



RULE
ADOPTION
NOTICE

RAN-02-23
July 18, 2002

**TO: All PCX Members and Member Organizations
ETP Holders and Sponsored Participants**

FROM: Department of Regulatory Policy

**SUBJECT: ArcaEx Housekeeping Amendments
(File No. SR-PCX-2002-35)**

On June 14, 2002, the Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed a rule change proposal with the Securities and Exchange Commission relating to housekeeping and technical amendments to PCXE Rules in order to incorporate those rules into the new PCXE Rules governing the Archipelago Exchange Facility. This rule change was effective upon filing. The following is the text of the rule change. Questions regarding this bulletin may be directed to Peter Bloom at (415) 393-4166.

* * *

EXHIBIT A

Text of the Rule Change¹

PCX Equities, Inc.

Rule 2 Equity Trading Permits

Electronic Mail Address

Rule 2.23 Each ETP Holder must maintain with the PCX Equities, Inc. ("PCXE") an Internet electronic mail account for communication with the PCXE. Each ETP Holder must update firm contact information via the electronic mail account or such other means as prescribed by the PCXE. The PCXE will use the electronic mail account to provide ETP Holders with regulatory bulletins, rule adoption notices, and other official notices.

¹ New text is underscored; deleted text is in brackets.

* * *

Rule 5

Listings

Section 1. General Provisions and Definitions

General Provisions and Definitions

Rule 5.1(a) – No change.

Definitions

Rule 5.1(b) – No change.

(1) – (15) – No change.

(16) The term “Reporting Authority” in respect of a particular series of Investment Company Units (“Units”) means the Corporation, a subsidiary of the Corporation, or an institution or reporting service designated by the Corporation or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Units; the amount of any dividend equivalent payment or cash distribution to holders of Units, net asset value, or other information relating to the issuance, redemption or trading of Units. Nothing in Rule 5.2(j)(3) implies that an institution or reporting service that is the source for calculating and reporting information relating to Units must be designated by the Corporation. The term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

* * *

Investment Company Units

Rule 5.2(j)(3) – No change.

(A)(i) – (iii) – No change.

(iv) The minimum number of Units required to be outstanding at the commencement of trading is set forth in Commentary .01 paragraph (d) of this Rule. [There must be at least 300,000 Units outstanding prior to the commencement of trading of a series of Units on the Exchange.]

(B) – (C) – No change.

(D) Limitation of Liability of the Corporation. Neither the Corporation, the Reporting Authority 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 current index or portfolio value the current value of the portfolio of securities required to be deposited to the open-end management investment company; the amount of any dividend equivalent payment or cash distribution to holders of Units; net asset value; or other information relating to the creation, redemption or trading of Units, resulting from any negligent act or omission by the Corporation, or the Reporting Authority, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, or the Reporting Authority, 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 reporting of transactions in one or more underlying securities. The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Units or any underlying index or data included therein and the Corporation makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Units or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Corporation's Bylaws and Rules.

Commentary:

.01 The Corporation may approve a series of Units for trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Units on the Corporation, or if the Corporation is trading the Units pursuant to unlisted trading privileges, upon the initial listing on the original listing exchange, each component of an index or portfolio underlying a series of Units shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks; and

(5) 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).

(b) *Index Methodology and Calculation.*

(1) The index underlying a series of Units will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(2) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “fire-wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and

(3) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association’s Network.

(c) *Disseminated Information.* The Reporting Authority will disseminate for each series of Units an estimate, updated every 15 seconds, of the value of a share of each series. This 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.

(d) *Initial Shares Outstanding.* A minimum of 100,000 shares of a series of Units is required to be outstanding at commencement of trading.

(e) *Minimum Price Variation.* The minimum price variation for quoting and entry of orders in a series of Units is \$0.01 as provided in Rule 7.6(a), Commentary .03.

(f) *Hours of Trading.* The hours of trading for series of Units are the same as those provided in Rule 7.34(a).

(g) *Surveillance Procedures.* The Corporation will implement written surveillance procedures for Units.

(h) *Disclosures.* The provisions of this subparagraph apply only to series of Units that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of

1933. The Corporation will inform ETP Holders regarding application of these provisions of this subparagraph to a particular series of Units by means of an information circular prior to commencement of trading in such series.

