

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 these filings also will be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2003-06 and should be submitted by November 19, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48685; File No. SR-NYSE-2003-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing Fees for Closed-End Funds

October 23, 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 hereby is given that on October 9, 2003, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. The NYSE has represented that the proposal meets the criteria of paragraph (f)(6) of Rule 19b-4 and, therefore, may take effect immediately. 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 NYSE proposes to amend Section 902.02 of its Listed Company Manual to implement a \$75,000 cap on the collective original listing fees payable by any two or more closed-end funds from the same fund family listing at the same time. Below is the text of the

proposed rule change. Proposed new language is italicized.

\* \* \* \* \*

Listed Company Manual

#### 902.00 Listing Fees

\* \* \* \* \*

#### 902.02 Schedule of Current Listing Fees

\* \* \* \* \*

##### A. Original Listing Fee

A special charge of \$36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum original listing fee of \$150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a "back-door listing". See Para. 703.08 (F) for definition.

Original listings of closed-end funds are not subject to either the special charge or to the minimum original listing fee. Closed end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a \$20,000 original listing fee, closed end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a \$30,000 original listing fee, and closed end funds with more than 20 million shares outstanding will be subject to a \$40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.

*If two or more closed-end funds from the same fund family list at the same time, the Exchange will cap the collective original listing fee for those funds at \$75,000. A fund family consists of closed end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.*

\* \* \* \* \*

#### 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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

NYSE 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

In recognition of the increasing cost pressures facing closed-end funds, the Exchange recently reduced the original listing fees applicable to closed-end funds by establishing a three-tiered structure based on the number of shares outstanding.<sup>3</sup> Closed-end funds with up to 10 million shares outstanding are subject to a \$20,000 original listing fee; funds with greater than 10 million shares up to 20 million shares outstanding are charged a \$30,000 original listing fee; and funds with more than 20 million shares outstanding are subject to a \$40,000 original listing fee.

The Exchange states that it inadvertently omitted in SR-NYSE-2003-22 an additional proposal to impose a cap of \$75,000 on the collective original listing fees payable by two or more closed-end funds from the same fund family listing at the same time. Accordingly, the Exchange proposes that there be a cap of \$75,000 on the collective original listing fees payable by a group of two or more closed-end funds from the same fund family listing at the same time. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940.<sup>4</sup> The Exchange clarifies that the \$75,000 cap is available regardless of whether the funds are transferring from another market or making an initial issuance of shares. In fact, if some of the funds listing at the same time are transferring to the Exchange, and others are conducting an initial public offering, the funds would still be eligible for the collective \$75,000 cap.

##### 2. Statutory Basis

The NYSE believes that the basis for the proposed rule change is Section 6(b)(4) of the Act,<sup>5</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its

<sup>3</sup> See Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR-NYSE-2003-22).

<sup>4</sup> 15 U.S.C. 80a-2(a)(3).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 17 CFR 200.30-3(a)(75).

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

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

members and issuers and other persons using its facilities.

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

The NYSE does not believe that the proposed rule change would 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*

The NYSE has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that, because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it may become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> 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.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate the proposed rule change operative immediately upon filing. The Commission believes that capping the initial listing fees payable by any two or more closed-end funds from the same fund family will benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the

proposed rule change becomes operative immediately.<sup>9</sup>

Rule 19b-4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The NYSE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

### 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. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2003-32 and should be submitted by November 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>9</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48676; File No. SR-PCX-2003-38]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to the Establishment of a Cross-and-Post Order Type

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 July 23, 2003, the Pacific Exchange, Inc. ("PCX") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On September 25, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to adopt new rules for the implementation of a new order type called a "Cross-and-Post Order" for use on the Archipelago Exchange ("ArcaEx").

The text of the proposed rule change is below. Proposed additions are in *italics*.

\* \* \* \* \*

#### PCX Equities, Inc.

##### Rule 7

##### Equities Trading

##### Orders and Modifiers

Rule 7.31 (a)-(cc)—(No change.)  
(dd)-(ee)—*Reserved.*

(ff) *Cross-and-Post Order. A Cross Order that is to be executed in whole or in part on the Corporation pursuant to Rule 7.31(s) where any unexecuted portion of the Cross-and-Post Order will be displayed in the Arca Book at the cross price.*

*The Corporation will cancel the Cross-and-Post Order at the time of order entry, if:*

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> See 15 U.S.C. 78s(b)(3)(C).