

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53077; File No. SR-PCX-2005-134)

January 9, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Certificate of Incorporation and Bylaws of Archipelago Holdings, Inc.

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 5, 2005, 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 Exchange. On December 15, 2005, the Exchange amended its proposal.³ 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 proposes: (i) to allow NYSE Group, Inc., a Delaware corporation (“NYSE Group”), and its related persons to wholly own and vote all of the outstanding capital stock of Archipelago Holdings, Inc., a Delaware corporation and the parent company of the Exchange (“Archipelago”), upon the consummation of the proposed business combination of Archipelago and New York Stock Exchange, Inc., a New York Type A not-for-profit corporation (the “NYSE”), subject to certain exceptions described herein; (ii) certain new rules of PCX and PCX Equities, Inc. (“PCXE”) prohibiting certain relationships between NYSE Group on the one hand and OTP Holders, OTP Firms, and ETP Holders (in each case as defined below) on the other

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced PCX’s original filing in its entirety.

hand; and (iii) to amend the rules of PCX and PCXE to impose certain restrictions on certain rights of OTP Holders and ETP Holders with respect to the nomination and election of the directors of PCX and PCXE.

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.⁴ 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

a. The Archipelago NYSE Mergers

The Exchange is submitting the proposed rule change in connection with the proposed mergers ("Mergers") of the NYSE and Archipelago. Following the Mergers, the businesses of the NYSE and Archipelago will be held under a single, publicly traded holding company named NYSE Group. The Mergers will occur pursuant to the terms of the Agreement and Plan of Merger, dated as of April 20, 2005, as amended and restated as of July 20, 2005, as further amended as of October 20, 2005, and as of November 2, 2005 (as so amended and restated, the "Merger Agreement"), by and among the NYSE, Archipelago, NYSE Group, NYSE Merger Corporation Sub, Inc., a Delaware corporation and a wholly owned subsidiary of the NYSE,

⁴ Exhibit 5.A (Resolutions Adopted at the October 20, 2005 Regular Meeting of the Board of Directors of Archipelago Holdings, Inc.), Exhibit 5.B (Proposed PCX Rules), and Exhibit 5.C (Proposed PCXE Rules) of the proposed rule change are also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

NYSE Merger Sub LLC, a New York limited liability company and a wholly owned subsidiary of NYSE Group, and Archipelago Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of NYSE Group.⁵ In the Mergers, NYSE members will receive cash and/or shares of NYSE Group common stock, and Archipelago stockholders will receive solely shares of NYSE Group common stock.⁶ Archipelago acquired PCX Holdings, Inc. (“PCXH”) on September 26, 2005, and is currently the ultimate parent company of PCXH and all of its subsidiaries, including PCX and PCXE.

b. Ownership Limitation in the Archipelago Certificate of Incorporation

The Archipelago Certificate of Incorporation was approved by the Commission on August 9, 2004 in connection with the initial public offering of Archipelago.⁷ In order to ensure that the ownership of Archipelago by the public will not unduly interfere with, or restrict the ability of, the Commission or PCX to effectively carry out its regulatory oversight responsibilities under the Act and generally to enable the Archipelago Exchange, L.L.C. (“ArcaEx”) to operate in a manner that complies with the federal securities laws, including furthering the objectives of Section 6(b)(5) of the Act,⁸ the Archipelago Certificate of Incorporation imposes certain ownership and voting limitations with respect to the stock of Archipelago.

⁵ For a description of the Merger Agreement and the transactions contemplated thereby, see Amendment No. 3 to the Registration Statement on Form S-4, Registration No. 333-126780, filed with the Commission on November 3, 2005 (“S-4 Registration Statement”), at 125-147.

⁶ Id.

⁷ See Securities Exchange Act Release No. 50170, 69 FR 50419 (August 16, 2004).

⁸ 15 U.S.C. 78f(b)(5).

Specifically, the Archipelago Certificate of Incorporation provides that no person,⁹ either alone or together with its related persons,¹⁰ may own beneficially shares of Archipelago stock representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter (the “Ownership Limitation”).¹¹ The Ownership Limitation will apply unless and until (1) a person, either alone or with its related persons, delivers to the board of directors of Archipelago a notice in writing regarding its intention to acquire shares of Archipelago stock that would cause such person, either alone or with its related persons, to own beneficially shares of stock of Archipelago in excess of the Ownership Limitation, at least 45 days (or such shorter period as the board of directors of Archipelago expressly consents to) prior to the intended

⁹ The Archipelago Certificate of Incorporation defines “Person” to mean a natural person, company, government, or political subdivision, agency, or instrumentality of a government. Archipelago Certificate of Incorporation, Article Fourth H(2).

