association [4] and, in particular, the requirements of Sections 15A(b)(5)[5] and (6)[6] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission received no comments on the proposed fee increase. The Commission believes that the fee is reasonable, given Nasdaq's representations regarding the 1,800% growth of Nasdaq trading volume, the increase in processing demands, and the increase in the subscriber audience since the fee's inception. The Commission believes that increasing the fee from $500 per month to $2,000 per month should not impede the widespread availability of the index information on a non-discriminatory basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR-NASD–2001–86) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

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

[5] 15 U.S.C. 78o-3(b)(5).

[6] 15 U.S.C. 78o-3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45684; File No. SR–NYSE–2001–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the New York Stock Exchange, Inc. Instituting a Pilot Program Relating to Amendments to the Initial Listing Standards and Allocation Policy for Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940

April 2, 2002.

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 29, 2001, 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. On March 14, 2002, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3] On April 1, 2002, the NYSE filed Amendment No. 2 to the proposed rule change with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and grant accelerated approval to the portion of the proposal instituting a pilot program relating to the listing eligibility criteria and allocation policy for closed-end management investment companies registered under the Investment Company Act of 1940 (''pilot'').

[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 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange, in part, substituted the phrase ''investment management company'' for ''fund family,'' provided a basis for the fund family standards, clarified the basis for establishing a fund group and the change in terminology in the listing standards from ''net assets'' to ''market value of publicly-held shares,'' made conforming changes to the rule text, and further clarified its allocation policy for a group of closed-end funds.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 1, 2002 (''Amendment No. 2'') (replacing Form 19b–4 in its entirety). In Amendment No. 2, the Exchange, in part, requested a three-month pilot, as well as permanent approval of the proposed rule change, substituted the phrase ''fund family'' for ''investment management company,'' defined the term ''fund family,'' clarified that each fund in the group is individually subject to the Exchange's continuing listing criteria, made conforming changes to its rule text, and requested accelerated approval of the pilot.

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

The NYSE proposes to implement a three-month pilot in respect of the following proposed rule change, as amended, while the Commission considers permanent approval of the proposal. The Exchange is proposing to amend Section 102.04 of the Exchange's Listed Company Manual (''Manual'') regarding listing standards for closed-end management investment companies registered under the Investment Company Act of 1940 (hereinafter referred to as ''funds'' or ''closed-end funds''). The Exchange is proposing to apply to all individual closed-end funds that desire to list on the Exchange the $60 million public market value test currently used for funds applying in connection with their initial public offering.[5] In addition, the Exchange is proposing a standard under which a group of funds meeting certain specified requirements can be listed concurrently by a single ''fund family,'' even if the group includes one or more funds with less than $60 million in public market value. Finally the Exchange is proposing to amend its Allocation Policy and Procedures (''Allocation Policy'') with respect to the specialist allocation of funds listed in such a fund family group.

The text of the proposed rule change is available at the NYSE and at the Commission.

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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

[5] The language in the current Manual Section 102.04, which the NYSE is proposing to replace, requires that a newly organized fund have $60 million in ''net assets.'' The NYSE proposes to use the term ''market value of publicly held shares,'' but represents that there is no substantive change involved in this different terminology. In the case of any IPO, whether of a business company or a fund, the Exchange has always looked at whether the offering has raised $60 million, and that is what the Exchange will continue to do under the amended rule. Similarly, with a transfer the Exchange has always looked at the aggregate market value of publicly held shares, and that is what the Exchange will continue to do under the amended rule. *See* Amendment No. 1, *supra* note 3.

the places specified in Item IV 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 represents that currently there are over 380 closed-end funds listed on the Exchange. The Exchange asserts that many of these funds represent multiple listings from a family of funds such as Nuveen, Morgan Stanley, Van Kampen or Merrill Lynch.[6] The Exchange represents that funds are often offered, issued, and listed in groups, such as state municipal bond funds. It is the Exchange's understanding that the fund families prefer to list all funds in a group on the same market, but can encounter difficulties when one or more of a group falls below the size required by the Exchange. As the Exchange explored a specific standard for group listings of closed-end funds, it determined that it made sense not only for groups of newly formed funds but for groups of existing funds as well. This, in turn, prompted the Exchange to re-examine its current policy of applying a different set of standards to funds with three or more years of operating history. Presently, such funds must meet the financial standards applicable to regular operating companies (earnings, cash flow, *etc.*), in contrast to newly formed funds, which may be listed based only on raising at least $60 million. The Exchange has determined that this distinction between existing and newly formed funds no longer serves any desired business or other purpose, and so is appropriate for elimination. Accordingly, the Exchange is proposing to apply a $60 million public market value test to all funds seeking to list, regardless of whether they are newly formed funds, or existing funds transferring from another market.

In addition, the Exchange is proposing to apply the following original listing standards to a group of closed-end funds listed concurrently by a single fund family. By meeting the following criteria, the funds in the group[7] could all be listed even if one or more of the group did not satisfy the $60 million test:

- Total group market value of publicly held shares (offering proceeds, in the case of newly formed funds) must equal in the aggregate at least $200 million;
- Each group must average a minimum of $45 million in market value of publicly held shares (proceeds) per fund; and
- No single fund in the group can have a market value of publicly held shares (proceeds) less than $30 million.