The Corporation requires that ETP Holders provide to all purchasers of a series of Units a written description of the terms and characteristics of those securities, in a form approved by the Corporation or prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Units that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Units as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Units) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Units).”

An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder that execution of an order to purchase a series of Units for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Units.

* * *

Section 3. Corporate Governance and Disclosure Policies

Rule 5.3 – No change.

Corporate Governance

Rule 5.3(a). Conflicts of Interest – No change.

Rule 5.3(b). Independent Directors/Audit Committee

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Such issuer shall maintain an audit committee, [a majority of which] All audit committee members shall be independent directors that satisfy the audit committee requirement set forth below.

(1) Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and

(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

(2) Composition/Expertise Requirement of Audit Committee Members.

(i) Each audit committee will consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent");

(ii) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and

(iii) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

(3) Independence Requirement of Audit Committee Members. In addition to the definition of Independent provided in 5.3(b)(2)(i), the following restrictions shall apply to every audit committee member:

(i) Employees. A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the

director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. “Affiliate” includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(ii) Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., a consultant) may serve on the audit committee only if the company’s board of directors determines in its business judgment that the relationship does not interfere with the director’s exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated.

“Business relationships” can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors’ determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(iii) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company’s executives serves on that corporation’s compensation committee may not serve on the audit committee.

(iv) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. “Immediate Family” includes a person’s spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person’s home.

(v) Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company’s board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(4) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(i) any determination that the company’s board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(ii) the financial literacy of the audit committee member;

(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(iv) the annual review and reassessment of the adequacy of the audit committee charter.

(5) “Officer” has the meaning specified in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

(6) Initial Public Offering. Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing

* * *

Rule 6 Business Conduct

Rule 6.17 – Reserved.

Supervision

Rule 6.18(a). Adherence to Law.

No ETP Holder may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Corporation. Every ETP Holder must supervise persons associated with it as to assure compliance therewith.

(b) Supervisory System.

Each ETP Holder for whom the Corporation is Designated Examining Authority (“DEA”) must establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and PCXE Rules. Final responsibility for proper

supervision will rest with the ETP Holder. The ETP Holder's supervisory system must provide, at a minimum, for the following:

(1) The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.

(2) The designation of a person with authority to reasonably discharge his/her duties and obligation in connection with supervision and control of the activities of the associated persons of the ETP Holder.

(3) The ETP Holder must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

(4) Each ETP Holder must designate and specifically identify to the Corporation one or more persons who will be responsible for such supervision.

(c) Written Procedures.

Each ETP Holder must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the PCXE Rules.

* * *

Rule 7 Equities Trading

Trading Differentials

Rule 7.6(a) – No change.

Commentary:

.01 - .02 – No change.

.03 The minimum price variation for quoting and entry of orders in series of Investment Company Units (“Units”) and Portfolio Depositary Receipts is \$0.01. [The minimum fractional variation for dealing in SPDRs, MidCap SPDRs and Nasdaq-100 Shares shall be 1/64 of \$1.00. However, to the extent that SPDRs, MidCap SPDRs and Nasdaq-100 Shares are traded in decimals, the MPV shall be \$0.01.]

.04 – The minimum price variation for orders generated from Profiles designated for the midpoint pricing service by the OptiMark System will be the variation of the

midpoint price between the highest published bid and the lowest published offer displayed on the Consolidated Quotation System. Any executions resulting from processing Profiles designated for midpoint pricing will be priced and reported in increments as small as [1/64th or, upon conversion to decimals,] one-half of the minimum price variation.

.05 – .06 – No change.

(b) – No change.

* * *

Intermarket Trading System

Rule 7.55(a) – No change.

Intermarket Trading System Application

(b) *Provisions of the Plan.* The Corporation has agreed to comply to the best of its ability, and, absent reasonable justification or excuse, to enforce compliance by its ETP Holders with the provisions of the Plan. In this connection, the following shall apply:

Intermarket Trading System (ITS)

(1) – No change.

(2) Any “commitment to trade”, which is transmitted by an ETP Holder to another participating market center through ITS, shall be firm and irrevocable for the period of time applicable to such commitment. All such commitments to trade shall:

(A) – (E) – No change.

