

association, and, in particular, section 15A(b) of the Act.⁸

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2003-090), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50398; File No. SR-NSCC-2004-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the By-Laws of the National Securities Clearing Corporation

September 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 7, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to the By-Laws of the National Securities Clearing Corporation ("NSCC") to provide for indemnity for non-director members of NSCC board committees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to help assure the fair representation of the users of NSCC, the NSCC board of directors has delegated significant responsibilities to the NSCC Equity Operations and Planning Committee, the NSCC Fixed Income Operations and Planning Committee, and the NSCC Membership and Risk Management Committee and has appointed to these committees, in addition to directors, non-director NSCC-user representatives.³

The purpose of the proposed rule change is to revise NSCC's By-Laws to specify that non-director members of NSCC board committees will be indemnified in the same manner as NSCC directors and officers.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act⁴ and the rules and regulations thereunder applicable to NSCC because the proposed change strengthens NSCC's board committee structure and thereby helps NSCC provide its participants with fair representation in the administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from NSCC participants or others have not been solicited or received on the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to section

19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(3)⁶ thereunder because the proposed rule is concerned solely with the administration of NSCC. At any time within 60 days of the filing of such 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 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. Please include File Number SR-NSCC-2004-05 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-NSCC-2004-05. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsccl.com/legal>. All

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(3).

² The Commission has modified the text of the summaries prepared by NSCC.

³ The changes to the NSCC By-Laws are modeled on the current indemnification provisions contained in the By-Laws of both the Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation. The Depository Trust Company has filed a proposed rule change similar to this proposed rule change. Securities Exchange Act Release No. 50399 (September 16, 2004) (File No. SR-DTC-2004-09).

⁴ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78o-3(b).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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.⁷

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”).¹ 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, 2004.² 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.³ 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.⁴ 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.⁵

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”),¹ and Rule 19b–4 thereunder,² 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, 2004.³ 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.⁴ The PCX proposes to implement

⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 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.

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

Continued

⁷ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

³ 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.

⁴ 15 U.S.C. 78q–1(b)(3)(F).