordinarily by 2 p.m. (ET)). Ordinarily, it will be posted no more than thirty minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York. In the NYSE Order, NYSE represented that all market participants will have access to this data at the same time and, therefore, no market participant will have a time advantage in using such data.

#### (c) Continued Listing and UTP Criteria

While the Exchange immediately seeks to UTP the Euro Currency Shares, the Exchange is also adopting general initial and continued listing standards applicable to all Currency Trust Shares in the event the Exchange were to list such Currency Trust Shares. In such an event, the Exchange would still file a Form 19b-4<sup>16</sup> to list such Currency Trust Shares. When the Exchange is the primary listing exchange, the Trust will be subject to the continued trading criteria under proposed PCXE Rule 8.202(e). In particular, the proposed criteria provides that the Currency Trust Shares may be removed from trading following the initial 12-month period from the date of commencement of trading of the Currency Trust Shares on the Exchange under any of the following circumstances:

- If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Currency Trust Shares for 30 or more consecutive trading days;
- If the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding;
- If the market value of all the Currency Trust Shares is less than \$1,000,000;

<sup>15</sup> Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006.

<sup>16</sup> 17 CFR 249.819.

- If the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, Custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;

- If the Indicative Trust Value ("ITV" or "IIV") is no longer made available on at least a 15-second delayed basis; or

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove Currency Trust Shares from listing and trading upon termination of the Trust.

If the Exchange is only trading the Shares pursuant to UTP, then the Exchange will cease trading in the Shares if: (1) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on PCXE Rule 7.12 and/or a halt because calculation and dissemination of the IIV and/or the underlying value (the spot price)<sup>17</sup> of the applicable non-U.S. currency has ceased; or (2) the primary market delists the Shares. Additionally, the Exchange may cease trading the Currency Trust Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

#### (d) Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares of the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with PCXE Rule 7.34(a). The minimum trading increment for Shares on the Exchange will be \$0.01.

Further, the Exchange has proposed new PCXE Rules 8.202(g)—(i), which set forth certain restrictions on equity trading permit holders ("ETP Holders") acting as registered Market Makers in Currency Trust Shares to facilitate surveillance. PCXE Rule 8.202(h) will require that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable non-U.S. currency, options, futures or

<sup>17</sup> For the purposes of trading the Euro Shares pursuant to UTP, the applicable value would be the Euro Spot price provided by The Bullion Desk at <http://www.thebulliondesk.com> and at <http://www.currencyshares.com> (to which the Exchange will hyperlink). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006.

options on futures on such currency, or any other derivatives based on such currency. PCXE Rule 8.202(i) will prohibit the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency (including the Shares). In addition, as stated above, PCXE Rule 8.202(g) will prohibit the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency unless adequate information barriers are in place, as provided in PCXE Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in euros, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule<sup>18</sup> or by the halt or suspension of the trading of futures contracts based on the euro. If the Exchange is the listing market for Currency Trust Shares, the Exchange will halt trading in the Shares if the Trust Web site (to which the PCX will hyperlink) ceases to provide: (1) The value of the euro updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, Custodian, or the Exchange (or this value is not displayed on the appropriate Web site), or (2) the IIV per Share updated at least every 15 seconds. If the Exchange is trading the shares pursuant to UTP, such as the Euro Currency Shares, the Exchange will cease trading the Shares if: (1) The primary market stops trading the Shares because of a regulatory halt similar to PCXE Rule 7.12 and/or a halt because of dissemination of the IIV and/or because the underlying spot price has ceased, or (2) the primary market delists

<sup>18</sup> See PCXE Rule 7.12.

the shares. Because ArcaEx will be trading the Shares during its early and late trading sessions, when the primary market is closed, the Exchange will monitor the dissemination of the euro spot price and IIV during these trading sessions and cease trading the Shares if these values are not disseminated at least every 15 seconds and such values are not displayed on the Exchange Web site via a hyperlink with the Trust's Web site.<sup>19</sup>

Currency Trust Shares will be deemed "Eligible Listed Securities," as defined in PCXE Rule 7.55, for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade through provisions of PCXE Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

The Commission exempted the Currency Trust Shares from the short sale requirements of Rule 10a-1 under the Act and gave no-action relief from Rule 200(g) of Regulation SHO under the Act.<sup>20</sup>

#### (e) Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products and shares of the streetTRACKS Gold Trust<sup>21</sup> to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, euro options, and euro futures through ETP Holders, in connection with such ETP Holders'

proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG. Specifically, the Exchange can obtain such information from the Phlx in connection with euro options trading on the Phlx and from the CME and the London International Financial Futures Exchange ("LIFFE") in connection with euro futures trading on those exchanges.

