

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-NYSE-2004-49 and should be submitted on or before October 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50448; File No. SR-PCX-2004-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by Pacific Exchange, Inc. Relating to Proposed Listing Fee Schedule for Structured Products

September 24, 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 May 11, 2004 the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary, PCX Equities, Inc. ("PCXE"), 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 PCXE. On August 9, 2004, the Commission received Amendment No. 1 to the proposed rule change.³ On August 23, 2004, the Commission received Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the

proposed rule change, as amended, from interested persons.

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

The PCX is proposing to amend its Schedule of Fees and Charges ("Schedule") in order to adopt new listing fees for listing structured products on the PCXE and traded on the Archipelago Exchange ("ArcaEx"), a facility of the PCXE. The PCX proposes to implement these fees retroactive for listings and listing applications pending as of April 1, 2004. The PCX also proposes to add a definition of structured product in PCXE Rule 5.1(b)17. The text of the proposed rule change is available at the Office of the Secretary of the Exchange and at the Commission.

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

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX 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

The PCX, through its wholly owned subsidiary, PCXE, proposes to adopt new listing fees specifically for structured products listed on the PCXE and traded on ArcaEx.⁵ The proposed fees include a non-refundable application processing fee, a one-time initial listing fee, and an annual maintenance fee based on the number of products listed with PCXE.⁶

⁵ Structured products are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured products include index and equity linked notes, term notes and units comprised of equity and/or debt securities.

⁶ The remaining portions of the current listing fees (Company Name Change Fee, Change in Par Value Fee, Substitute Initial Listing Fee, and Additional Shares Listing Fee) will continue to apply to structured products. Telephone conversation between Leah Mesfin, Special Counsel, Division, Commission, and Tania J. Blanford, Staff Attorney, Regulatory Policy, PCX, on September 16, 2004.

The PCX believes there are several reasons to adopt a fee schedule specifically for structured products. First, PCXE's current listing fees do not explicitly provide for fees to list these types of securities. Accordingly, the amended Schedule would provide guidance and clarity to issuers and the public regarding the applicable fees. Second, in many cases, depending on the number of products listed, the proposed listing fees would substantially reduce the fees paid by issuers of structured products, enabling ArcaEx to compete more effectively for listings with other marketplaces.⁷

Summary of Current and Proposed Fee Changes

(a) Application Processing Fees

Currently, issuers are charged a \$500 application processing fee. This fee is non-refundable, although upon approval for listing, it is credited towards the initial listing fee. PCX proposes to retain an application processing fee, but proposes to charge either \$500 or the initial listing fee, whichever is less.

(b) Initial Listing Fees

Currently, the general one-time initial listing fees are based on whether the issue is also listed on the New York Stock Exchange, American Stock Exchange, or Nasdaq National Market. If an issue is dually listed, the initial listing fee is \$10,000 per product; otherwise, the initial listing fee is \$20,000 per product. These fees apply to each product listed, regardless of the number of products listed by the issuer.

PCX proposes to adopt a one-time initial listing fee for structured products as follows: For the first initial public offering, the initial listing fee would be fixed at \$20,000. For subsequent initial public offerings of structured products from the same issuer, the initial listing fee would be \$1,000 for each additional listed issue, regardless of the number of products listed or if prior products remained listed. For structured products which are already listed on another exchange or marketplace, or are quoted on an inter-dealer quotation system, PCX proposes a fixed initial listing fee of \$5,000 for the first structured product listed by the issuer. For subsequent structured products listed by the same issuer that are already listed on another exchange or marketplace, or are quoted on an inter-dealer quotation system, PCX proposes to base the listing fee on

⁷ In addition to the described substantive changes, the Exchange also proposes to replace the "*" used reference the footnotes in the Schedule of Fees and Charges with sequential numbers for clarity.

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 5, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, PCX added a definition of "structured products" to the proposal and made other clarifying changes.

⁴ See letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 20, 2004 ("Amendment No. 2"). In Amendment No. 2, made a minor typographical correction to its proposed rule text.

the number of products listed, as follows:

Number of products	Fee
Two through 10	\$1,000
11 through 100	500
101+	100

This schedule would apply regardless of whether these products remain listed elsewhere.