¹⁰ The Archipelago Certificate of Incorporation defines “Related Persons” to mean with respect to any person (a) any other person(s) whose beneficial ownership of shares of stock of Archipelago with the power to vote on any matter would be aggregated with such first person’s beneficial ownership of such stock or deemed to be beneficially owned by such first person pursuant to Rules 13d-3 and 13d-5 under the Act; (b) in the case of a person that is a natural person, for so long as ArcaEx remains a facility (as defined in Section 3(a)(2) of the Act) of PCX and PCXE and the Amended and Restated Facility Services Agreement among Archipelago, PCX, and PCXE, dated as of March 22, 2002 (“Facility Services Agreement”), is in full force and effect, any broker or dealer that is an ETP Holder (as defined in the PCXE rules of PCX, as such rules may be in effect from time to time) with which such natural person is associated; (c) in the case of a person that is an ETP Holder, for so long as ArcaEx remains a facility of PCX and PCXE and the Facility Services Agreement is in full force and effect, any broker or dealer with which such ETP Holder is associated; (d) any other person(s) with which such person has any agreement, arrangement, or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding, or disposing of shares of the stock of Archipelago; and (e) in the case of a person that is a natural person, any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of Archipelago or any of its parents or subsidiaries. Archipelago Certificate of Incorporation, Article Fourth H(3). As defined in the PCXE rules, the term “ETP Holder” refers to any sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit, a permit issued by the PCXE for effecting approved securities transactions on the trading facilities of PCXE. PCXE Rule 1.1 (m) and (n). See 17 CFR 240.13d-3 and 240.13d-5. See also 15 U.S.C. 78c(a)(2).

¹¹ In considering whether a person owns shares of stock of Archipelago in violation of the applicable ownership limitations, Archipelago must consider any filings made with the Commission under Section 13(d) and Section 13(g) of the Act by such person and its related persons and must aggregate all shares owned or voted by such person and its related persons to determine such person’s beneficial ownership. See 15 U.S.C. 78m(d) and (g).

acquisition, and (2) such person, either alone or with its related persons, receives prior approval by the board of directors of Archipelago and the Commission to exceed the Ownership Limitation.¹² Specifically, (1) the board of directors of Archipelago must adopt a resolution approving such person and its related persons to exceed the Ownership Limitation, (2) the resolution must be filed with the Commission under Section 19(b) of the Act,¹³ and (3) such proposed rule change must be approved by the Commission and become effective thereunder.¹⁴

Subject to its fiduciary obligations under the Delaware General Corporation Law, as amended (“DGCL”), before adopting any such resolution, the board of directors of Archipelago must first determine that: (1) such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair any of Archipelago’s, PCX’s, or PCXE’s ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of Archipelago and its stockholders; (2) such acquisition of beneficial ownership by such person, either alone or with its related persons, would not impair the Commission’s ability to enforce the Act; and (3) such person and its related persons are not subject to any statutory disqualification¹⁵ (as defined in Section 3(a)(39) of the Act).¹⁶ In making such determinations, the board of directors of Archipelago may impose any conditions and restrictions on such person and its related persons owning any shares of stock of Archipelago entitled to vote on any matter as the board of directors of Archipelago in its sole discretion

¹² Archipelago Certificate of Incorporation, Article Fourth D(1)(a).

¹³ 15 U.S.C. 78s(b).

¹⁴ Archipelago Certificate of Incorporation, Article Fourth D(1)(a).

¹⁵ Archipelago Certificate of Incorporation, Article Fourth D(1)(b).

