

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53764; File No. SR-PCX-2006-16)

May 5, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto to Revise Fees for Equity Securities Issued by Operating Companies Listed on the Archipelago Exchange

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 March 1, 2006, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. (n/k/a NYSE Arca Equities, Inc.), 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 NYSE Arca.³ On March 17, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On May 5, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 6, 2006, the Pacific Exchange, Inc. ("PCX") filed a rule proposal, which was effective upon filing, that amended its rules to reflect these name changes: from PCX to NYSE Arca; 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 File No. SR-PCX-2006-24 (March 6, 2006).

⁴ See Amendment No. 1.

⁵ See Amendment No. 2.

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

The NYSE Arca proposes to amend its Schedule of Fees and Charges (“Fee Schedule”) to revise the application, initial, annual and additional shares listing fees for equity securities issued by operating companies listed on the Archipelago Exchange, the equities facility of the Exchange. The Exchange also proposes related modifications to the Fee Schedule.

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 NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change as amended 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. 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

In connection with the recently completed acquisition of the NYSE Arca and Arca Equities by Archipelago Holdings, Inc. – the parent of NYSE Arca, L.L.C. (“NYSE Arca Marketplace”) -- and the now completed merger between Archipelago Holdings, Inc. and the New York Stock Exchange (“NYSE”), NYSE Arca undertook a review of its listings business and competitive position in a rapidly changing industry.⁶ As a result of this

⁶ For instance, on December 8, 2005, Nasdaq announced that it had completed its acquisition of Instinet Group Incorporated, including INET ECN. In addition, on

review, the NYSE Arca determined to make significant changes to the fees associated with its listings program. Accordingly, the NYSE Arca proposes to revise, and in some cases increase, the application, initial, annual and additional share listing fees for equity securities issued by operating companies listed on NYSE Arca Marketplace. This filing also proposes a number of related modifications to the Fee Schedule.⁷

The NYSE Arca believes this proposal would enable it to compete effectively for listings, while supporting the ongoing costs of issuer services, including regulatory oversight and product and service offerings. This proposal further seeks to streamline and clarify the fees applicable to operating companies, making them more transparent and easier to understand and apply.

a. Application Fee

Currently, the NYSE Arca levies a non-refundable application processing fee of \$500, credited towards the applicable initial listing fee if the application is approved. The Exchange proposes to eliminate the application fee.

August 24, 2005, the Boston Stock Exchange, along with Citigroup, Credit Suisse First Boston, Fidelity Brokerage Company and Lehman Brothers, announced the formation of a new joint venture that will launch an electronic stock exchange, the Boston Equities Exchange. Further, on August 16, 2005, the Philadelphia Stock Exchange announced that Citigroup, Credit Suisse First Boston, Morgan Stanley and UBS have each acquired equity stakes in that exchange, with provisions that allow for each firm to obtain additional equity based on specific performance criteria.

⁷ These proposed fee changes apply only to equity securities issued by operating companies. They do not apply to other types of listed issues, including but not limited to open and closed-end funds, exchange-traded funds, commodity-based trusts, trust issued receipts, portfolio depositary receipts, structured products and investment company units. For these issues, the Fee Schedule remains unchanged.

b. Maximum Total Fees Paid by an Issuer Each Year

The NYSE Arca proposes a maximum cap of \$250,000 on the total fees paid each year by an issuer. Currently, the Exchange does not have such an issuer cap.

c. Listing Fee⁸

Currently, the Listing Fee applicable to common stock upon first listing depends on whether the stock is listed in conjunction with an initial public offering (“IPO”) or not, and whether it is classified as a Tier I or Tier II listing.⁹ For IPOs listed exclusively on Tier I,¹⁰ the Listing Fee is based on the issuer’s total shares outstanding (“TSO”), as follows:

TSO	Listing Fee
Less than 10,000,000	\$25,000
10,000,001 to 30,000,000	\$75,000
30,000,000 to \$75,000,000	\$100,000
Greater than \$75,000,000	\$125,000

For IPOs listed exclusively on Tier II,¹¹ the current Listing Fee is fixed at \$25,000. For IPOs which dually list, there is no Listing Fee, regardless of Tier classification. There is also no Listing Fee for already publicly-traded companies which

⁸ There are two types of fees applicable to issuers – Listing Fees and Annual Fees. Previously, NYSE Arca referred to Listing Fees as Initial Listing Fees and Additional Share Listing Fees. For ease of application, in light of the completed merger between Archipelago Holdings, Inc. and the NYSE, NYSE Arca proposes to conform its fee nomenclature to the NYSE’s nomenclature.

