

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53551; File No. SR-PCX-2006-05)

March 27, 2006

Self-Regulatory Organizations; The Pacific Exchange, Inc. (n/k/a “NYSE Arca, Inc.”); Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fees for Lead Market Makers, Transactions Within Exchange Traded Funds Listed on The New York Stock Exchange, Inc., and Registration and Transaction Fees for Equity Trading Permit Holders

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 January 30, 2006, The Pacific Exchange, Inc.³ (“PCX”), 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, II and III below, which Items were prepared by PCXE. On March 17, 2006, the NYSE Arca, Inc. (“Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“Arca Equities”) filed Amendment No. 1. The Exchange designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 6, 2006, PCX filed a proposed rule change that amended its rules to reflect the following name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; from PCX Equities, Inc. to NYSE Arca Equities, Inc.; from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. See SR-PCX-2006-24.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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.

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

The Exchange, through Arca Equities, proposes to amend its Schedule of Fees and Charges ("Schedule") to (i) implement fees for transactions conducted by Lead Market Makers⁷ ("LMMs"); (ii) increase fees for transactions in Exchange Traded Funds ("ETFs") listed on the New York Stock Exchange LLC ("NYSE"), and (iii) make other minor modifications to The Schedule. The text of the proposed rule change is available at the Commission, at the Exchange, and on the Exchange's Web site at www.archipelago.com/regulation/filings.asp#2006.

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 proposal. 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

⁶ For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 17, 2006, the date the Exchange filed Amendment No. 1.

⁷ See Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (SR-PCX-2005-56).

The Exchange proposes to amend the Schedule, effective February 1, 2006, to reflect (i) charges and credits applicable to transactions by LMMs, (ii) an increase of transaction fees and elimination of market data revenue sharing credits for transactions in ETFs listed on the NYSE, (iii) the amended requirement of investigation fees associated with the review and approval of persons associated with an ETP Holder,⁸ (iv) removal of the fee for fingerprint card submission to the Exchange, and (v) an exemption of transaction fees for ETP Holder transactions occurring during the Closing Auction.⁹ The Schedule incorporating these changes may be found at the following Web address: http://www.arcaex.com/traders/equities_fees.asp.

LMM Transaction Charges and Credits

For LMMs, the exclusive Market-Maker in primary listings on the Exchange and who will be eligible to receive orders in the NYSE Arca, L.L.C.'s ("NYSE Arca") Directed Order Process, the Exchange proposes to offer a \$0.004 per share credit for orders submitted by LMMs that provide liquidity to the NYSE Arca Book, but not allow these transaction to be eligible for the Market Data Revenue Sharing Credit. Additionally, the Exchange will exempt LMMs from the transaction fees and credits for orders executed as a Direct Order against a Directed Fill¹⁰ but will charge \$0.0025 per share for orders that remove liquidity from the NYSE Arca Book. Directed Fills will be eligible for Market Data Revenue Sharing Credit.

Fees and Credits for NYSE Listed ETF Securities

To maintain competitive fees, the Exchange proposes to amend the Schedule for ETP Holder transactions in NYSE listed ETF securities. With this, the Exchange proposes to

⁸ See Arca Equities Rule 1.1(n).

⁹ See Arca Equities Rule 7.35.

¹⁰ See Arca Equities Rule 7.31(j).

implement a credit of \$0.002 per share for limit orders of such securities residing on the NYSE Arca Book that execute against inbound marketable orders, but will eliminate the current Market Data Revenue Sharing Credit for Cross Orders¹¹ involving NYSE listed ETFs. Additionally, current charges for NYSE listed ETFs are \$0.001 per share for orders that execute against orders residing on the NYSE Arca Book and for orders that are routed away and executed by another market center or participant. The Exchange proposes to increase these fees to \$0.003 and \$0.004 per share, respectively.

ETP Holder Registration Fees

Currently, the Schedule reflects ETP Application Fees for investigations and fingerprints. Use of these fees, \$125 and \$35, respectively for each person¹² requiring approval by the Exchange, has become outdated as the Exchange now utilizes and is a participant of the Central Registration Depository (“Web CRD®”) system for electronic registration and review of criminal and disclosure background information. Previously, PCX was responsible for receipt and processing of fingerprint cards submitted for registration with the Exchange and for this would collect a \$35 processing fee directly from the ETP Holder. Now, ETP Holders are required to maintain registration information electronically on Web CRD® and submit fingerprint information directly to the National Association of Securities Dealers, Inc. (“NASD”) which maintains Web CRD®. All fees relating to registrations and fingerprint information available on Web CRD® are collected by NASD by deducting these fees from ETP Holders’ Web CRD® Daily Account. Individuals for whom information is not available on Web CRD®

¹¹ See Arca Equities Rule 7.31(s).

¹² See Arca Equities Rules 1.1(c) and 1.1(d) for Allied Persons and Approved Persons, respectively, requiring approval by the Exchange.

and who must be reviewed and approved by the Exchange will continue to be required to pay the \$125 investigation fee per individual.

Closing Auction Transaction Fee Exemption

In order to be consistent with its practices, the Exchange proposes to clarify that ETP Holder transactions during the Closing Auction are exempted from Exchange transaction fees noted on the Schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)¹³ of the Act, in general, and Section 6(b)(4)¹⁴ of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its ETP Holders, issuers, and other persons using its facilities.

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.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁵ and paragraph (f)(2) of Rule 19b-4 thereunder¹⁶ because it

¹³ 15 U.S.C. §78f(b).

¹⁴ 15 U.S.C. §78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

establishes or changes a due, fee, or other charge. At any time within 60-days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that 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.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2006-05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PCX-2006-05. 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

¹⁷ See footnote 6 supra.

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 Exchange. 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-2006-05 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.¹⁸

Nancy M. Morris
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).