#### (f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets; (2) PCXE Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares;<sup>22</sup> (3) how information regarding the IIV is disseminated; and (4) trading information. The Information Bulletin will also note to members their obligations regarding prospectus delivery requirements for the Shares. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Euro Amount) will receive a prospectus. Exchange members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of euros required to create a Basket or to be delivered upon a redemption of a Basket may gradually decrease over time in the event that the

Trust is required to sell euros to pay the Trust's expenses, and that if done at a time when the price of the euro is relatively low, it could adversely affect the value of the Shares. Finally, Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding the euro, and that the Commission has no jurisdiction over the trading of the euro.

#### 2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>23</sup> in general and furthers the objectives of Section 6(b)(5),<sup>24</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act<sup>25</sup> because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

#### 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

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 arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-123 on the subject line.

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

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

<sup>25</sup> 17 CFR 240.12f-5.

<sup>19</sup> Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006. In such case, the Exchange would immediately contact the Commission's staff.

<sup>20</sup> Currency Trust Shares are exempt from Rule 10a-1 under the Act permitting sales without regard to the "tick" requirements of Rule 10a-1 under the Act. Rule 10a-1(a)(1)(i) under the Act provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an "uptick") or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a "zero-plus tick"). See letter dated December 5, 2005 from James A. Brigagliano, Division of Market Regulation, Commission, to George T. Simon, Foley and Lardner.

<sup>21</sup> See streetTRACKS Gold approval order, *supra* note 5.

<sup>22</sup> The Exchange has proposed to amend PCXE Rule 9.2(a) ("Diligence as to Accounts") to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation. See Amendment No. 1 to SR-PCX-2005-115 (November 21, 2005). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 8, 2006.

### Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-PCX-2005-123. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. 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-PCX-2005-123 and should be submitted on or before March 8, 2006.

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

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>27</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in

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

<sup>27</sup> 15 U.S.C. 78f(b)(5).

general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>28</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>29</sup> The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.<sup>30</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>31</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. PCXE rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>32</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In connection with the Exchange's UTP of the Euro Shares, the Exchange will cease trading in the Shares if: (1) The primary market stops trading the Shares because of a regulatory trading halt similar to a halt based on PCXE Rule 7.12; or (2) the primary market stops trading the Shares because the value of the euro is no longer calculated or available on at least a 15 second delayed basis from a source unaffiliated with the Sponsor, Trust, Custodian or the Exchange, or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated euro value; or the IIV is no longer made available on at least a 15 second delayed basis<sup>33</sup> or if

<sup>28</sup> 15 U.S.C. 78f(f).

<sup>29</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>30</sup> See NYSE Order, *supra* note 6.

<sup>31</sup> 17 CFR 240.12f-5.

<sup>32</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>33</sup> Because the Exchange is trading the Shares in its early and late trading sessions, the Exchange will ensure that trading of the Shares on ArcaEx will cease during these trading sessions if the unaffiliated value of the euro and the IIV per Share

such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable; or (3) if the primary market delists the Shares.

In support of the portion of the proposed rule change regarding UTP of the Euro Shares, the Exchange has made the following representations:

1. PCX has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. PCX surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.
3. PCX will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.
4. PCX will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.
5. The Exchange will cease trading in the Shares if: (1) the primary market stops trading the shares because of a regulatory halt similar to a halt based on PCX Rule 7.12 and/or a halt because dissemination of the IIV and/or the underlying value (spot price on the euro) of the applicable non-U.S. currency has ceased;<sup>34</sup> or (2) the primary market delists the Shares.

This approval order is conditioned on PCX's adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Shares on the NYSE is consistent with the Act.<sup>35</sup> The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

are no longer calculated and disseminated at least every 15 seconds during these trading sessions, or the Exchange stops providing a hyperlink on the Exchange's Web site to such unaffiliated euro value or IIV per Shares. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 6, 2006.

