(*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.nscc.com/legal/*. 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–NSCC–2003–22 and should be submitted on or before January 3, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50810; File No. SR–NYSE–2004–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. To Amend Its Rules Regarding Listed Company Relations Proceedings

December 7, 2004.

I. Introduction

On February 9, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules regarding listed company relations proceedings. On March 29, 2004, the NYSE submitted Amendment No. 1 to the proposal.[3] On August 3, 2004, the NYSE submitted Amendment No. 2 to the proposal.[4]

The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on August 20, 2004.[5] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange has proposed to remove NYSE Rule 103C, which currently governs listed company relations proceedings, and to replace it with proposed Section 806.1 of the Exchange's Listed Company Manual. The Exchange also has proposed to add a related Policy Note to NYSE Rule 103B, which governs specialist stock allocation. Currently, if a listed company has a non-regulatory dispute with its specialist unit, NYSE Rule 103C provides for a mediation process known as a ''Listed Company Relations Proceeding.'' In order to resolve the issue, this proceeding is facilitated by the Listed Company Relations Subcommittee, a subcommittee of the Quality of Markets Committee (''QOMC''). If the matter remains unresolved, the Subcommittee prepares a report making recommendations to the QOMC. The QOMC, in turn, reviews the Subcommittee's report and makes recommendations to the Exchange's Board of Directors. After reviewing the QOMC's recommendations and giving the parties to the mediation proceeding an opportunity to present their written views, the Board of Directors ultimately is authorized to direct the Allocation Committee to reallocate the listed company's stock to a different specialist unit. The Exchange has stated that the process for a Listed Company Relations Proceeding is ''cumbersome and extremely lengthy.'' The Exchange has further noted that proceedings under current NYSE Rule 103C occur under the oversight of the QOMC before a subcommittee consisting of, among others, certain Exchange officials. In the NYSE's view, this process no longer makes sense given the recent changes to the Exchange's governance structure.[6] For these reasons, the Exchange is proposing a new mediation process under proposed Section 806.01 of its Listed Company Manual.

Under proposed Section 806.01, if a listed company wishes to request a change of specialist unit, it would file a notice (the ''Issuer Notice'') with the Corporate Secretary of the Exchange to that effect, stating the specific issues that prompted the request and what steps, if any, it has taken to address the issues.[7] The Exchange's Corporate Secretary would provide copies of the Issuer Notice to the Exchange's Regulatory Group and the New Listings & Client Service Division. The Corporate Secretary also would notify the specialist unit that a Listed Company Change of Specialist Mediation (''Mediation'') is being commenced, and would provide a copy of the Issuer Notice to the specialist unit. The specialist unit would be granted two weeks to respond to the Issuer Notice, with the last date of that period referred to as the ''Specialist Response Date.'' The Exchange would appoint a committee (the ''Mediation Committee'') to facilitate the Mediation between the listed company and the specialist unit, which would consist of at least one floor broker representative of the NYSE's Board of Executives (''BOE''), at least one BOE investor representative, and at least one listed company representative of the BOE. As soon as practicable after the expiration of the Specialist Response Date, the Mediation Committee would commence a meeting with the representatives of the listed company and the specialist unit to attempt to mediate the matters indicated in the Issuer Notice.

At any time after the filing of the Issuer Notice, the listed company may file a written notice with the Corporate Secretary stating that it is concluding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 26, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the proposed rule text in the original proposal to reflect changes in NYSE Rule 103C that the Commission had recently approved. *See* Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004).

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 2, 2004 (''Amendment No. 2''). Amendment No. 2 deleted NYSE rule 103C and replaced it with proposed Section 806.01 in the Exchange's Listed Company Manual and a proposed Policy Note in NYSE Rule 103B.

[5] *See* Securities Exchange Act Release No. 50196 (August 13, 2004), 69 FR 51740.

[6] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (SR–NYSE–2003–34). *See also,* Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004) (SR–NYSE–2004–02).

[7] The Exchange represents that the proposed rule would be added to Section 8.06 of its Listed Company Manual (which includes the provision under which listed companies may voluntarily delist from the Exchange), because ''under these circumstances, the change of specialist represents an issuer choice: in this case, a choice to change its specialist rather than a choice to change the market on which the company is listed.''

the Mediation because it wishes to continue with the same specialist unit.

