

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51519; File No. SR-PCX-2005-37)

April 11, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Adjusting the Implementation Date of Previously Adopted PCXE Listing Fees for Exchange-Traded Funds and Closed-End Funds

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 March 29, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and II below, which Items have been prepared by PCX. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

PCX, through its wholly-owned subsidiary PCX Equities, Inc. (“PCXE”), is proposing to adjust the implementation date of previously adopted PCXE listing fees for Exchange-Traded Funds (“ETFs”) and Closed-End Funds (“CEFs”) to April 1, 2005.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(3).

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 Commission previously approved a rule proposal by the Exchange to adopt new listings fees for ETFs and CEFs (collectively "Funds") listed by the PCXE for trading on the Archipelago Exchange, a facility of the PCXE.⁵ In this rule proposal, the Exchange proposed a non-refundable application processing fee, a one-time original listing fee per Fund issuer or family of Funds, and an annual maintenance fee based on the aggregate total shares outstanding of the Funds listed by the same Fund issuer or family of Funds. The Exchange proposed to implement these fees specific to Funds effective June 21, 2004.

The Exchange now seeks to adjust the implementation date of the Funds' listing fees to April 1, 2005. In February 2005, due to an administrative oversight, the Exchange inadvertently invoiced currently listed Funds for their 2005 annual maintenance fee based on the prior fee schedule. Because the Exchange discovered the error after the Fund issuers had already received the incorrect invoice, the Exchange decided to revise the effective date of implementation rather

⁵ See Securities Exchange Act Release No. 50591 (October 26, 2004), 69 FR 63427 (November 1, 2004) (SR-PCX-2004-63).

than withdraw and resubmit corrected invoices. As a result, all listed Funds paid a lower annual maintenance fee than they would otherwise have paid under the new fee schedule. Under these circumstances, the Exchange believes that this adjustment is appropriate as all listed Fund issuers were treated similarly and none were negatively impacted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its OTP Holders, OTP Firms, ETP Holders, issuers, and other persons using its facilities.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(3) of Rule 19b-4 thereunder,⁹ because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of 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 Number SR-PCX-2005-37 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-2005-37. 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

⁹

17 CFR 240.19b-4(f)(3).

Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-37 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).