

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–NSCC–2004–05 and should be submitted on or before October 13, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50395; File No. SR–NSCC–2003–09]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Amend the Procedure for Determining Intraday Mark-to-the-Market Payments

September 16, 2004.

#### I. Introduction

On May 20, 2003, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR–NSCC–2003–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> On October 20, 2003, NSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on March 8, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

NSCC is amending Procedure XV (Clearing Fund Formula and Other Matters) to give NSCC more flexibility in determining the intraday mark-to-the-market amount it will collect from its members.

NSCC Rule 15 (Financial Responsibility and Operational Capability) provides that NSCC may obtain such adequate assurances of a member’s financial responsibility and operational capability as NSCC may at any time or from time to time deem

necessary or advisable in order to protect NSCC, Settling Members, Municipal Comparison Only Members, Fund Members, Insurance Carrier Members, creditors, or investors.

Currently, Procedure XV describes the criteria for determining which positions in high risk/volatile issues NSCC will require additional mark-to-the-market payments for and provides specific formulas that are used to determine additional deposit amounts. Generally, NSCC assesses on an intraday basis an additional mark-to-the-market charge to a member when the member maintains a position in a security where the intraday exposure to NSCC is in excess of 10% of the member’s excess net capital. In addition, with respect to illiquid unsettled positions, NSCC may request additional collateral if the member’s net unsettled position in any one security is greater than 25% of the security’s average daily volume.

NSCC is replacing the formulas currently reflected in its procedures with a more generalized provision to give NSCC the flexibility to determine what amount, if any, should be collected based on conditions that exist at that time.<sup>3</sup> In addition, the reference to NSCC’s authority to make such charges is being corrected to reflect NSCC Rule 15, Section 4.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of funds and securities for which it is responsible.<sup>4</sup> The Commission finds that NSCC’s proposed rule change is consistent with this requirement because it should permit the safeguarding of funds and securities for which NSCC is responsible by permitting NSCC to more appropriately collect collateral to cover its exposure from its members’ unsettled positions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–

NSCC–2003–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50374; File No. SR–PCX–2004–63]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to a Proposed Listing Fee Schedule for Exchange Traded Funds and Closed-End Funds

September 14, 2004.

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 August 9, 2004, 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 III below, which Items have been prepared by the PCX. The PCX submitted Amendment No. 1 to the proposal on September 3, 2004.<sup>3</sup> 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 PCX, through its wholly-owned subsidiary PCX Equities, Inc. (“PCXE”), is proposing to amend its Schedule of Fees and Charges (“Schedule”) in order to adopt new listing fees specifically for listing Exchange-Traded Funds (“ETFs”) and Closed-End Funds (“CEFs”) (collectively, “Funds”) on the PCXE and trading on the Archipelago Exchange (“ArcaEx”), a facility of the PCXE.<sup>4</sup> The PCX proposes to implement

<sup>5</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 letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 1, 2004, and accompanying Form 19b–4 (“Amendment No. 1”). Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> ETFs include unit investment trusts, portfolio depository receipts and trust issued receipts designed to track the performance of the broad

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<sup>7</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 49353 (March 2, 2004), 69 FR 10789.

<sup>3</sup> Additional factors that NSCC may use in determining intraday mark-to-the-market requirements include but are not limited to (1) Percent of total security float, (2) average daily security volume, (3) position size (quantity and value), (4) portfolio concentration, and (5) industry/sector concentration.

<sup>4</sup> 15 U.S.C. 78q–1(b)(3)(F).