

Amendment No. 2, and Amendment No. 4 is a non-substantive amendment to IM-11890-2. The Commission therefore believes that it is appropriate to accelerate approval of Amendment Nos. 2, 3, and 4 so that the proposed rule change, as amended, may be implemented in full without delay.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 2, 3, and 4 to the proposed rule change, as amended, are 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-089 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-089. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. 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-NASD-2005-089 and

should be submitted on or before October 21, 2005.

#### VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NASD-2005-089), as amended, be, and it hereby is, approved, and Amendment Nos. 2, 3, and 4 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52502; File No. SR-PCX-2005-19]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed New Listing Fees

September 23, 2005.

#### I. Introduction

On February 28, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc., 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 increase certain portions of its listing fees and to make a number of related modifications. On June 15, 2005, PCX amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 16, 2005.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

PCX is proposing to amend its Schedule of Fees and Charges, as follows: (1) Implement new initial listing fees specifically for common stock issued in initial public offerings and listed exclusively by PCX for

trading on the Archipelago Exchange ("ArcaEx"), a facility of PCX, and make related modifications to the initial listing fees; (2) exempt from initial listing fees already-public issues which are listed and/or quoted on other marketplaces, whether or not dually listed; (3) exempt from annual maintenance fees transfer listings for the first 12 calendar months after listing, whether or not dually listed; (4) revise the annual maintenance fees; and (5) revise the additional shares listing fees.

#### III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires, among other things, that an exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using its facilities. The Commission notes that the Exchange does not believe that the proposed listing fee changes, including the proposed exemptions from certain listing fees, would negatively impact the Exchange's regulatory program. Further, the Commission notes that PCX has committed extensive resources to its listings program since the ArcaEx began operating as a facility of PCX. Finally, the Commission believes that the proposal might also serve to enhance competition among listing markets.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-PCX-2005-19), as amended, be, and it hereby is, approved.

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

**Jonathan G. Katz,**

*Secretary.*

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

<sup>5</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<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).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

<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. 52225 (August 8, 2005), 70 FR 48224.