

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50593; File No. SR-PCX-2004-63)

October 26, 2004

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to a Proposed Listing Fee Schedule for Exchange-Traded Funds and Closed-End Funds

On August 9, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly-owned subsidiary, PCX Equities, Inc. (“PCXE”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change 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> to adopt new listing fees specifically for listing Exchange-Traded Funds and Closed-End Funds (collectively, “Funds”) on the PCXE and trading on the Archipelago Exchange, a facility of the PCXE.

The proposed rule change was published for comment in the Federal Register on September 22, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. Specifically, the Commission believes that the proposal is consistent

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

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

<sup>3</sup> See Securities Exchange Act Release No. 50374 (September 14, 2004), 69 FR 56813.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the Exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that by adopting listing fees specifically for Funds, the PCX's amended Schedule of Fees and Charges ("Schedule") should provide guidance and clarity to issuers and the public regarding the appropriate applicable fees for Funds. Additionally, the Commission notes that the proposed fee changes should decrease the listing fees that existing Fund issuers would otherwise pay under the current Schedule.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-PCX-2004-63) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).