(F) specify the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, the longer of the three [two] options available under the Plan shall be assumed by ITS.

(3) – (7) – No change.

(8) Openings

(A) Notification Requirements

(i) Applicable Price Change

(1) Initial Notification—Whenever a Market Maker, in arranging an opening transaction through the facilities of the Corporation in any Eligible Listed Security, anticipates that the opening transaction through the facilities of the Corporation will be at a price that represents a change from the security's previous day's consolidated closing price of more than the “applicable price

change” (as defined below), he or she, via the facilities of the Corporation, shall notify the other Participant markets of the situation by sending a “pre-opening notification” through the System. Thereafter, the Market Maker shall not open the security in his or her market until not less than three minutes after his transmission of the pre-opening notification.

The “applicable price changes” are:

Security	Consolidated Closing Price	Applicable Price Change (More Than)
Network A	Under \$15	.10 [or 1/8 point]
	\$15 or over	.25 [or 1/4 point]
Network B	Under \$5	.10 [or 1/8 point]
	\$5 or over	.25 [or 1/4 point]

—A pre-opening notification shall:

- (A) be designated as a pre-opening notification (“IND”);
- (B) identify the participant market (“P”), the Market Maker and the security (“XYZ”); and
- (C) indicate the “applicable price range” by being formatted as a standardized pre-opening administrative message as follows:

IND P/XYZ (RANGE)

The price range shall not exceed the “applicable price range” shown below:

Security	Consolidated Closing Price	Applicable Price Change (More Than)
Network A	Under \$50	.50 [or ½ point]
	\$15 or over	<u>\$1</u> ⁴ [1 point or, or for stocks trading in decimals, 1.00]
Network B	Under \$10	.50 [or ½ point]

\$10 or over \$1⁵ [1 point or,
for stocks]
trading in
decimals, 1.00]

⁴ If the previous day's consolidated closing price of a Network A Eligible Security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities Exchange, the "applicable price change" is two dollars.

⁵ If the previous day's consolidated closing Network B eligible Security exceeded \$75 and the security is not a Portfolio Depository Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is two dollars.

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a .10 - .60 [or 1/8 - 5/8] price range would be permissible if the previous day's consolidated closing price were .10 or .60 or [1/8 or 5/8], but not if the closing price were .25, or .40 or .50 [or ¼, or 3/8 or ½].

(9) – No change.

Commentary:

01. – 03. – No change.

* * *

Section 7. Special Offerings

Rules 7.63(a) – (d) – No change.

Definition – Price – Special Commission

(e). *Information on Tape.* The terms of a Special Offering shall be printed on the tape before it is effective, with statement, if such be the fact, that stabilizing transactions have been effected or are contemplated and that it is intended to over allot shares as permitted by Rule 7.63(c)(1). Transactions effected pursuant to a Special Offering shall when feasible be printed currently on the tape, and the tape shall show the gross price and the special commission in a legend such as "SP OFF 100 XYZ 40 COM .50 [or ½]," as well as the number of orders involved in such transaction where more than one order is involved; and after the close of the market, any unprinted remainder of such transactions executed during the day shall be so printed. When the offering is terminated, an announcement to that effect shall be printed on the tape; and when the intention to stabilize is terminated, such fact shall be announced on the tape together with a statement that stabilizing transactions have been effected, if such be the fact.

* * *

Rule 8

Trading of Certain Equity Derivatives

Rules 8.1 – 8.13 – No change.

Section 2. Portfolio Depositary Receipts

Rules 8.100(a) – (b) – No change.

(c) Disclosures. The provisions of this subparagraph apply only to series of Portfolio Depositary Receipts that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Corporation will inform ETP Holders regarding application of these provisions of this subparagraph to a particular series of Portfolio Depositary Receipts by means of an information circular prior to commencement of trading in such series.

ETP Holders shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Corporation or prepared by the unit investment trust issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Portfolio Depositary Receipts) is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Portfolio Depositary Receipts). In addition, upon request you may obtain from your broker a prospectus for (the series of Portfolio Depositary Receipts)."

An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder that execution of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(d) – No change.

