

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49776; File No. SR-NYSE-2004-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Trading Hours for Three Exchange-Traded Funds Listed on the Exchange

May 26, 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 May 20, 2004, 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 and II below, which Items have been prepared by the NYSE. 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 specify that 4:15 p.m. (New York time) is the closing time applicable to trading on the NYSE in the following exchange-traded funds ("ETFs") listed on the Exchange: Fresco Dow Jones STOXX 50<sup>SM</sup> Fund, Fresco Dow Jones EURO STOXX 50<sup>SM</sup> Fund, and iShares<sup>®</sup> S&P Global 100 Fund.

#### 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 on 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

The Exchange proposes to specify that 4:15 p.m. (New York time) is the closing time applicable to trading on the NYSE in the following ETFs listed on the Exchange: Fresco Dow Jones STOXX

50<sup>SM</sup> Fund (symbol: FEU), Fresco Dow Jones EURO STOXX 50<sup>SM</sup> Fund (symbol: FEZ), and iShares<sup>®</sup> S&P Global 100 Fund (symbol: IOO).<sup>3</sup> The Commission previously has approved the listing and trading of these ETFs on the Exchange.<sup>4</sup>

The current trading hours for FEU and FEZ are 9:30 a.m. to 4:15 p.m. These securities currently trade until 4:15 p.m. pursuant to NYSE Rule 1100(e), which states that any series of Investment Company Units (which term encompasses ETFs) so designated by the Exchange may be traded until 4:15 p.m. In SR-NYSE-2002-51, the Exchange stated incorrectly that the close of trading in these ETFs would be 4 p.m. The Exchange is correcting the misstatement in SR-NYSE-2002-51 and hereby specifies these securities may be traded until 4:15 p.m.

In SR-NYSE-00-53, the Exchange stated that IOO would be traded until 4 p.m. and that at such time as futures contracts are traded on the S&P Global 100 Index trading would be permitted until 4:15 p.m. The Exchange has now determined that IOO should trade until 4:15 p.m. pursuant to NYSE Rule 1100(e), notwithstanding that futures on the underlying index are not currently traded. The Exchange believes that trading IOO until 4:15 p.m. will provide investors with greater investment flexibility and will be generally consistent with trading hours applicable to most ETF trading on the NYSE and in other U.S. securities markets.

###### 2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is the requirement under section 6(b)(5) of the Act<sup>5</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

<sup>3</sup> "Fresco Index Shares," "Dow Jones," and "STOXX" are the respective trademarks or service marks of Fresco Index Shares Funds, Dow Jones & Company, Inc., and STOXX Limited. "iShares" is a registered trademark of Barclays Global Investors, Inc.

<sup>4</sup> See Securities Exchange Act Release Nos. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR-NYSE-2002-51) (approving listing and trading of FEU and FEZ on the NYSE); and 43658 (December 2, 2000), 65 FR 77408 (December 11, 2000) (SR-NYSE-00-53) (approving listing and trading of IOO on the NYSE).

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

##### 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

The Exchange 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 the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder<sup>7</sup> because it 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 of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>8</sup>

The NYSE has requested that the Commission waive the 30-day period, which would make the rule change operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case. Allowing the rule change to become operative immediately should provide investors with greater investment flexibility and standardize the trading hours applicable to most ETFs trading on the NYSE and on other exchanges.<sup>9</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

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

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

<sup>8</sup> As required under Rule 19b-4(f)(6)(iii), the NYSE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>9</sup> For the 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>1</sup> 15 U.S.C. 78s(b)(1).

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-26 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-NYSE-2004-26. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2004-26 and should be submitted on or before June 24, 2004.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49773; File No. SR-PCX-2004-46]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Modifying the Market Imbalance Calculation

May 26, 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 May 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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. On May 24, 2004, 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"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to modify and clarify current ArcaEx practices with respect to the calculation of the Market Imbalance provided for in PCXE Rule 1.1.

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

\* \* \* \* \*

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

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Letter from Mai Shiver, Acting Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Commission, dated May 21, 2004 ("Amendment No. 1"). In Amendment No. 1, the PCX replaced and superseded the original filing in its entirety.

PCX Equities, Inc.

Rule 1

Definitions

Rule 1.1(a)-(p)—No Change.

Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, the Closing Auction and the Trading Halt Auction, as the case may be,

(1) The term "Imbalance" shall mean the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time.

(A) The term "Total Imbalance" shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) The term "Market Imbalance" shall mean:

(i) as it relates to the Market Order Auction, the imbalance of any remaining buy (sell) Market Orders that are not matched for execution *against Market Orders* during the applicable auction.

(ii) As it relates to the Closing Auction, the imbalance of any remaining buy (sell) Market-on-Close Orders that are not matched for execution *against Market-on-Close Orders* during the applicable auction.

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#### 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 the proposed rule change and discussed any comments it had received on the proposed rule change. 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 proposes to modify PCXE Rule 1.1 for the purpose of modifying the ArcaEx calculation of the Market Imbalance. Currently, the Market Imbalance, as it relates to the Market Order Auction, is defined as the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the Market Order