

manner as Investment Company Units previously approved by the Commission. Furthermore, the Commission notes that it granted accelerated approval to the request of the Amex, NYSE, and CHX to list and trade fixed income ETFs.<sup>49</sup> Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>50</sup> that the proposed rule change, as amended, (File No. SR-PCX 2003-41) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>51</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48664; File No. SR-PCX-2003-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 To Exempt ETP Holders and Sponsoring ETP Holders From the Administrative Late Charges Related to Transaction Fees by the Archipelago Exchange

October 20, 2003.

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> notice is hereby given that on September 24, 2003, 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 the Exchange. On October 10, 2003, the Exchange filed an amendment that entirely replaced the original rule filing.<sup>3</sup> The PCX has designated this

proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Substance of the Proposed Rule Change

The Exchange, through PCXE, proposes to amend the Schedule of Fees and Charges ("Schedule") for the Archipelago Exchange ("ArcaEx") to establish an exception to an administrative late charge applicable to ETP Holders and Sponsoring ETP Holders for failure to pay applicable dues, fees, or charges that are past due. The text of the proposed rule change is available at the PCX 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, the PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The 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 Exchange is proposing to amend ArcaEx's Schedule to establish an exception to an administrative late charge applicable to ETP Holders and Sponsoring ETP Holders who trade on ArcaEx for failure to pay dues, fees, or charges that are past due.

Currently, ArcaEx<sup>5</sup> assesses an administrative late charge to ETP Holders and Sponsoring ETP Holders that are substantially late in making payments to ArcaEx of dues, fees, fines

period, the Commission considers the period to have commenced on October 10, 2003, the date the PCX filed Amendment No. 1. See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> With the exception of regulatory related fees and charges, for which the PCX administers, ArcaEx administers the billing and collection of all other fees and charges.

or other charges.<sup>6</sup> The purpose of this charge is to recover ArcaEx's costs in seeking to collect such payments when they are past due and to encourage ETP Holders and Sponsoring ETP Holders to make such payments in a timely manner. ArcaEx provides invoices and related notices to ETP Holders and Sponsoring ETP Holders as follows: An initial invoice is sent approximately five days after a given month in which dues, fees or other charges are accrued. If no payment is made on the invoice within one month, ArcaEx sends the ETP Holder or Sponsoring ETP Holder a "late" notice on the tenth day of the month following the month in which the invoice was issued. Thereafter, if no payment is made by the twentieth of the month following issuance, ArcaEx sends a second "late" notice with an administrative late charge. The amount of the late charge is \$250.00 or 1.0 percent of the invoice amount (whichever is greater) if the ETP Holder or Sponsoring ETP Holder is late once within the previous twelve months; and \$500.00 or 1.5 percent of the invoice amount (whichever is greater) if the ETP Holder or Sponsoring ETP Holder is late more than once within the previous twelve months.

ArcaEx is proposing to establish an exception that would eliminate the requirement to pay the administrative late charges related to transaction fees. The purpose of such an exception is for business reasons in that ArcaEx is seeking to promote a more competitive level to its ETP Holders and Sponsoring ETP Holders for conducting business on ArcaEx. The administrative late charge will continue to be applied to all other dues, fees or charges that are past due.

###### 2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

<sup>6</sup> See Securities Exchange Act Release No. 35757 (May 24, 1995), 60 FR 28433 (May 31, 1995), (SR-PSE-95-15) (Notice of Filing and Immediate Effectiveness of the Administrative "Late" Charges). While this rule change in the Schedule has been operative since May 13, 1995, due to a clerical error the Schedule was not updated internally at that time. Hence, the Schedule, to date, has not reflected the late charge. This administrative error has been corrected internally by the PCX's Finance Department.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>49</sup> See *supra*, note 5.

<sup>50</sup> 15 U.S.C. 78s(b)(2).

<sup>51</sup> 17 CFR 200.3-3(a)(12).

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

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

<sup>3</sup> See October 9, 2003 letter from Tania J. Cho, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachment ("Amendment No. 1"). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety. For purposes of calculating the 60-day abrogation

### *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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX-2003-53 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48673; File No. SR-Phlx-2003-69]**

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Temporarily Waive Membership Transfer Fees**

October 21, 2003.

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> notice is hereby given that on October 2, 2003, 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 the Exchange has prepared. 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 amend its schedule of dues, fees and charges to adopt the following temporary actions respecting fees that would ordinarily be imposed on transfers of memberships:<sup>3</sup>

(1) Waive the transfer fee of \$500<sup>4</sup> in connection with memberships that are transferred from a member who holds legal title to more than one regular

membership<sup>5</sup> to an existing member or new member; (2) waive the application fee of \$350<sup>6</sup> in connection with the transfer of a membership from a member who holds legal title to more than one regular membership to a new member;<sup>7</sup> (3) refund the initiation fee of \$1,500<sup>8</sup> incurred in connection with the transfer of a membership from a member who holds legal title to more than one regular membership to a new member, when such transfer occurred during the time period from October 1, 2003 until the record date for the Special Member Meeting;<sup>9</sup> and (4) waive the transfer fee of \$500 in connection with transfers of memberships back to the prior legal title holder (who held legal title to more than one regular membership and transferred it to an existing member or new member from October 1, 2003 to the record date for the Special Member Meeting) within 60 days after the record date. The text of the proposed rule change is available at the Phlx 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, the Phlx 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>5</sup> See Phlx Certificate of Incorporation, Article Fifth.

<sup>6</sup> In general, the application fee is charged in connection with applications handled by the Exchange's Membership Services Department, including applications for Exchange membership. See Securities Exchange Act Release No. 47383 (February 20, 2003), 68 FR 8956 (February 26, 2003) (SR-Phlx-2002-79).

<sup>7</sup> The waivers for the application fee and transfer fee as described in items one and two would be in effect from October 1, 2003 until the record date for the Special Member Meeting. The record date has currently been set for October 21, 2003.

<sup>8</sup> The initiation fee is imposed upon members upon election. See Securities Exchange Act Release No. 26468 (January 18, 1989), 54 FR 3713 (January 23, 1989) (SR-Phlx-88-45). See also Phlx Article XII, Section 12-8.

<sup>9</sup> The Exchange intends to refund these initiation fees in the billing cycle following the date of the transfer of the membership.

<sup>11</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> This proposal does not apply to memberships in non-participating status ("NPS"). Any transfer of memberships in NPS must abide by the requirements set forth in Phlx Article XII, Section 12-1. The Phlx notes, however, that members who change the status of their membership from NPS to participating status before the record date for the special meeting concerning demutualization ("Special Member Meeting") can take full advantage of the waivers described herein. Telephone conversation between Cynthia Hoekstra, Counsel, Phlx, and Ian K. Patel, Attorney, Division of Market Regulation, Commission on October 20, 2003.

<sup>4</sup> The transfer fee is imposed on the transferee at the time of the transfer of legal or equitable title to any Phlx regular membership. See Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR-Phlx-97-09).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).