

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50210; File No. SR-PCX-2004-79)

August 18, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to the Corporate Restructuring and Initial Public Offering of Archipelago Holdings, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on August 10, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On August 16, 2004, the PCX amended the proposed rule change.³ The PCX filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which designates the proposed rule change as constituting a “non-controversial” rule change and that renders the proposal effective upon filing with the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 13, 2004 (“Amendment No. 1”). Amendment No. 1 replaced the original rule filing in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 16, 2004, the date the PCX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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

The PCX, through PCXE, proposes to amend PCXE Rule 14.3 in order to reflect the corporate name change that resulted from the corporate restructuring of Archipelago Holdings, L.L.C. into Archipelago Holdings, Inc. and the subsequent initial public offering of Archipelago Holdings, Inc. Proposed new language is in *italics*; proposed deletions are in [brackets].

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Rules of PCX Equities, Inc.

Rule 14

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Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc.

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Archipelago Exchange, L.L.C. and Archipelago Holdings, [L.L.C.] Inc.

Rule 14.3(a) – No Change.

(b) – Access to and Status of Officers and Directors of Archipelago Holdings, [L.L.C.] Inc. All officers and directors of Archipelago Holdings, [L.L.C.] Inc., shall be deemed to be officers and directors of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act.

(c) – No Change.

(d) – Location of Books and Records. Archipelago Exchange, L.L.C., and Archipelago Holdings, [L.L.C.] Inc. must maintain all books and records related to the Archipelago Exchange within the United States.

(e) – Confidentiality Requirements. The officers and directors of Archipelago Holdings, [L.L.C.] Inc. shall establish and maintain procedures and internal controls reasonably designed to

adequately restrict the flow of confidential and proprietary information between PCX (including the facilities of PCX Equities) and the functions of WAVE that are not regulated as facilities of PCX Equities. In addition, PCX and PCX Equities shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Archipelago Exchange facility (including the functions of WAVE that are deemed a facility of PCX Equities) and the functions of WAVE as an introducing broker/residual electronic communications network.

(f) – No Change.

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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 Exchange 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 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 is proposing to amend PCXE Rule 14.3 to make administrative changes necessary as a result of the corporate restructuring of Archipelago Holdings, L.L.C. into Archipelago Holdings, Inc. and the subsequent initial public offering of Archipelago Holdings, Inc. Archipelago Holdings, Inc. is the entity that will succeed Archipelago Holdings, L.L.C. as the sole parent of the current equities trading facility of PCX and PCXE, the Archipelago

Exchange, L.L.C. Thus, the Exchange proposes to amend PCXE Rule 14.3 to replace the term “Archipelago Holdings, L.L.C.” with the term “Archipelago Holdings, Inc.”

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)⁷ of the Act, in general, and furthers the objectives of Section 6(b)(1),⁸ in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5),⁹ in particular, because the rule is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and 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 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ 15 U.S.C. 78f(b)(5).

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

No written comments were solicited or received.

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

The foregoing rule change, as amended, has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ The Exchange has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,¹⁴ the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

days beforehand. The Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days before filing the amended proposal with the Commission.¹⁵ The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the proposed rule change, as amended, will allow the rules of the Exchange to accurately reflect the fact that Archipelago Holdings, Inc. has succeeded Archipelago Holdings, L.L.C. as the sole parent of the current equities trading facility of PCX and PCXE, the Archipelago Exchange, L.L.C. In addition, the proposed rule change will make no substantive changes to the Exchange's rule. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-79 on the subject line.

¹⁵ The Commission deems the initial filing of SR-PCX-2004-79 received by the Commission on August 10, 2004 to be the required pre-filing notice set forth in Rule 19b-4(f)(6)(iii) under the Act, 17 CFR 240.19b-4(f)(6)(iii).

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-PCX-2004-79. 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 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-2004-79 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.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).