(c) Annual Maintenance Fees

Currently, the annual maintenance fees are fixed and based on whether the issue is also listed on the New York Stock Exchange, American Stock Exchange, or Nasdaq National Market. If dually listed, the maintenance fee is \$1,000 per product; otherwise, the maintenance fee is \$2,000 per product. These fees apply regardless of the number of products listed by the issuer. Annual maintenance fees are payable beginning in the first full calendar year of listing.

The PCX proposes to adopt a fee schedule for annual maintenance fees specific to structured products as follows: \$5,000 for the first product listed by an issuer, regardless of whether the product is listed elsewhere. For all additional structured products listed by the same issuer, the PCX proposes to base the annual maintenance fee on the number of products listed, as follows:

Number of products	Annual maintenance fee
Two through 10	\$1,000
11 through 100	500
101+	100

This schedule would apply regardless of whether these products remain listed elsewhere.

(d) Implementation

The PCX proposes that these modifications become effective retroactive for all listings and listing applications pending as of April 1, 2004.

(e) Definition of Structured Products

Finally, the PCX proposes to include a definition of structured products in PCXE Rule 5.1(b)(17). Structured products are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured products

include index and equity linked notes, term notes and units comprised of equity and/or debt securities. The PCX believes that providing a definition of structure products is appropriate to alleviate any confusion for issuers regarding the listing fees for structured products.

2. Statutory Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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:

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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 Number SR-PCX-2004-43 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 Number SR-PCX-2004-43. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-43 and should be submitted on or before October 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,¹⁰

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

Text of the Proposed Rule Change ¹¹

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ New text is *italicized*; deleted text is in [brackets].

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES
[PCX equities: listing fees]

Administrative Listing Fees:	
Application Processing Fee ^{1(*)}	\$500.00
Application Processing Fee for	\$500.00 or the initial Structured Products ¹ listing fee, whichever is less.
Company Name Change	\$250.00.
Change in Par Value	\$250.00.
Initial [Original] Listing Fees^{2(*)}:	
Common Stock, dually listed with the NYSE, AMEX or Nasdaq NM	\$10,000.00.
Common Stock, not dually listed	\$20,000.00.
Additional Classes of Common Stock	\$2,500.00.
Preferred Stock, Warrants, Debit Instruments, Purchase Rights, Units	\$2,500.00.
Initial Listing Fees for Structured Products:	
Initial Public Offerings	\$20,000.00.
Additional IPOs listed by the same issuer or "family" of fund	\$1,000.00.
Structured Products multiply listed on another marketplace or quoted on an inter-dealer quotation system	\$5,000.00.

^{1(*)} This is a non-refundable, fixed charge for review of listing applications. Issues approved for listing will have this charge credited towards the Initial [Original] Listing fee.

^{2(*)} The Initial [Original] Listing fees are fixed and are not charged by the number of shares listed.

Additional Structured Products listed by same issuer:

Number of structured products	Fee
2 through 10	\$1,000
11 through 100	500
101+	100

Substitute Initial [Original] Listing Fee^{3(*)}:	
Per Application (fixed charge)	\$2,500.00
Additional Shares Listing Fee:	
Per share	.0025
Minimum charge (per application)	500.00
Maximum charge (per application)	7500.00
Maximum charge (per year)	15,000.00
Annual Listing Maintenance Fee (Payable January of each year following listing):	
For one issue, dually listed with the NYSE, AMEX or Nasdaq NM	1,000.00
For one issue, not dually listed	2,000.00
For each additional issue	500.00
Minimum (per year)	1,000.00
Maximum (per year)	5,000.00
For one Structured Product	5,000.00

^{3(*)} A Substitute Initial [Original] Listing would occur as a result of a change in state of incorporation, reincorporation under the laws of same state, reverse stock split, recapitalization, or similar events affecting the nature of a listed security.

For each additional Structured Product listed by the same issuer:

Number of structured products	Annual maintenance fee
2 through 10	\$1,000
11 through 100	500
101+	100

Rules of PCX Equities, Inc.

Rule 5 Listings

Section 1. General Provisions and Definitions

* * * * *

Rule 5.1(a)—No change.

Rule 5.1(b)(1)–(16)—No change.

(17) The term "Structured Products" means products that are derived from and/

or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured Products include index and equity linked notes, term notes

and units comprised of equity and/or debt securities.

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