<sup>34</sup> *Id.*

<sup>35</sup> See NYSE Order, *supra* note 6.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-PCX-2005-123), is hereby approved on an accelerated basis.<sup>36</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>37</sup>

J. Lynn Taylor,

*Assistant Secretary.*

[FR Doc. E6-2128 Filed 2-14-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53249; File No. SR-PCX-2005-138]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend the PCX's Rules Governing the Hours of Trading in Equity Options

February 7, 2006.

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 December 16, 2005, 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 PCX. On January 13, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on January 31, 2006.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

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

The PCX proposes to amend its hours of trading for equity options as set forth in PCX Rule 7.1 and to make a corresponding clarifying change to PCX Rule 6.24(g). The Exchange proposes

that these changes be implemented on February 13, 2006.<sup>5</sup> The text of the proposed rule change, as amended, is available on the PCX's Web site (<http://www.pacificex.com>), at the principal office of the PCX, 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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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

According to the Exchange, the purpose of the proposed rule change, as amended, is to amend PCX Rule 7.1, Commentary .01 "Trading Sessions" to adjust the closing time for equity options trading on the PCX to 1 p.m. (Pacific time). In addition, the Exchange proposes to make a minor "housekeeping" change to PCX Rule 6.24(g) "Exercise of Options Contracts" so that the rule is consistent with the new closing time.<sup>6</sup> After the change becomes effective, the 1 p.m. (Pacific time) closing time for equity options will coincide with the closing time of the primary equity markets listing the stocks underlying PCX options. The primary exchanges generally close at 1 p.m. (Pacific time).

According to the Exchange, presently, listed options are traded on all options exchanges until 1:02 p.m. (Pacific time), while the underlying equities cease trading at 1 p.m. The extended time for

options trading, which was implemented prior to electronic order entry and execution, provided an opportunity for all orders that were entered during market hours, especially those entered near the close, to be properly represented and executed if possible. The extended time also allowed options traders to respond to late reports of closing prices of underlying issues over the consolidated tape. Due to technological advances in options trading, most orders are no longer manually handled or traded on the floor. Customers and Market Makers have the ability to transact business in an all-electronic fashion with sub-second processing. Even though orders can still be traded via open outcry on the floor, these orders are limited in number and do not create a processing problem, even when entered near to the end of the day. Therefore, the need to provide an extended period of time in order to accommodate any orders that were unable to be processed during normal trading hours is no longer necessary. In addition, improvements in the processing and reporting of transactions have all but eliminated delays in the reporting of closing prices of underlying issues. Consequently, the need to continue trading options, while waiting for the correct closing price from the primary market, is no longer necessary.

The Exchange notes that if it were to unilaterally modify its closing time, the existence of dissimilar closing times applicable to the different options exchanges would likely lead to confusion for options investors and broker-dealers. It is the PCX's understanding that all options exchanges will make similar changes to their rules to change the closing time in equity options from 1:02 p.m. to 1 p.m. (Pacific time).<sup>7</sup> The options exchanges collectively have determined that they would implement this new closing time on February 13, 2006.<sup>8</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

<sup>5</sup> *Id.*

<sup>6</sup> The Exchange also proposes to delete certain language contained in PCX Rule 7.1, Commentary .01 which addresses the specific categories of Market Makers that are eligible to effect trades through the facilities of the Exchange. According to PCX, its rules governing trading by Market Makers, and the explanations of which types of Market Makers are eligible to trade either on the Floor of the Exchange or through the facilities of the Exchange are included in PCX Rule 6.32(a) entitled "Market Makers Defined." The PCX believes that it is redundant to repeat this language in PCX Rule 7.1, and therefore proposes to delete it as part of this proposed rule change. See Amendment No. 1, *supra* note 3.

<sup>7</sup> The PCX notes that, although certain other exchanges are also proposing to change the closing time for narrow-based index options, the PCX's proposed rule change does not include a provision regarding narrow-based indexes. The Exchange represents that, at this time, the PCX does not trade options on narrow-based index products and does not have any plans to list options on narrow-based index products. PCX Rule 5.20(a) governs the closing time for transactions in index options. If in the future the PCX were to list options on narrow-based indexes, the PCX represents that it will, at that time, make any necessary changes to PCX Rule 5.20(a) regarding the closing time for options on narrow-based indexes. *Id.*

<sup>8</sup> See Amendment No. 2, *supra* note 4.

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, the Exchange provided additional discussion to clarify its proposed rule change.

<sup>4</sup> In Amendment No. 2, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.