⁹ Tier I is designed for larger capitalization, mature issuers; Tier II is for smaller issuing companies. Both Tiers have their own set of listing criteria.

¹⁰ See NYSE Arca Equities Rule 5.2(c).

¹¹ See NYSE Arca Equities Rule 5.2(k).

transfer their listings from another marketplace, regardless of whether such issuers are exclusively or dually listed, their Tier classification, or TSO.

To simplify and streamline these fees, the NYSE Arca proposes to adopt new Listing Fees based on TSO at the time a security is listed on NYSE Arca Marketplace, as follows:¹²

TSO	Listing Fee
Up to and including 30 million	\$100,000
30,000,001 up to and including 50 million	\$125,000
Over 50 million	\$150,000

These proposed fees also would apply to each class of preferred stock or warrant listed, whether or not the issuer has common shares also listed.¹³ Further, these fees would apply regardless of Tier classification or whether the issue is exclusively or dually listed. These proposed Listing Fees also would apply to foreign private issuers, but only to the extent their securities are issued and outstanding in the United States.¹⁴ However, in light of the recently completed merger between Archipelago Holdings, Inc. and the NYSE, issuers that transfer their listing to the NYSE Arca Marketplace from the NYSE would not be subject to Listing Fees upon initial listing.

¹² For purposes of Listing Fee calculations, NYSE Arca would include treasury stock, restricted stock and shares issued in conjunction with the exercise of an overallotment option, if applicable, in the number of shares for which an issuer is billed at the time a security is first listed.

¹³ As discussed below, for additional classes of common stock when the issuer has a class of common stock already listed, the Exchange would levy a flat Listing Fee for initial listing of \$5,000.

¹⁴ See 17 CFR 240.3b-4 (defining “foreign private issuer”).

For additional classes of common stock, preferred stock, debt instruments, purchase rights and warrants, the current initial listing fee is \$2,500, regardless of whether such securities are also listed elsewhere. These fees apply to each additional issue listed, regardless of shares outstanding or Tier classification.

For additional classes of common stock, the NYSE Arca proposes a flat Listing Fee of \$5,000 in lieu of the per share schedule above.

The Listing Fee for debt instruments and purchase rights remains \$2,500.

d. Technical Original Listing Fee¹⁵

Currently, the NYSE Arca charges a fee for technical original listing applications of \$2,500. Under the current rule, a technical original listing occurs as a result of, for example:

- change in the issuer's state of incorporation;
- reincorporation under the laws of the same state;
- recapitalization;
- creation of a holding company or a new company by operation of law or through an exchange offer;¹⁶ or
- similar events, which, in effect, create a new security or which alters any of its rights, preferences, privileges or terms.

Additionally, this fee currently applies if the change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-

¹⁵ To conform to NYSE fee nomenclature, NYSE Arca proposes to adopt the term "Technical Original Listing" in place of "Substitute Initial Listing."

¹⁶ The proposed new rule text regarding the application of the fee in these circumstances codifies the Exchange's existing practice.

for-share interest in the new company without any change in their equity position or rights.¹⁷ By the proposed rule change, the NYSE Arca proposes to rename the fee,¹⁸ to codify its current practice regarding applying the fee,¹⁹ and to increase the amount of the fee to \$5,000 per application.

e. Annual Fee

Currently, the Annual Fee depends on whether a security was listed in conjunction with an IPO, whether the security is listed exclusively or dually, and Tier classification. For Tier I exclusive IPO listings, the current Annual Fee is based on TSO, as follows:

TSO	Annual Fee
Less than 10,000,000	\$15,000
10,000,001 to 50,000,000	\$20,000
50,000,001 to 100,000,000	\$35,000
Greater than 100,000,000	\$50,000

For Tier II exclusive IPO listings, the current annual Fee is \$12,500, regardless of TSO.

For dual listings in conjunction with IPOs, and exclusive and dual listings of already publicly-traded companies, the Exchange does not levy an Annual Fee for the first 12-calendar months following listing. At the end of this 12-month period, NYSE

¹⁷ The proposed new rule text regarding the application of the fee in these circumstances codifies the Exchange's existing practice.

¹⁸ See supra at n.15.

¹⁹ See supra at n.16 and n.17.

Arca proposes to assess, on a pro-rated basis, the applicable Annual Fee for the balance of the then current calendar year, as follows:

- for exclusive IPO Listings, the Annual Fee is based on the fees set forth above for exclusive IPOs, depending on Tier classification;
- for dual IPO and exclusive and dual non-IPO Listings, the Annual Fee is \$10,000, regardless of Tier classification or shares outstanding.

