

Text of the Proposed Rule Change

Underlining indicates additions; [brackets] indicate deletions

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
PCX HOLDINGS, INC.

PCX Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

FIRST: The name of the corporation is PCX Holdings, Inc.

SECOND: The original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on September 15, 2003.

THIRD: The corporation has not yet received any payment for any of its stock.

FOURTH: Pursuant to Sections 241 and 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of Incorporation restates, integrates and further amends the provisions of the Certificate of Incorporation of the corporation.

FIFTH: The Certificate of Incorporation of the corporation is hereby amended and restated to read in full as follows:

Article One

The name of the Corporation is: PCX HOLDINGS, INC.

Article Two

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

Article Three

The nature of the business or purposes to be conducted or promoted are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

Article Four

The total number of shares of all classes of stock that the Corporation shall have authority to issue is one million (1,000,000) shares of common stock, having a par value of one cent (\$.01) per share, and twenty-five thousand (25,000) shares of preferred stock having a par value of one cent (\$.01) per share. Authority is hereby expressly granted to the Board of Directors to fix by resolution or resolutions any of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions that are permitted by the General Corporation Law of the State of Delaware in respect of any class or classes of preferred stock or any series of any class of preferred stock of the Corporation.

Article Five

The Corporation shall be a for-profit stock corporation that shall have authority to issue capital stock. The stock shall be non-assessable. The Corporation shall have perpetual existence.

Article Six

1. Board of Directors.

(a) Number of Directors. The number of directors of the Corporation shall consist of not less than seven (7) or more than twelve (12), the exact number to be fixed exclusively by the Board of Directors from time to time pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board of Directors, subject to the bylaws of the Corporation.

(b) Terms. The Board of Directors shall be divided into three classes (Class 1, Class 2 and Class 3), as nearly equal in number as the then total number of directors constituting the whole Board permits. The directors shall serve staggered three-year terms with the term of office of one class expiring each year. In order to commence such staggered three-year terms, directors in Class 1 shall be initially appointed to hold office until the first annual meeting of stockholders; directors in Class 2 shall be initially appointed to hold office until the second annual meeting of stockholders; and directors in Class 3 shall be initially appointed to hold office until the third annual meeting of stockholders. Thereafter, the term of office for each class of directors elected at each annual meeting shall be three years from the date of their election. All directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of early resignation, removal or disqualification.

(c) Election and Qualification of Directors. At each annual meeting of stockholders at which a quorum is present, the persons receiving a plurality of the votes cast shall be directors. No director need be a stockholder.

(d) Removal of Directors. No director or class of directors may be removed from office by a vote of the stockholders at any time except for cause. For purposes of this section, “cause” shall mean only (i) a breach of a director’s duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the Delaware General Corporation Law, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

(e) Initial Board of Directors of the Corporation. The initial members of the Board of Directors of the Corporation shall consist of individuals nominated by the Nominating Committee of Pacific Exchange, Inc. in consultation with the Chief Executive Officer and approved by the Board of Governors of Pacific Exchange, Inc.

2. Vacancies. Any vacancy on the Board of Directors resulting from death, retirement, resignation, disqualification or removal from office or other cause, as well as any vacancy resulting from an increase in the number of directors which occurs between annual meetings of the stockholders at which directors are elected, shall be filled only by a majority vote of the remaining directors then in office, though less than a quorum, except that those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. The directors chosen to fill vacancies shall hold office for a term expiring at the end of the next annual meeting of stockholders at which time a director shall be chosen by vote of the stockholders to fill any

portion of the term that remains. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Article Seven

Action by the stockholders of the Corporation may only be taken at an annual or special stockholders' meeting as described in the bylaws of the Corporation. Unless otherwise restricted by the Certificate of Incorporation, bylaws or the rules of the Corporation, any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all of the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Board or committee. Stockholder action may not be taken by consent in lieu of a meeting.

Article Eight

1. Management. Except as set forth in Section 2 of this Article Eight, the Corporation shall be managed by or under the direction of the Board of Directors which shall exercise all powers conferred under the laws of Delaware.

