

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52995; File No. SR-PCX-2005-140)

December 21, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the NASD PCX Agreement

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 December 21, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. On December 21, 2005, PCX filed Amendment No. 1 to the proposed rule change. PCX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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

PCX is proposing to amend its undertaking to extend for 90 days from the date of this filing the time period by which PCX will amend the agreement between the National Association of Securities Dealers (“NASD”) and PCX currently in place pursuant to Rule 17d-2 under the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Act⁵ (the “NASD PCX Agreement”). As described in more detail below, the amendment to the NASD PCX Agreement will expand the scope of the NASD’s regulatory responsibility.

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

In its filing with the Commission, 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 IV below. 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 Commission recently approved a proposed rule change in relation to the acquisition of PCX Holdings, Inc. by Archipelago Holdings, Inc. (“Archipelago Holdings”).⁶ In its filing with the Commission, PCX committed to amend the NASD PCX Agreement within 90 days of the Commission’s approval of SR-PCX-2005-90 to expand the scope of the NASD’s regulatory functions under the NASD PCX Agreement so as to encompass all of the regulatory oversight and enforcement responsibilities with respect to the broker-dealer affiliate of Archipelago Holdings, Archipelago Securities, L.L.C. (“Archipelago Securities”).⁷ The 90-day period expires on December 21, 2005, and while the PCX and NASD have executed an amended NASD PCX

⁵ 17 CFR 240.17d-2.

⁶ Securities Exchange Act Release No. 52497 (September 22, 2005); 70 FR 56949 (September 29, 2005) (approving SR-PCX-2005-90 as amended).

⁷ Archipelago Securities acts as the outbound order router for the Archipelago Exchange and, as such, is regulated as an exchange “facility” of the PCX and PCXE.

Agreement, the PCX and NASD have not yet filed the amended NASD PCX Agreement with the Commission.

The PCX believes that an extension of time for an additional 90 days from the date of this filing to amend the PCX NASD Agreement will give the Commission staff sufficient time to publish and take action on the proposal. There is currently a plan in place (i.e., the NASD PCX Agreement) allocating to the NASD the responsibility to receive regulatory reports from Archipelago Securities, to examine Archipelago Securities for compliance and to enforce compliance by Archipelago Securities with the Act, the rules and regulations thereunder and the rules of the NASD, and to carry out other specified regulatory functions with respect to Archipelago Securities. The Exchange notes that the current NASD PCX Agreement will remain in full force and effect during the interim period and PCX will continue to abide by the terms of the agreement. Furthermore, the PCX undertakes to file a proposed amendment to the NASD PCX Amendment with the Commission on or before January 4, 2006. The PCX believes the requested extension of time is consistent with the Act and the rules and regulations thereunder, and will neither significantly affect the protection of investors or the public interest nor impose any significant burden on competition.

2. Basis

For the reasons discussed above, the Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange be

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general to protect investors and the public interest.¹⁰

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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change, as amended, 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 has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days after the filing of the

¹⁰ See Amendment No. 1.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required 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 of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this requirement. The Commission notes that the Exchange did provide notice of the filing two business days prior to the date of filing.

proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission 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.

PCX has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because the original 90-day time period expires on December 21, 2005, such waiver will allow the PCX to remain in compliance with its undertaking to amend the NASD PCX Agreement. The Commission notes that PCX represents that it has executed, but not yet filed with the Commission, an amended NASD PCX Agreement with the NASD, and that PCX has undertaken to file a proposed amendment to the NASD PCX Agreement on or before January 4, 2006. The Commission further notes that the NASD PCX Agreement currently in place will remain in full force and effect during the interim period and PCX will continue to abide by the terms of the agreement. For these reasons the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

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. 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

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an E-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-140 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, N.E., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-140. 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. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. 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-PCX-2005-140 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz,
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).