¹⁶ 15 U.S.C. 78c(a)(39).

deems necessary, appropriate, or desirable in furtherance of the objectives of the Act and the governance of Archipelago.¹⁷

In addition, the Archipelago Certificate of Incorporation provides that for so long as ArcaEx remains a facility (as defined in Section 3(a)(2) of the Act)¹⁸ of PCX and PCXE and the Facility Services Agreement, which currently governs the regulatory relationship of PCX and PCXE to ArcaEx, remains in full force and effect, no ETP Holder, either alone or with its related persons, shall be permitted at any time to own beneficially shares of Archipelago stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.¹⁹ Furthermore, unlike the Ownership Limitation described earlier, the Archipelago Certificate of Incorporation does not give the board of directors of Archipelago the authority to waive the 20% ownership limitation with respect to ETP Holders and their related persons.

c. Voting Limitation in the Archipelago Certificate of Incorporation

The Archipelago Certificate of Incorporation also provides that no person, either alone or with its related persons, shall be entitled to (1) vote or cause the voting of shares of Archipelago stock to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the “Voting Limitation”) or (2) enter into any agreement, plan, or arrangement not to vote shares, the effect of which agreement, plan, or arrangement would be to enable any person, either alone or with its related persons, to vote, possess the right to vote, or cause the voting of shares that would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (“Nonvoting Agreement Prohibition”).²⁰

The Voting Limitation and the Nonvoting Agreement Prohibition shall apply unless and until (1)

¹⁷ Archipelago Certificate of Incorporation, Article Fourth D(1)(b).

¹⁸ 15 U.S.C. 78c(a)(2).

¹⁹ Archipelago Certificate of Incorporation, Article Fourth D(2).

²⁰ Archipelago Certificate of Incorporation, Article Fourth C(1).

a person, either alone or with its related persons, delivers to the board of directors of Archipelago a notice in writing regarding such person's intention to vote, possess the right to vote, or cause the voting of shares of Archipelago stock that would cause such person, either alone or with its related persons, to violate the Voting Limitation or the Nonvoting Agreement Prohibition, at least 45 days (or such shorter period as the board of directors of Archipelago expressly consents to) prior to the intended vote and (2) such person, either alone or with its related persons, receives prior approval from the board of directors of Archipelago and the Commission to exceed the Voting Limitation or enter into an agreement, plan, or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition.²¹ Specifically, (1) the board of directors of Archipelago must adopt a resolution approving such person and its related persons to exceed the Voting Limitation or to enter into an agreement, plan, or arrangement not otherwise allowed pursuant to the Nonvoting Agreement Prohibition, (2) the resolution must be filed with the Commission under Section 19(b) of the Act,²² and (3) such proposed rule change must be approved by the Commission and become effective thereunder.²³

Subject to its fiduciary obligations under DGCL, before adopting any such resolution, the board of directors of Archipelago must first determine that: (1) the exercise of such voting rights or the entering into of such agreement, plan, or arrangement, as applicable, by such person, either alone or with its related persons, would not impair Archipelago's, PCX's or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of Archipelago and its stockholders; (2) the exercise of such voting rights or the entering into of such agreement, plan, or arrangement would not impair the

²¹ Archipelago Certificate of Incorporation, Article Fourth C(2).

²² 15 U.S.C. 78s(b).

²³ Archipelago Certificate of Incorporation, Article Fourth C(2).

Commission’s ability to enforce the Act; (3) such person and its related persons are not subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act);²⁴ and (4) in the case of a resolution to approve the exercise of voting rights in excess of the Voting Limitation, for so long as ArcaEx remains a facility (as defined in Section 3(a)(2) of the Act)²⁵ of PCX and PCXE and the Facility Services Agreement is in full force and effect, neither such person nor its related persons are ETP Holders.²⁶ In making such determinations, the board of directors of Archipelago may impose any conditions and restrictions on such person and its related persons owning any shares of Archipelago stock entitled to vote on any matter as the board of directors of Archipelago in its sole discretion deems necessary, appropriate, or desirable in furtherance of the objectives of the Act and the governance of Archipelago.²⁷

d. Additional Matters Relating to OTP Holders and OTP Firms of PCX

In connection with the closing of the acquisition by Archipelago of PCXH on September 26, 2005,²⁸ Archipelago amended and restated its bylaws (as amended and restated, the “Archipelago Bylaws”) to provide that the board of directors of Archipelago will not adopt any resolution waiving the Voting Limitation, the Nonvoting Agreement Prohibition, and the Ownership Limitation with respect to any OTP Holder or OTP Firm of PCX (as defined in PCX

²⁴ 15 U.S.C. 78c(a)(39).

