

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53610; File No. SR-PCX-2006-12)

April 6, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Order Granting Approval of Proposed Rule Change Relating to Clearly Erroneous Executions

On February 23, 2006, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (“Exchange”)¹ filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ to amend PCX Equities, Inc. (n/k/a NYSE Arca Equities, Inc.) (“NYSE Arca Equities”) Rule 7.10(e) pertaining to clearly erroneous executions of securities issued in initial public offerings (“IPOs”). The proposed rule change was published for comment in the Federal Register on March 3, 2006.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

The proposed rule change would revise the procedures in NYSE Arca Equities Rule 7.10(e) relating to trade nullifications (“busts”) and price adjustments (“adjusts”) of the initial trade of securities issued in IPOs that are traded on the Archipelago Exchange

¹ On March 6, 2006, the Exchange filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect the recent acquisition of PCX by Archipelago Holdings, Inc. (“Archipelago”) and the merger of NYSE with Archipelago. See File No. SR-PCX-2006-24. All references herein have been changed to reflect the aforementioned rule change.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 53376 (February 27, 2006), 71 FR 11008 (“Notice”).

(n/k/a NYSE Arca Marketplace) on an unlisted trading privileges basis. Currently, initial trades on NYSE Arca Marketplace of these securities that are executed at prices of \$1.00 or 10% (whichever is lesser) away from the primary listing exchange's opening price are automatically busted or adjusted to the opening price of the security on the primary listing exchange. Under the proposed rule change, NYSE Arca Equities staff would have the discretion to bust or adjust initial trades in IPO securities that are executed at \$1.00 or 10% (whichever is lesser) away from the opening price on the primary listing exchange. The Exchange states that this discretion is necessary because the primary listing exchange often has multiple prices for an IPO security during the first moments that the IPO security begins to trade.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the proposed rule change, by granting NYSE Arca Equities staff the discretion to bust or adjust initial trades for IPO securities that are executed at \$1.00 or 10% (whichever is lesser) away from the primary listed exchange's

⁵ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

opening price, and thus no longer require NYSE Arca Equities staff to automatically bust or adjust such trades, is designed to help ensure that the Exchange's clearly erroneous execution rule is exercised in a fair and reasonable manner. As the Exchange noted, the primary listing exchange's opening price for an IPO security may not necessarily be indicative of the actual trading price of the security, and, thus the Commission believes that it is fair and reasonable for NYSE Arca Equities staff to have the discretion to review all prices at the time the IPO security first trades on the primary listing exchange to determine whether it is appropriate to adjust or bust the trade at issue.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-PCX-2006-12) is approved.

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

Nancy M. Morris
Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).