

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53752; File No. SR-PCX-2006-14)

May 2, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Order Approving Proposed Rule Change to Reduce the Fee Charged to a Lead Market Maker When It Transfers Options Issues to Another Lead Market Maker

I. Introduction

On February 23, 2006, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (“Exchange”) 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to reduce the fee charged to a Lead Market Maker (“LMM”) when it transfers options issues to another LMM. The proposed rule change was published for comment in the Federal Register on March 20, 2006.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In its filing, the Exchange proposed to reduce the fee charged to an LMM, when the LMM transfers an allocated options issue to another LMM. The Exchange presently charges an LMM a \$1000 fee, per issue, in the event that the LMM transfers the issue to another LMM, in accordance with the Exchange’s allocation procedures. The \$1000 per issue fee is subject to a cap when multiple issues are included as part of the same transfer. Under the new proposal, the fee will be \$100 per issue transferred. The new lower fee will not be subject to a rate cap when multiple issues are transferred.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 53476 (March 13, 2006), 71 FR 14046.

The Exchange proposes to make this fee effective retroactive to September 26, 2005, which coincides with the date that Archipelago Holdings Inc. acquired the Exchange (“Merger”). The Exchange will review all transfers that have occurred or may occur from September 26, 2005 through the effective date of this proposal and will make any fee adjustments that are deemed warranted pursuant to the proposed rate schedule contained in this filing.

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires, among other things, that an exchange’s rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that, following the Merger, new management of the Exchange has reviewed fees and charges and determined to make this fee reduction retroactive to the date of the Merger.

---

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-PCX-2006-14) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris  
Secretary

---

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).