²⁵ 15 U.S.C. 78c(a)(2).

²⁶ Archipelago Certificate of Incorporation, Article Fourth C(3).

²⁷ Id.

²⁸ See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005).

rules, as such rules may be in effect from time to time)²⁹ or its related persons.³⁰ These new provisions of the Archipelago Bylaws may not be amended, modified, or repealed unless such amendment, modification, or repeal is filed with and approved by the Commission or approved by Archipelago stockholders voting not less than 80% of the then outstanding votes entitled to be cast in favor of any such amendment, modification, or repeal.³¹

e. Resolutions of the Board of Directors of Archipelago

In order to allow NYSE Group to wholly own and vote all of Archipelago stock upon consummation of the Mergers, on October 19, 2005, NYSE Group delivered a written notice to the board of directors of Archipelago, pursuant to the procedures set forth in the Archipelago Certificate of Incorporation, requesting approval of its ownership and voting of Archipelago stock in excess of the Ownership Limitation and the Voting Limitation. Among other things, in

²⁹ PCX rules define an “OTP Holder” to mean any natural person, in good standing, who has been issued an Options Trading Permit (“OTP”) by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities or has been named as a Nominee. PCX Rule 1.1(q). The term “Nominee” means an individual who is authorized by an “OTP Firm” (a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange’s trading facilities) to conduct business on the Exchange’s trading facilities and to represent such OTP Firm in all matters relating to the Exchange. PCX Rule 1.1(n). In connection with Archipelago’s acquisition of PCXH, PCX also implemented certain new rules which provide, in part, that for as long as Archipelago controls, directly or indirectly, PCX, no OTP Holder or OTP Firm, either alone or together with its “related persons” (as such term is defined in PCX rules), shall: (i) own beneficially shares of Archipelago stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter; (ii) have the right to vote, vote, or cause the voting of shares of Archipelago stock to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter; or (iii) enter into any agreement, plan, or arrangement not to vote shares of Archipelago stock, the effect of which would enable any person, either alone or together with its related persons, to vote, possess the right to vote, or cause the voting of shares what would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter. PCX Rules 3.4(a) and (b).

³⁰ Archipelago Bylaws, Section 6.8(d). For purposes of Section 6.8(d), the term “Related Person” has the meaning set forth in the Archipelago Certificate of Incorporation and also includes (1) in the case of a person that is a natural person, any broker or dealer that is an OTP Holder or an OTP Firm with which such natural person is associated and (2) in the case of a person that is an OTP Holder or an OTP Firm, any broker or dealer with which such OTP Holder or OTP Firm is associated.

³¹ Archipelago Bylaws, Section 6.8(g).

the notice, NYSE Group represented to the board of directors of Archipelago that neither it, nor any of its related persons, are (1) ETP Holders, OTP Holders, or OTP Firms or (2) subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act).³²

At a meeting duly convened on October 20, 2005, the board of directors of Archipelago adopted a resolution approving NYSE Group's request that it be permitted, either alone or with its related persons, to exceed the Ownership Limitation and the Voting Limitation. In adopting such resolution, the board of directors of Archipelago determined that: (1) the acquisition of beneficial ownership of 100% of the outstanding shares of Archipelago common stock and the exercise of voting rights with respect to 100% of the outstanding shares of Archipelago common stock by NYSE Group, either alone or with its related persons, would not impair any of Archipelago's, PCX's, or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and are otherwise in the best interests of Archipelago and its stockholders; (2) such acquisition of beneficial ownership and exercise of voting rights of Archipelago common stock by NYSE Group, either alone or with its related persons, would not impair the Commission's ability to enforce the Act; (3) neither NYSE Group nor any of its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act);³³ and (4) neither NYSE Group nor any of its related persons is an ETP Holder, OTP Holder, or OTP Firm. The board of directors of Archipelago also approved the submission of this proposed rule change to the Commission.

f. Request for Approval

The Exchange hereby requests the Commission to allow NYSE Group to wholly own and vote all of the outstanding common stock of Archipelago, either alone or with its related persons,

³² 15 U.S.C. 78c(a)(39).