(e) *Initial and Continued Listing and/or Trading.* A Trust upon which a series of Portfolio Depositary Receipts is based will be traded on the Corporation, whether by listing or pursuant to unlisted trading privileges, subject to the following criteria:

(1) Commencement of Trading—The minimum number of Portfolio Depositary Receipts required to be outstanding at commencement of trading is set forth in Commentary .01 paragraph (d) of this Rule. [For each Trust, the Corporation will establish a minimum number of Portfolio Depositary Receipts required to be outstanding at the time of commencement of trading on the Corporation.]

(2) – (5) – No change.

Commentary:

.01 The Corporation may approve a series of Portfolio Depositary Receipts for trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depositary Receipts on the Corporation, or if the Corporation is trading the Portfolio Depositary Receipts pursuant to unlisted trading privileges, upon the initial listing on the original listing exchange, each component of an index or portfolio underlying a series of Portfolio Depositary Receipts shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks; and

(5) 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).

(b) Index Methodology and Calculation.

(1) The index underlying a series of Portfolio Depositary Receipts will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(2) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “fire-wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and

(3) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association’s Network.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depositary Receipts an estimate, updated every 15 seconds, of the value of a share of each series. This 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.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depositary Receipts is required to be outstanding at commencement of trading.

(e) Minimum Price Variation. The minimum price variation for quoting and entry of orders in a series of Portfolio Depositary Receipts is \$0.01 as provided in Rule 7.6(a), Commentary .03.

(f) Hours of Trading. The hours of trading for series of Portfolio Depositary Receipts are the same as those provided in Rule 7.34(a).

(g) Surveillance Procedures. The Corporation will implement written surveillance procedures for Portfolio Depositary Receipts.

* * *

TRUST ISSUED RECEIPTS

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

(b) Definitions. A Trust Issued Receipt is a security (1) that is issued by a trust (“Trust”) which holds specific securities deposited with the Trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee (“Trustee”) by an issuer of the deposited securities.

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

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

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

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

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

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

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

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

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

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

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

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

(e) ETP Holders. ETP Holders shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

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

Commentary:

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

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

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

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

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

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

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

* * *

Rule 10

Disciplinary Proceedings, Other Hearings, and Appeals

10.12(a) – (h) -- No Change

FINES

(i) *Minor Rule Plan: Recommended Fine Schedule.*

(1) Minor Trading Rule Violations¹

	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>
1. Short Sale Rules (Rule 7.16)	\$500.00	\$1,000.00	\$2,500.00
2. Failure to follow the provisions of the rules and Regulations governing the use of the Intermarket Trading System ("ITS"). (Rules 7.55-7.57)	<u>no change</u> \$500.00	<u>\$1,500.00</u> [1,000.00]	<u>\$2,500.00</u> [\$2,000.00]

¹ Fines for multiple violations of Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running on-year basis.

(2) Record Keeping and Other Minor Rule Violation

	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>
1. Failure to submit trade data to the Corporation in a timely manner (Rule 10.2(e))	<u>\$1,000.00</u> [\$250.00]	<u>\$2,500.00</u> [\$500.00]	<u>\$3,500.00</u> [\$750.00]
2. Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner (Rule 4.11(b))	<u>\$1,000.00</u> [\$500.00]	<u>\$2,500.00</u> [\$1,000.00]	<u>\$3,500.00</u> [\$1,500.00]
3. Failure to furnish in a timely manner books, records or other Requested information or testimony in connection with an examination of financial responsibility and/or operational conditions (Rule 4.11(c))	<u>\$2,000.00</u> [\$250.00]	<u>\$4,000.00</u> [\$500.00]	<u>\$5,000.00</u> [\$750.00]
4. Failure to notify the Corporation of a change of address where notices may be served. (Rule 2.16(b))	<u>\$500.00</u> [\$250.00]	<u>\$1,000.00</u> [\$500.00]	<u>\$2,500.00</u> [\$750.00]
5. Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Corporation. (Rule 4.11(a))	<u>\$2,000.00</u> [\$250.00]	<u>\$4,000.00</u> [\$500.00]	<u>\$5,000.00</u> [\$750.00]
6. Delaying, impeding or failing to cooperate in an Corporation Investigation. (Rule 10.2(d))	<u>\$3,500.00</u> [\$500.00]	<u>\$4,000.00</u> [\$1,000.00]	<u>\$5,000.00</u> [\$2,000.00]

* * *