

should refer to File Number SR-NYSE-2004-13 and should be submitted on or before November 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50593; File No. SR-PCX-2004-63]

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

October 26, 2004.

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")¹ and Rule 19b-4 thereunder,² 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, 2004.³ 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 exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,⁶ 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,⁷ 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.⁸

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50591; File No. SR-Phlx-2004-62]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Waive the Options Specialist Shortfall Fee for One Specialist Unit That Did Not Have a Specialized Quote Feed in Place

October 26, 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 September 23, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 Phlx proposes to waive the options specialist shortfall fee

("shortfall fee") for the period May 2004 through August 2004 for one specialist unit that did not have a specialized quote feed ("SQF") in place that could price an option accurately for any option where the primary volume in the underlying security shifted to another market.³ There is no new proposed rule language.

Background: The Exchange currently imposes a shortfall fee of \$.35 per contract for specialists trading any top 120 Option if 12% of the total national monthly contract volume ("volume threshold") for such Top 120 Option is not effected on the Phlx.⁴ The fee is limited to \$10,000 per month per option provided that the total monthly market share effected on the Phlx in that Top 120 Option is equal to or greater than 50% of the volume threshold in effect.⁵ For any Top 120 Option listed after February 1, 2004 and for any Top 120 Option acquired by a new specialist unit⁶ within the first 60 days of operations, the following thresholds apply:⁷

First full month of trading: 0% national market share.

Second full month of trading: 3% national market share.

Third full month of trading: 6% national market share.

Fourth full month of trading: 9% national market share.

Fifth full month of trading (and thereafter): 12% national market share.

Proposal: The Exchange proposes to waive the shortfall fee for transactions settling on or after May 1, 2004 through August 31, 2004 for one specialist unit that did not have an SQF in place that

³ An SQF is a specialized connection that bypasses the Exchange's Auto-Quote, which is the Exchange's electronic options pricing system that enables specialists to automatically monitor and instantly update quotations. Auto-Quote and SQFs ("Quoting Mechanisms") incorporate pricing model data, which generate automatic pricing of option series based on a number of factors, including the value of the underlying stock.

⁴ See Securities Exchange Act Release No. 48206 (July 22, 2003), 68 FR 44555 (July 29, 2003)(SR-Phlx-2003-45).

⁵ See Securities Exchange Act Release No. 48207 (July 22, 2003), 68 FR 44558 (July 29, 2003)(SR-Phlx-2003-47).

⁶ A new specialist unit is one that is approved to operate as a specialist unit by the Options Allocation, Evaluation, and Securities Committee on or after February 1, 2004 and is a specialist unit that is not currently affiliated with an existing options specialist unit as reported on the member organization's Form BD, which refers to direct and indirect owners, or as reported in connection with any other financial arrangement such as is required by Exchange Rule 783.

⁷ The shortfall fee is not applicable to any option traded on Phlx XL, the Exchange's electronic trading platform, either on a variable or fixed fee basis. See Securities Exchange Act Release No. 50332 (September 9, 2004), 69 FR 55858 (September 16, 2004)(SR-Phlx-2004-49).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ 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).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.