³³ 15 U.S.C. 78c(a)(39).

except for any related person of NYSE Group that is an ETP Holder, OTP Holder, or OTP Firm, upon the consummation of the Mergers.

g. Certain Relationships between NYSE Group and OTP Holders, OTP Firms, and ETP Holders

Upon consummation of the Mergers, NYSE Group will become the parent company of the successors to the NYSE and Archipelago.³⁴ In order to protect the integrity and independence of the regulatory responsibilities of PCX and PCXE after the consummation of the Mergers, PCX and PCXE have proposed certain new rules designed to minimize any potential conflicts of interest that may result from ownership relationships or affiliations between OTP Holders, OTP Firms, and ETP Holders on the one hand and NYSE Group and its subsidiaries, including PCX and PCXE on the other hand.

Specifically, the proposed PCX Rule 3.10 and proposed PCXE Rule 3.10 provide that, unless approved by the Commission, (a) no OTP Holder, OTP Firm, or ETP Holder shall be affiliated (as such term is defined in Rule 12b-2 under the Act)³⁵ with NYSE Group or any of its affiliated entities,³⁶ and (b) neither NYSE Group nor any of its affiliates (as such term is defined in Rule 12b-2 under the Act)³⁷ shall hold, directly or indirectly, an ownership interest in any OTP Firm or ETP Holder.³⁸ The proposed PCX and PCXE rules further provide that any person who fails to meet the requirements described in the preceding sentence shall not be eligible to become

³⁴ For a description of the structure of NYSE Group after the consummation of the Mergers, see S-4 Registration Statement, at 252.

³⁵ Pursuant to Rule 12b-2 under the Act, an “affiliate” of a specified person is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified. 17 CFR 240.12b-2.

³⁶ Proposed PCX Rule 3.10(a) and proposed PCXE Rule 3.10(a).

³⁷ Pursuant to Rule 12b-2 under the Act, a person “affiliated” with a specified person is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified. 17 CFR 240.12b-2.

³⁸ Proposed PCX Rule 3.10(b) and proposed PCXE Rule 3.10(b).

an OTP Holder, OTP Firm, or ETP Holder, as the case may be.³⁹ In addition, in the event of any failure by any OTP Holder, OTP Firm, or ETP Holder to comply with the applicable provisions of the proposed PCX Rule 3.10 and proposed PCXE Rule 3.10, PCX or PCXE shall suspend all trading rights and privileges of such OTP Holder, OTP Firm, or ETP Holder, as the case may be, in accordance with the proposed PCX and PCXE rules, subject to the procedures provided therein.⁴⁰

PCX and PCXE believe that by prohibiting these relationships, the proposed new rules will ensure that PCX and PCXE can fairly and objectively exercise their regulatory oversight responsibilities with respect to OTP Holders, OTP Firms, and ETP Holders.

h. Rights of OTP Holders and ETP Holders with respect to the Nomination and Election of Their Representatives to the PCX Board and PCXE Board

The Bylaws of PCX and PCXE contain certain composition requirements with respect to the respective boards of directors of PCX and PCXE. Specifically, the Bylaws of PCX provide that at least 20% of the directors of PCX shall consist of individuals nominated by trading permit holders, with at least one director nominated by the ETP Holders and at least one director nominated by the OTP Holders.⁴¹ The Bylaws of PCXE provide that at least 20% of the directors (but no fewer than two directors) of PCXE shall be nominees of the ETP/Equity ASAP

³⁹ Proposed PCX Rule 3.10(c) and proposed PCXE Rule 3.10(c).

⁴⁰ The proposed PCX and PCXE rules provide that in the event of any such failure to comply with the proposed PCX Rule 3.10 and proposed PCXE Rule 3.10, respectively, PCX or PCXE shall: (1) provide notice to the applicable OTP Holder, OTP Firm, or ETP Holder, as the case may be, within five business days of learning of the failure to comply; (2) allow the applicable OTP Holder, OTP Firm, or ETP Holder fifteen calendar days to cure any such failure to comply; (3) in the event that the applicable OTP Holder, OTP Firm, or ETP Holder does not cure such failure to comply within such fifteen calendar day cure period, schedule a hearing to occur within thirty calendar days following the expiration of such fifteen calendar day cure period; and (4) render its decision as to the suspension of all trading rights and privileges of the applicable OTP Holder, OTP Firm, or ETP Holder no later than ten calendar days following the date of such hearing. Proposed PCX Rule 13.2(a)(2)(F) and proposed PCXE Rule 11.2(a)(2)(v).

