

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53690; File No. SR-PCX-2005-122)

April 20, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

I. Introduction

On October 24, 2005, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration.³ On January 6, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment No. 1, was published for comment in the Federal Register on March 23,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 the Pacific Exchange, Inc. by Archipelago Holdings, Inc. ("Archipelago") and the merger of NYSE with Archipelago. See Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (File No. SR-PCX-2006-24). All references herein have been changed to reflect the aforementioned rule change.

⁴ In Amendment No. 1, the Exchange made changes to its rule text to clarify that the delisting procedures set forth therein apply to instances where the Exchange is considering delisting for reasons other than those set forth in amended Rule 12d2-2(a) under the Act.

2006.⁵ On March 21, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.⁶ No comments were received regarding the proposal. This order approves the proposed rule change, as amended, on an accelerated basis, publishes notice of Amendment No. 2 to the proposed rule change, and grants accelerated approval to Amendment No. 2.

II. Description of the Proposed Rule Change

Section 12 of the Act⁷ and Rule 12d2-2 thereunder⁸ (“SEC Rule 12d2-2”) govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2-2 (“amended SEC Rule 12d2-2”) and other Commission rules require the electronic filing of revised Form 25⁹ on the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.¹⁰

⁵ See Securities Exchange Act Release No. 53497 (March 16, 2006), 71 FR 14763.

⁶ In Amendment No. 2, the Exchange amended its rule text to clarify that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice. In addition, the Exchange revised its rule text to clarify that applications to voluntarily withdraw a class of securities from listing must be filed on Form 25 and that the previous rule text would be operative until April 23, 2006.

⁷ 15 U.S.C. 78j.

⁸ 17 CFR 240.12d2-2.

⁹ 17 CFR 249.25.

¹⁰ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) (“SEC Rule 12d2-2 Approval Order”).

In the case of exchange-initiated delistings, amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

- (i) Notice to the issuer of the exchange's decision to delist its securities;
- (ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and
- (iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2-2(d)(1), and must remain posted on its Web site until the delisting is effective.

NYSE Arca Equities Rule 5.5(m) provides the applicable procedures when the Exchange considers removing securities from listing. The Exchange proposes to amend NYSE Arca Equities Rule 5.5(m) to comply with new requirements set forth in amended SEC Rule 12d2-2(b). The provisions set forth in current NYSE Arca Equities Rule 5.5(m), which provide for notification to the issuer in the event that the Exchange determines to delist the issuer's securities and the right to appeal the Exchange's determination, satisfy the minimum provisions set forth in amended SEC Rule 12d2-2(b)(1)(i) - (ii). The Exchange's rules do not currently provide for the mandated public notice, and accordingly, proposed NYSE Arca Equities Rule 5.5(m)(3) would require the Exchange to provide public notice, pursuant to amended SEC Rule 12d2-2(b)(iii). Specifically, the Exchange proposes to

state that, in the event the Exchange makes a final decision to remove the security of an issuer from listing, the Exchange will take the following actions, no fewer than ten (10) days before the delisting becomes effective: (i) an application on Form 25 will be submitted by the Exchange to the Commission to strike the security from listing and registration in accordance with Rule 12d2-2; (ii) a copy of such application will be provided to the issuer in accordance with Rule 12d2-2; and (iii) public notice of the Exchange's final determination to delist the security will be made via a press release and posting on the Exchange's website until the delisting is effective. In connection with this proposed change, the Exchange also proposes to make reference to the above public notice procedures in the appeal procedures discussion in new NYSE Arca Equities Rule 5.5(m)(2)(f). In addition, the Exchange proposes to state in NYSE Arca Equities Rule 5.5(m)(1)(b) that the Exchange, after making its initial determination to delist a security, will notify the issuer in writing, if possible, rather than by telephone.

NYSE Arca Equities Rule 5.4(b) sets forth the Exchange procedures that apply when an issuer proposes to withdraw a security from listing on the Exchange. The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to provide that the Exchange, upon receiving notification by an issuer of its intent to withdraw its securities from listing and registration, will post notice of such intent on the Exchange's Web site by the next business day and will continue to post the notice until the delisting becomes effective. These proposed changes reflect the requirements set forth in amended SEC Rule 12d2-2(c). The Exchange also proposes a new requirement that an issuer submit to the Exchange a copy of the Form 25 that it has filed with the Commission no later than the date of such filing.

In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to clarify that the issuer, when proposing to withdraw its securities from listing and registration, must submit to the Exchange a “letter from an authorized officer of the issuer providing the specific reasons cited by the board of directors of the issuer for the proposed withdrawal,” rather than a “statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.”

