

opposed to every transaction, in determining trading frequency for a given security for purposes of determining whether dissemination delays apply to large transactions in that security. TBMA urges NASD to monitor the effects of the increased dissemination set forth in the proposal, and seek appropriate adjustments to the proposed dissemination scheme on an expedited basis should harm to liquidity be shown to result. TBMA also recommends that NASD make its consolidated transaction data publicly available, so that the industry can assess the effects of transparency on liquidity.

B. NASD's Response

In response to the TBMA Letter, NASD states that it believes that its proposal strikes a well-reasoned balance between concerns regarding liquidity and the substantial benefits of increased transparency. NASD notes that the proposal was developed and supported by the BTRC. The NASD also notes that, after reviewing the two studies that it commissioned to address the relationship of transparency to liquidity, the NASD found no conclusive evidence that TRACE transparency has adversely affected liquidity, including liquidity of lower-rated bonds. In response to the recommendations of TBMA regarding ongoing NASD review, the NASD states that the proposal provides for NASD to continue to review the trading and liquidity of TRACE-eligible securities during the two stages of implementation of the proposal; and that NASD has authority to effect necessary amendments to TRACE Rules to protect the integrity of the market. In response to the comment of TBMA that NASD should make consolidated TRACE transaction data available, NASD states that transaction information on all publicly disseminated TRACE eligible securities will be available through the NASD Web site, vendors, or via an electronic feed directly from NASD.

V. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to be registered securities association and, in particular, with the requirements of section 15A(b)(6) of the Act.¹² Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

principles of trade, and, in general, to protect investors and the public interest.¹³

The Commission believes that, by expanding dissemination of transaction information to, by NASD's estimate, roughly 99 percent of all secondary transactions and 95 percent of par value traded in TRACE-eligible securities, the proposal will substantially increase the amount of information available to the public and market participants about the corporate bond markets, thereby promoting the protection of investors and the public interest. Specifically, under the proposal, TRACE will disseminate transaction information on non-investment grade bonds (other than the FIPS 50) for the first time, significantly enhancing the transparency of this important segment of the corporate bond market. The Commission believes that this proposal, in conjunction with the NASD's recent proposal reducing transaction reporting times in TRACE to 30 minutes (effective October 1, 2004), and then to 15 minutes (effective July 1, 2005),¹⁴ represents a significant incremental improvement in the transparency of the corporate bond market. Moreover, the Commission believes that the proposed amendments to Rule 6210 (regarding classification of securities) and Rule 6260 (requiring the managing underwriter or group of underwriters to provide certain information to NASD) should assist the NASD in implementing the proposal.

The Commission notes that the proposal imposes dissemination delays for securities rated BBB or lower in the new issue aftermarket, and for larger transactions in infrequently traded non-investment grade bonds in the secondary market other than the new issue aftermarket. The Commission believes that these dissemination delays may unnecessarily restrict the availability of this transaction information to investors in this market. Moreover, the Commission notes that the two studies commissioned by the NASD to address the relationship between transparency and liquidity found no conclusive evidence that TRACE transparency has adversely affected liquidity.¹⁵ Accordingly, the Commission expects that, not later than November 1, 2005 (nine months after the effective date of Stage Two), the

¹³ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78(c)(f).

¹⁴ See Securities Exchange Act Release No. 48056 (June 18, 2003), 68 FR 37886 (June 25 2003), *supra* note 9.

¹⁵ See Commission Notice, *supra* note 3, at 16.

NASD will submit a proposed rule change eliminating the delays in TRACE information dissemination. As previously noted, the Commission received one comment letter, from TBMA, on the proposed rule change. In its letter, TBMA argued that the delayed dissemination regime in the proposal does not go far enough to protect liquidity. As noted above, the Commission notes that economic studies commissioned and cited by NASD have shown no conclusive evidence that the transparency afforded by TRACE has adversely affected market liquidity.

Finally, the Commission believes that amendments to the TRACE Rules to prohibit dissemination of secondary market transactions in Rule 144A Securities and to delete provisions regarding market aggregate and last sale data and the treatment of certain transaction reports, should streamline and clarify the TRACE Rules, thus promoting the protection of investors and the public interest.

VI. Conclusion

For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, as amended (SR–NASD–2004–94), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04–20588 Filed 9–10–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50319; File No. SR–PCX–2004–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Minimum Terms for Equity Linked Notes (“ELNs”)

September 7, 2004.

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 August 4, 2004, the Pacific Exchange, Inc. (“PCX”

¹⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

¹² 15 U.S.C. 78o–3(b)(6).

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 self-regulatory organization. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under subparagraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to modify the listing requirement related to the minimum and maximum terms to list Equity Linked Notes ("ELNs") on PCXE and traded on the Archipelago Exchange ("ArcaEx"), a facility of the PCXE. The PCX proposes to modify the two to seven year term requirement in PCXE Rule 5.2(j)(2) to a minimum one-year term requirement. The PCX also proposes to eliminate the maximum term for ELNs.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Rules of PCX Equities, Inc.