⁴¹ PCX Bylaws, Section 3.02(a).

Nominating Committee, as provided under PCXE Rule 3.⁴² The procedures for the nomination, appointment, and election of the directors of PCX and PCXE are governed by PCX and PCXE rules.⁴³ In order to ensure that the director nomination and election processes of each of PCX and PCXE would not be subject to any undue influence from the concentration of rights in any one OTP Holder⁴⁴ or ETP Holder, either alone or together with certain affiliates, each of PCX and PCXE has proposed amendments to its rules that will impose certain restrictions on the ability of OTP Holders and ETP Holders to participate in the director nomination and election processes of PCX and PCXE, respectively.

Specifically, with respect to the nomination and election of the OTP Holder members of the nominating committee of PCX (“PCX Nominating Committee”), the PCX rules currently provide that: (i) the PCX Nominating Committee shall have seven members consisting of six OTP Holders and one person from the public; (ii) in addition to candidates nominated by the PCX Nominating Committee to fill positions on the PCX Nominating Committee for the next annual term, the PCX Nominating Committee must nominate any candidate for the OTP Holders’ positions on the PCX Nominating Committee endorsed by the written petition of the lesser of 35 OTP Holders or 10% of OTP Holders in good standing on or before the 45th day preceding the expiration of the existing term; (iii) in the event that there are more than six nominees to fill the OTP Holders’ positions on the PCX Nominating Committee as a result of

⁴² PCXE Bylaws, Section 3.02(a).

⁴³ PCX Rule 3.2(b)(2) and PCXE Rule 3.2(b)(2).

⁴⁴ Even though OTP Firms also hold options trading permits, they do not have any voting rights with respect to the nomination and election of the OTP Holder representative on the PCX Board.

petition by OTP Holders, the PCX Nominating Committee must submit the nominees to OTP Holders for election.⁴⁵

The proposed PCX Rule 3.2(b)(2)(B)(i) provides that with respect to the nomination process described in clause (ii) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with (as such term is defined in Section 3(a)(18) of the Act)⁴⁶ the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated (as such term is defined in Rule 12b-2 under the Act)⁴⁷ with the OTP Firm that such OTP Holder is associated with, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for an OTP Holders' position on the PCX Nominating Committee. In addition, the proposed PCX Rule 3.2(b)(2)(B)(iii) provides that with respect to the election process described in clause (iii) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 20% of the votes cast for a particular nominee for an OTP Holders' position on the PCX Nominating Committee.

With respect to the nomination and election of the OTP Holder representative on the PCX Board, the PCX rules currently provide that (i) in addition to the candidate nominated by the PCX Nominating Committee for the OTP Holders' position on the PCX Board, the PCX Nominating Committee must nominate any eligible candidate endorsed by the written petition of

⁴⁵ PCX Rules 3.2(b)(2)(A) and (B).

⁴⁶ Pursuant to Section 3(a)(18) of the Act, the term "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that such term does not include any person associated with a broker or dealer whose functions are solely clerical or ministerial. 15 U.S.C. 78c(a)(18).

⁴⁷ 17 CFR 240.12b-2.

the lesser of 35 OTP Holders or 10% of OTP Holders in good standing on or before the tenth business day after the PCX Nominating Committee publishes its nominee for the PCX Board,⁴⁸ and (ii) if there are two or more nominees for the PCX Holder's position on the PCX Board as a result of petition by OTP Holders, the PCX Nominating Committee must submit the contested nomination(s) to OTP Holders for election.⁴⁹

The proposed PCX Rule 3.2(b)(2)(C)(ii) provides that with respect to the nomination process described in clause (i) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for the OTP Holders' position on the PCX Board. In addition, the proposed PCX Rule 3.2(b)(2)(C)(iii) provides that with respect to the election process described in clause (iii) above, no OTP Holder, either alone or together with (x) other OTP Holders associated with the same OTP Firm that such OTP Holder is associated with and (y) OTP Holders associated with OTP Firms that are affiliated with the OTP Firm that such OTP Holder is associated with, may account for more than 20% of the votes cast for a particular nominee for the OTP Holders' position on the PCX Board.