2. Adoption of Bylaws.

(a) In furtherance and not in limitation of the powers conferred by statute, the power to adopt, amend or repeal the bylaws of the Corporation may be exercised by the Board of Directors; except that the Board of Directors may not amend or repeal a provision of the bylaws adopted by the stockholders and declared as part of such adoption to be amendable or repealable only by the stockholders. Any adoption, amendment or repeal of the bylaws by the Board of Directors shall require the approval of a majority of the Board of Directors.

(b) The stockholders shall also have the power to adopt, amend or repeal the bylaws, provided that in addition to any vote of the holders of any class or series of stock required by law or this Certificate of Incorporation, if the proposal to adopt, amend or repeal the bylaws has not been approved by the Board of Directors, the affirmative vote of at least two-thirds (2/3) of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, but not less than a majority of such outstanding shares, shall be required for the stockholders to adopt, amend or repeal any provision of the bylaws of the Corporation.

Article Nine

1. Limitations on Transfer.

(a) During the first thirty (30) days following the date stock is first issued by the Corporation to members of Pacific Exchange, Inc., no stockholder (each, an “Initial Stockholder”) shall be permitted to sell, transfer, assign or pledge any shares of stock in the Corporation owned by such stockholder to any other party or parties unless the Board of Directors of the Corporation waives such restriction on sale, transfer, assignment or pledge.

(b) For so long as this Corporation shall control, directly or indirectly, Pacific Exchange, Inc.:

(i) no Person (as defined below) either alone or together with its Related Persons (as defined below), may own, directly or indirectly, of record or beneficially shares of the capital stock (whether common or preferred stock) of this Corporation constituting more than forty percent (40%) of the outstanding shares of any class of capital stock of this Corporation; provided, however, that,

(A) subject to clause (C), below, such restriction shall not apply in the case of any class of preferred stock which shall not have the right by its terms to vote in the election of members of the Board of Directors of the Corporation or on other matters which may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of said class of preferred stock);

(B) subject to clause (C), below, such restriction may be waived by the Board of Directors of this Corporation pursuant to an amendment to the Bylaws adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors adopts a resolution stating that it is the determination of such Board that such amendment will not impair the ability of Pacific Exchange, Inc., to carry out its functions and responsibilities as an “exchange” under the Securities Exchange Act of 1934, as amended, and the rules thereunder, and is otherwise in the best interests of the Corporation and its stockholders and Pacific Exchange, Inc., and will not impair the ability of the United States Securities and Exchange Commission to enforce said Act, and such amendment shall not be effective until approved by said Commission;

(C) notwithstanding clauses (A) and (B), above, in any case where a Person either alone or together with its Related Persons would own more than the above percentage limitation upon consummation of any proposed sale, assignment or transfer of the Corporation’s capital stock, the Board of Directors of the Corporation shall have determined that such Person and its Related Persons are

not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Securities Exchange Act of 1934, as amended);

(D) any Person (and its Related Persons owning any capital stock of the Corporation) which proposes to own, directly or indirectly, of record or beneficially shares of the capital stock (whether common or preferred stock) of this Corporation constituting more than forty percent (40%) of the outstanding shares of any class of capital stock of this Corporation, shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than forty-five (45) days (or any shorter period to which said Board shall expressly consent) before the proposed exercise of said voting rights or the granting of said proxies or consents, of its intention to do so.; and

(ii) no Person, either alone or together with its Related Persons, who is a trading permit holder of Pacific Exchange, Inc., or an equities trading permit holder of PCX Equities, Inc., may own, directly or indirectly, of record or beneficially shares constituting more than twenty percent (20%) of any class of capital stock of this Corporation.

(iii) any Person, either alone or together with its Related Persons, that at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, five percent (5%) or more of the then outstanding shares of capital stock of this Corporation, that has the right by its terms to vote in the election of members of the Board of Directors of the Corporation, shall, immediately upon so owning five percent (5%) or more of the then outstanding shares of

such stock, give the Board of Directors written notice of such ownership of five percent (5%) or more of the then outstanding shares of such stock, which notice shall state:

(1) such Person's full legal name; (2) such Person's title or status and the date on which such title or status was acquired; (3) such Person's approximate ownership interest in the Corporation; and (4) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise.