Simultaneous with the mediation process, the Regulatory Group would review the Issuer Notice and any specialist response, and would have the authority to request a review of the matter by the Exchange's Regulatory Oversight Committee, a standing committee of the Exchange's Board of Directors composed wholly of independent NYSE directors. Where a review by the Regulatory Oversight Committee has been requested, no change of the specialist unit can occur until the Regulatory Oversight Committee makes a final determination that it is appropriate to permit such a change. The Regulatory Oversight Committee, in making its determination, would consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Furthermore, notwithstanding the Regulatory Group's review of any matter raised during this process, the Regulatory Group would be able, at any time, to take any regulatory action that it may determine to be warranted.

After the expiration of three months from the Specialist Response Date, the listed company would be able to file a written notice with the Exchange's Corporate Secretary stating that it wishes to proceed with the change of specialist unit. Subject to any ongoing review of the Regulatory Oversight Committee, as soon as practicable thereafter, the listed company's security would be submitted for allocation under Exchange Rule 103B. Under the proposed Policy Note to Exchange Rule 103B, the currently-assigned specialist unit would not be prohibited from applying for allocation of the security. Furthermore, the proposed Policy Note would state that no negative inference for allocation or regulatory purposes would be made against the specialist unit in the event that the specialist unit is changed pursuant to the process outlined above, nor would the specialist unit be afforded preferential treatment in subsequent allocations as a result of a change pursuant to a Mediation.

III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[8] particularly Section 6(b)(5) of the Act.[9] Section 6(b)(5) requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change appropriately balances the need to revise the current mediation process for resolution of disputes between listed companies and their assigned specialist units, which the Exchange represents is ''cumbersome and extremely lengthy,'' with the need to incorporate appropriate procedures that are designed to provide that any such mediation is subject to review by the Exchange's Regulatory Group and, in turn, by its Regulatory Oversight Committee. While the proposal shortens the current timeframe for resolving a dispute between the listed company and the specialist unit to three months, it also introduces the involvement of the Exchange's Regulatory Group in the mediation process to assure that the requested change of specialist unit is for non-regulatory purposes. The Regulatory Group would be provided copies of any Issuer Notice and response to such Notice by the specialist unit. The Regulatory Group is accorded the right to take any regulatory action that it may determine to be warranted at any time during the Mediation. In addition, the Regulatory Group is permitted to request a review of the matter by the Regulatory Oversight Committee, a committee composed entirely of independent directors. When a review by the Regulatory Oversight Committee has been requested, no change of specialist unit may occur until after the Regulatory Oversight Committee makes a final determination that it is appropriate to permit such a change. The Regulatory Oversight Committee, in making its determination of whether to permit a change in specialist unit, may consider all relevant regulatory issues, including whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or is in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Therefore, the Commission believes that the proposed Mediation process, while more simplified and expedited than the current process, would provide an appropriate mechanism for the Exchange's Regulatory Group to maintain independent oversight over a listed company's request to change specialist units, to ascertain that such requests are confined to non-regulatory reasons, and to obtain a review by the Regulatory Oversight Committee when appropriate.

The Commission believes that the proposal to simplify the procedures and shorten the timeframe for the mediation of disputes between a listed company and its specialist unit should not impair the ability of the listed company and the specialist unit to fully discuss and attempt to resolve any non-regulatory issues, under the auspices of the Mediation Committee. The Commission notes that the proposed rule change requires the Mediation Committee to commence meeting with the representatives of the listed company and the specialist unit ''as soon as practicable'' after the specialist unit has submitted its written response to the Issuer's Notice, and does not limit the Mediation Committee and the parties from meeting as many times as necessary to discuss and address concerns that the listed company has with its specialist unit. The proposal further provides that at any time the listed company may file a written notice concluding the Mediation because the listed company wishes to continue with the same specialist unit. Therefore, the Commission believes that the proposed Mediation process should provide the listed company and the specialist unit ample opportunity to discuss and attempt to resolve any non-regulatory issues.

The Commission also believes that the proposal provides appropriate procedures for reallocating a security after a change of special unit and for subsequent allocation decisions affecting a specialist unit that is subject to such a change. The Commission notes that the proposed addition to the Policy Notes to NYSE Rule 103B, which governs specialist stock allocation, would lift the current prohibition on a specialist reapplying for an allocation of the security after the listed company has requested to change its specialist unit for a particular security. The proposal also would retain the provision that no preferential treatment for subsequent allocation would be demonstrated to a specialist unit that was a party to a Mediation. Furthermore, the proposal would state that no negative inference for allocation or regulatory purposes

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

would be made against a specialist unit in the event that a listed company requests a Mediation. The Commission believes that it is appropriate to permit a specialist unit to apply for the allocation of the security—should the specialist choose to apply for the allocation—despite the fact that the listed company and the specialist unit have been parties to a Mediation. There is the possibility, although it may be remote, that the specialist unit may be assigned to the listed company, so the specialist unit should not be barred from applying for the allocation, particularly if a non-regulatory matter between the parties has been vented through a mediation process. The Commission also believes that it is appropriate for the Exchange to have policies in place that would prevent any negative inference to be drawn for allocation or regulatory purposes and that would prohibit the specialist unit from being afforded preferential treatment in subsequent allocations, because addressing and resolving a non-regulatory dispute between a listed company and its specialist unit should have no bearing on future allocations of securities to the specialist unit.

Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2004–04), as amended by Amendment Nos. 1 and 2, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50799; File No. SR–PCX–2004–99]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Listing and Trading iShares® FTSE/Xinhua China 25 Index Fund

December 6, 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 October 15, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The PCX proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, to list and trade, or trade pursuant to unlisted trading privileges, the iShares® FTSE/Xinhua China 25 Index 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 PCX 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 III below. The Exchange 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 has adopted listing standards applicable to Investment Company Units (''ICUs''), which are consistent with the listing criteria currently used by the American Stock Exchange LLC and other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs, or trade such ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[3] The Exchange now proposes to list and trade, or trade on a UTP basis, under PCXE Rule 5.2(j)(3), shares of the iShares® FTSE/Xinhua China 25 Index Fund (''Fund''),[4] a series of the iShares Trust (''Trust'').[5] Fund shares will be deemed equity securities subject to PCXE rules governing the trading of equity securities.[6] Because the Fund invests in non-U.S. securities not listed on a national securities exchange or the Nasdaq Stock Market, the Fund does not meet the ''generic'' listing requirements of PCXE Rule 5.2(j)(3), Commentary .01, applicable to the listing of ICUs pursuant to Rule 19b–4(e) under the Act, and therefore cannot be listed on a national securities exchange without a filing pursuant to Rule 19b–4 under the Act.

As set forth in detail below, the Fund will hold certain securities and other instruments selected to correspond generally to the performance of the FTSE/Xinhua China 25 Index (''Underlying Index''). The Fund was created to qualify as a ''regulated investment company'' (''RIC'') under the Internal Revenue Code (''Code'').[7] Barclays Global Fund Advisors (''Advisor'' or ''BGFA'') is the

[1] 15 U.S.C. 78s(b)(1).

[2] 217 CFR 240.19b–4.

[3] *See* PCXE Rule 5.2(j)(3).

[4] iShares is a registered trademark of Barclays Global Investors, N.A.

[5] The Trust is registered under the Investment Company Act of 1940, as amended (the ''Investment Company Act''). On January 22, 2003, the Trust filed with the Commission a Registration Statement for the Fund on Form N–1A under the Securities Act of 1933, as amended, and under the Investment Company Act (File Nos. 333–92935 and 811–09729) (as amended, the ''Registration Statement''). On July 28, 2004, the Trust filed a Form N–1A to update certain Fund information.

On September 8, 2004, the Trust filed with the Commission a Second Amended and Restated Application to Amend Orders under Sections 6(c) and 17(b) of the Investment Company Act for the purpose of exempting the Fund from various provisions of the Investment Company Act and the rules thereunder (the ''Application''). *See Barclays Global Fund Advisors, et al.*; *Notice of Application*, Investment Company Act Release No. 26597 (September 14, 2004), 69 FR 56105 (September 17, 2004) (File No. 812–12936). The Application requested that the Commission amend a prior order received by the Advisor, the Trust and the Distributor on August 15, 2001, as amended (the ''Prior Order'') to permit the Trust to offer three new International ETFs, including the Fund, and to permit the Fund, along with certain other International ETFs, to invest in certain depositary receipts, as described below. *See also In the Matter of iShares Trust, et al.*, Investment Company Act Release No. 25111 (August 15, 2001) (File No. 812–12254); *Barclays Global Fund Advisors, et al.*, Investment Company Act Release No. 25078 (July 24, 2001), 66 FR 39377 (July 30, 2001) (File No. 812–12254). *In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002); *In the Matter of iShares Trust, et al.*, Investment Company Act Release No. 26006 (April 15, 2003) (relating to Prior Order). On October 5, 2004, the Commission approved the Application. *See Barclays Global Fund Advisors, et al.*, Investment Company Act Release No. 26626 (October 5, 2004) (''Amended Order'').

[6] Telephone conversation between Tania J.C. Blanford, Staff Attorney, PCX, and Natasha Cowen, Attorney, Division of Market Regulation (''Division''), Commission, on December 6, 2004.

[7] *See also infra* note 12.