Similarly, with respect to the nomination and election of the ETP Holder members of the nominating committee of PCXE ("PCXE Nominating Committee"), the PCXE rules currently provide that (i) the PCXE Nominating Committee shall have seven members consisting of six ETP Holders and one person from the public, (ii) in addition to candidates nominated by the PCXE Nominating Committee to fill positions on the PCXE Nominating Committee for the next

⁴⁸ PCX Rule 3.2(b)(2)(C)(ii).

⁴⁹ PCX Rule 3.2(b)(2)(C)(iii).

annual term, the PCXE Nominating Committee must nominate any candidate for the ETP Holders' positions on the PCXE Nominating Committee endorsed by the written petition of at least 10% of ETP Holders in good standing on or before the 45th day preceding the expiration of the existing term, (iii) in the event that there are more than six nominees to fill the ETP Holders' positions on the PCXE Nominating Committee as a result of petition by ETP Holders, the PCXE Nominating Committee must submit the nominees to ETP Holders for election.⁵⁰

The proposed PCXE Rule 3.2(b)(2)(B)(i) would provide that with respect to nomination process described in clause (ii) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates (as such term is defined in Rule 12b-2 under the Act),⁵¹ may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for an ETP Holders' position on the PCXE Nominating Committee. In addition, the proposed PCXE Rule 3.2(b)(2)(B)(iii) would provide that with respect to election process described in clause (iii) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for an ETP Holders' position on the PCXE Nominating Committee.

With respect to the nomination and election of the ETP Holder representatives on the PCX Board and Board of Directors of PCXE ("PCXE Board"), the PCXE rules currently provide that (i) in addition to the candidates nominated by the PCXE Nominating Committee for the ETP Holders' positions on the PCX Board and PCXE Board, the PCXE Nominating Committee must nominate any eligible candidate endorsed by the written petition of at least 10% of ETP Holders in good standing to the PCX Board or PCXE Board, as the case may be, within the time period

⁵⁰ PCXE Rules 3.2(b)(2)(A) and (B).

⁵¹ 17 CFR 240.12b-2.

set forth in the PCXE rules,⁵² and (ii) if there are three or more nominees for the ETP Holders' positions on the PCXE Board or two or more nominees for the ETP Holder's position on the PCX Board, the PCXE Nominating Committee shall submit the contested nomination(s) to the ETP Holders for election.⁵³

The proposed PCXE Rule 3.2(b)(2)(C)(i) provides that with respect to nomination process described in clause (i) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 50% of the signatories to a petition endorsing a particular petition nominee for an ETP Holders' position on the PCX Board or PCXE Board. In addition, the proposed PCXE Rule 3.2(b)(2)(C)(ii) provides that with respect to the election process described in clause (ii) above, no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for an ETP Holders' position on the PCX Board or PCXE Board.

PCX believes that the proposed limitations relating to the director nomination and election process would serve to protect the integrity of PCX's, PCXE's, and the Commission's regulatory oversight responsibilities and would allow PCX and PCXE to protect their respective board of directors from any undue influences of a group of related OTP Holders or ETP Holders. Aside from the trading rights that such permit holders are entitled to and these rights described in this section, the respective permit holders have no other voting, nomination, petition, or other rights under the organizational documents and rules of PCX and PCXE, as applicable.

⁵² PCXE Rule 3.2(b)(2)(C)(i).

⁵³ PCXE Rule 3.2(b)(2)(C)(ii).

2. Basis

The Exchange believes that this filing, as amended, is consistent with Section 6(b)⁵⁴ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁵⁵ in particular, because the rules summarized herein would create a governance and regulatory structure with respect to the operation of the equities and options business of PCX that 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. The Exchange also believes that this filing, as amended, furthers the objectives of Section 6(b)(1) of the Act⁵⁶ 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 Sections 17(d) or 19(g)(2) of the Act)⁵⁷ 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.

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.

⁵⁴ 15 U.S.C. 78f(b).

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78f(b)(1).

⁵⁷ 15 U.S.C. 78q(d) and 78s(g)(2).

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

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 self-regulatory organization 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.

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-2005-134 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-134. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of 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-2005-134 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.⁵⁸

Nancy M. Morris
Secretary

⁵⁸ 17 CFR 200.30-3(a)(12).