The current maximum Annual Fee payable by a single issuer for all issues listed is \$90,000. Annual Fees are not pro-rated or reduced for securities that delist for any reason.

The Exchange proposes an Annual Fee for listed issuers listing common or preferred securities as follows: a minimum of \$30,000 for issuers with up to and including 10 million TSO plus, for each share over 10 million TSO up to and including 100 million TSO, issuers would be subject to an additional per share charge of \$0.000375. For all issuers with TSO above 100 million, the Annual Fee would be a flat \$85,000 per issue listed. For example, an issuer with 54.5 million TSO would pay an Annual Fee of \$46,687.50 (\$30,000 plus \$0.000375 times 44.5 million), an issuer with 100 million TSO would pay an Annual Fee of \$63,750 (\$30,000 plus \$0.000375 times 90 million), and an issuer with 110 million TSO would pay the maximum Annual Fee of \$85,000 per issue. These proposed Annual Fees would also apply to foreign private issuers, but only to the extent securities are issued and outstanding in the United States. The NYSE Arca would calculate the Annual Fee for foreign private issuers based on a

four-quarter average of the securities issued and outstanding in the United States during the preceding year.²⁰

To the extent that an issuer that is billed by NYSE Arca as a foreign private issuer has a change in status that requires the issuer to commence filing U.S. periodic and annual reports with the Commission during the course of a year, NYSE Arca would bill that issuer Listing and Annual Fees as a domestic issuer at the beginning of the first calendar year following the issuer's change in status. An issuer that changes its status would not be subject to new Listing Fees for worldwide securities already issued and outstanding.

For additional classes of common stock, preferred stock, debt instruments, purchase rights and warrants, the NYSE Arca's current Annual Fee is \$500, regardless of whether they are also listed elsewhere. These fees apply to each such issue listed, regardless of shares outstanding or Tier classification.

For issuers with more than one class of common stock listed, the Exchange proposes an Annual Fee of \$20,000 or \$0.000375 per share listed, whichever is greater, for each additional class of common stock.²¹

²⁰ The purpose of utilizing a four-quarter average is to recognize the possibility of flow-back and flow-in of securities to and from the home country market and more reasonably reflect the number of securities in the United States over the course of the year.

²¹ For purposes of Annual Fee calculation when an issuer has multiple classes of common stock listed, the NYSE Arca would assess the class of common stock with the highest TSO the Annual Fee proposed above for listed issuers, that is, a minimum Annual Fee of \$30,000 for up to and including 10 million TSO plus, if applicable, a per share charge of \$0.000375 on each share over 10 million up to and including 100 million TSO, subject to the \$85,000 maximum Annual Fee per issue. For each additional class of common stock listed, the NYSE Arca would assess Annual Fees as proposed above for additional classes, that is, an Annual Fee of \$20,000 or \$0.000375 per share listed, whichever is greater.

For additional classes of preferred stock where the issuer has a class of common or preferred stock already listed, the Exchange proposes an Annual Fee of \$5,000 or \$0.000375 per share, whichever is greater. Further, the NYSE Arca proposes an Annual Fee for each class of warrant listed of \$5,000 or \$0.000375 per warrant, whichever is greater. The Annual Fee for debt instruments and purchase rights would remain \$500.

Issues would be subject to the Annual Fee in the year of listing, pro-rated based on days listed that calendar year. However, issuers that transfer their listing from the NYSE to the NYSE Arca Marketplace would, for the year of transfer, be subject only to the applicable NYSE Annual Fee billed for that year and, in subsequent years, such issuers would pay the applicable NYSE Arca Marketplace Annual Fee; similarly, issuers that transfer their listings from NYSE Arca Marketplace to the NYSE would, for the year of transfer, be subject only to the applicable NYSE Arca Marketplace Annual Fee billed for that year and, in subsequent years, such issuers would pay applicable NYSE Annual Fees.

f. Subsequent Listing of Additional Securities²²

Currently, the fee applicable to all issuers for Subsequent Listing of Additional Securities is \$.0025 per additional share listed, assessed beginning with the 100,000th additional share listed per application. There is no charge per application for the first 99,999 additional shares listed. For domestic issuers, the minimum and a maximum charge per application currently depends on whether an issue is exclusively or dually listed, as follows:

²² Previously, the NYSE Arca referred to Subsequent Listing of Additional Securities as Additional Shares Listing.

- For all exclusive listings, the maximum charge per application is \$15,000 and the annual maximum charge is \$30,000;
- For all dual listings, the maximum charge per application is \$7,500 and the maximum annual charge is \$14,000; and
- For all applications to list additional shares, the current minimum charge is \$500.