The Exchange also proposes to amend NYSE Arca Equities Rule 5.4(b) to state that an issuer seeking to voluntarily apply to withdraw a class of securities from listing on NYSE Arca that has received notice from NYSE Arca, pursuant to Rule 5.3, Rule 5.5 or otherwise, that it is below NYSE Arca’s continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from NYSE Arca, must disclose that it is no longer eligible for continued listing (identifying the specific continued listing policies and standards with which it does not comply) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to NYSE Arca along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii); and (ii) its public press release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii).¹¹

Finally, the Exchange has made changes in its rules to clarify that the Form 25 serves as the application to remove a security from listing and/or registration and to specify that the proposed changes will be effective as of April 24, 2006 as required by amended SEC Rule 12d2-2.

¹¹ See Amendment No. 2, supra note 6.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹² and, in particular, the requirements of Section 6 of the Act.¹³ Specifically, as discussed below, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, in part, 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 regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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. Further, as noted in more detail below, the changes being adopted by the Exchange meet the requirements of amended SEC Rule 12d2-2.

A. Exchange Delisting

Amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist.

¹² In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

The Commission believes that the Exchange's current rules and proposal comply with the dictates of amended SEC Rule 12d2-2(b).

The Exchange's rules currently provide the requisite issuer notice as well as an opportunity for appeal to the Board Appeals Committee, a committee appointed by the Board of Directors.¹⁵ In addition, the proposed rule change will provide for public notice of the Exchange's final determination to remove the security from listing and/or registration. The Exchange also proposes to state in NYSE Arca Equities Rule 5.5(m)(1)(b) that the Exchange, after making its initial determination that a security should be delisted, will notify the issuer in writing, if possible, of the decision rather than by telephone. The Commission notes that this provision is a clarification of the Exchange's current practices. Overall, the proposed Exchange amendments should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.¹⁶

B. Issuer Voluntary Delisting

The Exchange proposes to set forth in its Exchange rules the general requirements of amended SEC Rule 12d2-2(c) regarding issuer voluntary delisting. Accordingly, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to provide that the Exchange, upon receiving notification by an issuer of its intent to withdraw its securities from listing and registration, will post notice of such intent on the Exchange's Web site by the next business day and will continue to post the notice until the delisting becomes effective. The Commission believes that the proposal will better inform issuers of the

¹⁵ See NYSE Arca Equities Rule 5.5(m)(2)(c).

¹⁶ 15 U.S.C. 78f(b).

requirements for voluntary delisting of their securities under the Exchange's rules and federal securities laws.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2-2 that would require the issuer to submit to the Exchange a copy of the Form 25 that the issuer has filed with the Commission no later than the date of such filing. The Commission believes that this requirement will allow the Exchange to be fully informed of the filing of a Form 25 and be prepared to take timely action to delist the security in accordance with the filing of the Form.

In addition, the Exchange proposes to revise NYSE Arca Equities Rule 5.4(b) to require an issuer proposing to withdraw a security from listing to submit to the Exchange a letter from an authorized officer of the issuer providing the specific reasons cited by the board of directors of the issuer for the proposed withdrawal. The Commission believes that this requirement may help ensure that the decision to delist a security voluntarily has been well-considered by the issuer's board.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.4(b) to state that an issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange that has received notice from the Exchange, pursuant to Rule 5.3, Rule 5.5 or otherwise, that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (identifying the specific continued listing policies and standards with which it does not comply) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along

with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2-2(c)(2)(ii); and (ii) its public press release and Web site notice required by amended SEC Rule 12d2-2(c)(2)(iii).¹⁷ The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

C. Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2

Pursuant to Section 19(b)(2) of the Act,¹⁸ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publishing notice of the proposed rule change and Amendment Nos. 1 and 2 in the Federal Register. In the SEC Rule 12d2-2 Approval Order, the Commission stated that the compliance date of the amendments is April 24, 2006.¹⁹ In addition, no comments were received on the proposal, as originally published.²⁰ Accelerated approval of the proposal, as amended, would enable the Exchange's amended rules to become operative by the compliance date set forth by the Commission.

The Commission further finds good cause for approving Amendment No. 2 to the

¹⁷ See Amendment No. 2, supra note 6.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ See SEC Rule 12d2-2 Approval Order, supra note 10.

²⁰ See note 5, supra.

proposal, prior to the 30th day after publishing notice in the Federal Register. In Amendment No. 2, the Exchange amended its rule text to clarify that an issuer seeking to voluntarily delist that has received notice from the Exchange that it is below continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose its status. As previously discussed, the revisions made to the proposal in Amendment No. 2 will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. The Commission believes that granting accelerated approval of Amendment No. 2 will permit the Exchange to implement this new provision as expeditiously as possible, to the benefit of investors. In addition, the Commission believes that these revisions do not raise new regulatory issues.

Accordingly, pursuant to Section 19(b)(2) of the Act,²¹ the Commission finds good cause to approve the proposed rule change, as amended, prior to the thirtieth day after notice of the proposed rule change and Amendment Nos. 1 and 2 are published in the Federal Register.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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

²¹ Id.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-122 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-2005-122. 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 the filing also will be available for inspection and copying at the principal office of 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-2005-122 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (File No. SR-PCX-2005-122), as amended by Amendment Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Nancy M. Morris
Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).