Rule 5

Listings

* * * * *

Equity Linked Notes ("ELNs")

Rule 5.2(j)(2)(A)—No Change.

(B) ELN Listing Standards

(i)(a)–(c)—No change.

(d) [a term of two to seven years] *a minimum term of one year* [, provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR,

the issue may not have a term of more than three years].

(C)–(E)—No change.

* * * * *

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed modifications to the fee schedule. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

ELNs are non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock. PCXE Rule 5.2(j)(2) sets forth the listing criteria applicable to ELNs. PCXE Rule 5.2(j)(2)(B)(i)(d) requires that ELNs have, among other things, a term of two to seven years to be eligible for listing, provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored American Depositary Receipts, the issue may not have a term of more than three years. The Exchange initially adopted this term requirement as a conservative measure to help ensure that the trading of ELNs did not have an adverse effect on the liquidity of the underlying stock and were not used in a manipulative manner.⁵

The Exchange proposes to modify the term requirements in Rule 5.2(j)(2)(B)(i)(d) to reduce the minimum term of ELNs, whether the ELN is based on U.S. or non-U.S. securities, to one year, and eliminate the maximum term requirement.⁶ All other requirements in Rule 5.2(j)(2) would remain the same.

⁵ The Amex and the NYSE initially adopted similar term limits for equity-linked debt securities listed on their exchanges. See Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) and Securities Exchange Act Release No. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994), respectively.

⁶ The Exchange represents that it will notify the Commission in advance if the Exchange intends to list ELNs of a non-U.S. company issuer and the issue has a term of more than three years.

In recent years, several other self-regulatory organizations that have listing criteria for equity linked debt securities have reduced the minimum term requirement for such securities to one year.⁷ The Exchange seeks to make the same modifications in order to provide ELN issuers with a greater choice of listing venues and remove the impediment to listing created by the current stringent term requirements. These modifications would also allow ArcaEx to compete more effectively with other listing venues for listings of ELNs.

The Exchange represents that it has sufficient resources and comprehensive surveillance procedures to identify and deter manipulative and other illicit trading activity in ELNs and securities linked to them. In conducting its surveillance procedures, the Exchange has not found any adverse effects as a result of the trading of ELNs and the securities to which ELNs are linked. Finally, the Exchange notes that NYSE, Amex, and the CHX have similar rules that reduce the minimum terms for their equity-linked debt instruments to one year and eliminate the maximum term.⁸ Accordingly, the Exchange believes it is appropriate to relax the more stringent term requirements set forth in PCXE Rule 5.2(j)(2) by reducing the minimum term for ELNs to one year and eliminating the maximum term limit.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁹ of the Act, in general, and furthers the objectives of Section 6(b)(5)¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

⁷ See Securities Exchange Act Release No. 42313 (January 4, 2000), 65 FR 2205 (January 13, 2000) (CHX reduced the minimum term of eligible equity linked debt securities from two years to one and eliminated maximum term requirement); Securities Exchange Act Release No. 42110 (November 5, 1999), 64 FR 61677 (November 12, 1999) (Amex reduced the minimum term of eligible equity linked debt securities from two years to one and eliminated maximum term requirement); and Securities Exchange Act Release No. 41992 (October 7, 1999), 64 FR 56007 (Oct. 15, 1999) (NYSE reduced the minimum term of eligible equity linked debt securities from two years to one and eliminated maximum term requirement).

⁸ See *supra* note 7.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

³ 17 CFR 240.19b-4(f)(6).

⁴ As required by 17 CFR 240.19b-4(f)(6), the Exchange has represented that the proposed rule change will not significantly affect the protection of investors or the public interest, nor will it impose any significant burden on competition. The Exchange also fulfilled its obligation to provide at least five-business days notice to the Commission of its intent to file this proposed rule change by notice on July 29, 2004. The Exchange's proposed rule changes are similar to the rules regarding the terms of equity-linked debt securities for the American Stock Exchange LLC ("Amex"), the Chicago Stock Exchange, Inc. ("CHX"), and the New York Stock Exchange, Inc. ("NYSE").

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has provided the Commission with written notice of its intent to file the proposed rule change, at least five business days prior to the filing date. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,¹³ the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing on the basis that such rule changes are necessary for the Exchange to compete effectively with other listing venues for listing ELNs. The Exchange has fulfilled its obligation to provide the five-business days notice to the Commission of its intent to file this proposed rule change by notice on July 29, 2004. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it conforms the listing criteria for ELNs to those of the Amex, the CHX and the NYSE.¹⁴ Therefore, the Commission has

determined to allow the proposed rule change to become effective and operative as of the date of filing with the Commission.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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 proposed rule change 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. Please include File No. SR-PCX-2004-75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. SR-PCX-2004-75. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also 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-2004-75 and should be submitted on or before October 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-2164 Filed 9-10-04; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collections should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202-395-6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See *supra* note 7.

¹⁵ For purposes only of waiving the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).