As discussed above, this group standard will apply regardless of whether the group consists of newly formed or existing funds, or a combination thereof.[8] The Exchange has determined that the foregoing standards achieve a balance between maintaining the Exchange's standards at an appropriate level, and providing some additional flexibility to fund families that desire to concurrently list a group of closed-end funds on the same Exchange.[9]

The Exchange is also proposing to amend its Allocation Policy[10] to provide that the Allocation Committee should generally allocate to one specialist unit all the closed-end funds in a family group listed under the group criteria discussed above. The Exchange believes that economies of scale and more effective utilization of resources may be realized through the allocation of a group of what are likely to be less actively traded securities to one specialist unit, rather than to have the individual funds within the group allocated to a number of units. In certain situations, however, the Allocation Committee would be permitted to allocate funds within a group to more than one unit. Such situations could include, for example, instances where the number of funds in the group, the types of funds, or the relative values of the funds suggest to the Allocation Committee that allocation to more than one specialist unit would be appropriate.

The Exchange first notes that the normal Allocation Policy apply to closed-end funds being listed on the Exchange just as they apply to any other business corporation being listed. Therefore, the amendment being proposed hereby is altering the Allocation Policy in only the discreet manner specified. The Exchange represents that all the other aspects of the Allocation Policy, including the method by which the listed company is permitted to pick from a panel of specialists put together by the Allocation Committee, will apply.[11]

The Exchange also has stated that the allocation of a family group to a single specialist is to be the norm when listing fund families. The Exchange represents that closed-end funds are often less actively traded than regular listed companies, and the fact that a family group will include one or more funds on the smaller end of the spectrum suggests that those members of the group may trade even less actively than the average closed-end fund. As a result, it will usually be most appropriate to have the entire group allocated to the same specialist, so that it has the chance to trade both the larger and the smaller funds in the group. However, the Allocation Policy recognizes that there are situations where the Allocation Committee may conclude that allocation to more than one specialist unit is preferable. The Exchange asserts that it is impossible to predict all the circumstances in which this might arise, which is why the Allocation Committee is being provided with the discretion to react to situations as they occur. However, one set of circumstances that might prompt the Allocation Committee to allocate to more than one specialist is if a particularly large family group is presented with possibly several funds in the various size categories. The Exchange asserts that it could be considered overly burdensome to ask one unit to take on the entire group at one time, and it could be very possible to divide the group into two or perhaps even more tranches for allocation purposes, while still serving the goal of fairness and efficiency that has prompted the family group approach described herein.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

[6] The Exchange represents that a ''fund family'' (as the term is used herein) consists of funds with a common investment adviser or having investment advisers which are all affiliates of one another. *See* Amendment No. 2, *supra* note 4.

[7] The Exchange represents that the composition of the group will be determined in each case by the investment adviser bringing the group listing to the Exchange. *See* Amendment No. 1, *supra* note 3.

[8] *See* Amendment No. 2, *supra* note 4.

[9] *See* Amendment Nos. 1 and 2, *supra* notes 3 and 4. Once a group of closed-end funds is listed under the proposed standards, each fund in the group will be individually subject to the Exchange's continued listing criteria applicable to funds specified in Section 802.01B of the Manual.

[10] The intent of the Exchange's Allocation Policy is (1) to ensure that the allocation process is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.

[11] *See* Amendment No. 1, *supra* note 3.

[12] *Id.*

consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, in that it is 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 a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, 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 any written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause pursuant to section 19(b)(2) of the Act,[15] for approving the establishment of the pilot for a three-month period ending on July 5, 2002 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the pilot), prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Exchange represents that accelerated approval will enable the Exchange to accommodate the timetable of listing fund families on the Exchange.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the NYSE. All submissions should refer to File No. SR–NYSE–2001–45 and should be submitted by April 30, 2002.

V. Commission Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, relating to the establishment of the pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the requirements under section 6(b)(5) of the Act[17] that the rules of an exchange 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.[18] The Commission believes that the proposed pilot strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing funds, including fund families, on the Exchange.

The Commission finds good cause for approving the pilot prior to the 30th day after publication in the **Federal Register**. The NYSE has represented that it desires to promptly implement the proposed rule change based on business considerations[19] and that accelerated approval will enable the Exchange to accommodate its timetable for listing fund families.[20] The Commission believes that accelerated approval will permit the Exchange to continue listing funds and accommodate the desire of fund families to list groups of closed-end funds on one marketplace, while allowing the Commission adequate time to consider the Exchange's proposal for permanent approval of the pilot.[21] Accordingly, the Commission finds it appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act[22] for partially approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] the proposed rule change, as amended, (File No. SR–NYSE–2001–45) is approved on a pilot basis until July 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8514 Filed 4–8–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45680; File No. SR–PCX–2002–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes to the PCX's Schedule of Fees and Charges for Exchange Services

April 2, 2002.

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 March 20, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

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

[16] *See* Amendment No. 2, *supra* note 4.

[17] 15 U.S.C. 78f(b)(5).

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

[19] Telephone conversation between James F. Duffy, Senior Vice President, Elena Daly, Assistant General Counsel, NYSE; and Sonia A. Patton, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on April 02, 2002.

[20] *See* Amendment No. 2, *supra* note 4.

[21] Approval of the three-month pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[22] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.