In addition, for American Depositary Receipts (“ADRs”) and American Depositary Shares (“ADSs”) only, NYSE Arca’s current maximum additional shares listing charge per year is \$10,000, the minimum charge per application is \$500, and the maximum per application charge at \$7,500. These fees are assessed only on the ADRs and ADSs that are issued and outstanding in the United States.

For an issuer to list additional shares of a class of previously listed securities, NYSE Arca proposes to adopt the following schedule, subject to a minimum fee of \$5,000 per application:

Number of Securities Issued	Fee Per Share
Up to and including 75 million	\$0.0048
75,000,001 to 300 million	\$0.00375
Over 300 million	\$0.0019

The Listing Fees for subsequent listings of additional shares are calculated starting at the rate applicable to the number of shares already listed and outstanding (including treasury stock and restricted stock). This schedule applies to subsequent issuances of common stock, preferred stock and warrants.

These fees would be assessed as follows, subject to any maximum on fees paid by an issuer per year:

- To the extent that an issuer submits a supplemental listing application for shares that are immediately issued, such as in connection with a merger or acquisition, stock split or stock dividend, Listing Fees for those shares would be billed at the time the supplemental listing application is processed.
- However, to the extent an issuer submits a supplemental listing application for shares that are not issued at the time of listing, such as for an equity compensation plan or for convertible securities where the listed securities will be issued over time, only the \$5,000 minimum supplemental listing application fee would be billed at the time the supplemental listing application is processed. Listing Fees would accrue on these securities as of the date of issuance and the accrued Listing Fees would be billed at the beginning of the following year along with the issuer's Annual Fees.

These fees would also apply to foreign private issuers, but only to the extent securities are issued and outstanding in the United States, subject to any maximum on fees paid by an issuer per year. In addition, issuers that transfer their listing to the NYSE Arca Marketplace from the NYSE would be subject to these fees.

g. Miscellaneous Administrative Fees

Currently, NYSE Arca charges \$250 to administer certain modifications to NYSE Arca records. The Exchange, stating that this fee has not been increased in many years, proposes to increase this fee to \$2,500 per modification, which includes changes in

company name, symbol, par value, and title of security or designation. The fee would also apply to poison pill plans (also known as shareholder rights plans).

h. Maximum Listing Fee for Stock Splits and Stock Dividends

The NYSE Arca proposes that Listing Fees on shares issued in conjunction with stock splits and stock dividends be capped at \$150,000 per split or issuance, subject to the \$250,000 maximum on total fees paid each year by an issuer. Currently, the Exchange does not have such a cap.

i. Listing Fee Discounts

In the case of transactions such as a consolidation between two or more listed issuers that result in the formation of a new issuer that immediately lists upon consummation of the consolidation, or a merger between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer (which lists within 12 months from the consummation of the transaction), Listing Fees for that newly listed issuer would be 25% of the Listing Fee for each class of securities being listed, up to 25% of the maximum applicable to the issue(s) listed. No discount would be applied, however, where a listed issuer survives the merger or consolidation, or in the case of a backdoor (or “reverse”) merger.

j. Rule Change Implementation

The NYSE Arca proposes to implement these revised fees, as applicable, for all currently listed issuers upon effectiveness of this proposal, except as follows:

- For calendar year 2006, NYSE Arca proposes that issuers listed on NYSE Arca Marketplace, and issuers with listing applications pending as of the effective date of this proposal, would continue to be subject to the current

Fee Schedule. As of January 1, 2007, however, all such issuers would be subject to the Fee Schedule as proposed to be revised.

- Further, NYSE Arca proposes, for the period through December 31, 2007, that all issuers which transfer their listings from Nasdaq or the American Stock Exchange, or apply to list during that time, would not be subject to Listing Fees upon initial listing. Such issuers, however, would be subject to Annual Fees and Fees for Subsequent Listing of Additional Securities, as proposed above. Going forward, NYSE Arca would consider whether to extend this period beyond December 31, 2007, and would make any necessary proposals under Rule 19b-4 prior to that date.

2. Statutory Basis

The NYSE Arca believes that the proposal is consistent with Section 6(b) of the Act²³ in general, and Section 6(b)(4) of the Act²⁴ 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 believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule

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 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 No. SR-PCX-2006-16 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-2006-16. 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 Commissions 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 the NYSE Arca. 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-2006-16 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Nancy M. Morris
Secretary

²⁵ 17 CFR 200.30-3(a)(12).