(iv) each Person required to provide written notice pursuant to subparagraph (b)(iii) of this Paragraph 1(b) shall update such notice promptly after any change therein; provided that no such updated notice shall be required to be provided to the Board of Directors in the event of an increase or decrease of less than one percent (1%) (of the then outstanding shares of any class of capital stock) in the ownership percentage so reported (such increase or decrease to be measured cumulatively from the amount shown on the last such report) unless any increase or decrease of less than one percent (1%) results in such Person so owning more than twenty percent (20%) or more than forty percent (40%) of the shares of any class of capital stock then outstanding (at a time when such Person so owned less than such percentages) or such Person so owning less than twenty percent (20%) or less than forty percent (40%) of the shares of any class of capital stock then outstanding (at a time when such Person so owned more than such percentages).

As used in this Article Nine: the term "Person" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or

unincorporated organization, or any governmental entity or agency or political subdivision thereof; the term “Related Persons” shall mean (i) with respect to any Person, all “affiliates” and “associates” of such Person (as such terms are defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended); (ii) with respect to any Person constituting a trading permit holder of Pacific Exchange, Inc. or an equities trading permit holder of PCX Equities, Inc., any broker or dealer with which such holder is associated; and (iii) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of this Corporation; and the term “beneficially owned” shall have the meaning set forth in Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

(c) For so long as this Corporation shall control, directly or indirectly, Pacific Exchange, Inc., no Person, either alone or together with its Related Persons, at any time, may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock (whether such shares be common stock or preferred stock) of the Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances which would result in the shares of capital stock of the Corporation which shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any

Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation which would, as a result thereof, represent more than twenty percent (20%) of said voting power, except as otherwise permitted by the Board of Directors of the Corporation pursuant to an amendment to the Bylaws adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors shall adopt a resolution stating that it is the determination of such Board that such Person and its Related Persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Securities Exchange Act of 1934, as amended) and that such amendment will not impair the ability of Pacific Exchange, Inc., to carry out its functions and responsibilities as an “exchange” under the Securities Exchange Act of 1934, as amended, and the rules thereunder, and is otherwise in the best interests of the Corporation and its stockholders and Pacific Exchange, Inc., and will not impair the ability of the United States Securities and Exchange Commission to enforce said Act, and such amendment shall not be effective until approved by said Commission. In making the determinations referred to in the immediately preceding sentence, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Securities Exchange Act of 1934, as amended, and the rules thereunder, and the governance of Pacific Exchange, Inc. Any Person (and its Related Persons owning any capital stock of the Corporation) which proposes to exercise voting rights, or grant any proxies or consents with respect to any shares exceeding such twenty percent (20%) limitation shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than forty-five (45) days (or any shorter period to

which said Board shall expressly consent) before the proposed exercise of said voting rights or the granting of said proxies or consents, of its intention to do so.

2. Effect of Purported Transfers in Violation of this Article. If any stockholder purports to vote, or sell, transfer, assign or pledge any shares of the Corporation to any Person other than the Corporation in a transaction that would violate the provisions of this Article Nine, then the Corporation shall record on the books of the Corporation the transfer of only that number of shares that would not violate the provisions of this Article Nine, and shall for all purposes treat the remaining shares as owned by the purported transferor for all purposes, including without limitation, voting, payment of dividends and distributions with respect to shares whether upon liquidation or otherwise. If any stockholder purports to vote, grant any proxy or enter into any other agreement for the voting of shares that would violate the provisions of this Article Nine, then the Corporation shall not honor such vote, proxy or agreement to the extent that such provisions would be violated, and any shares subject thereto shall not be entitled to be voted to the extent of such violation.

3. Right to Redeem Shares Purportedly Transferred in Violation of this Article. If any stockholder purports to vote, or sell, transfer, assign or pledge any shares of the Corporation to any Person, in a transaction that would violate the provisions of this Article Nine, then the Corporation shall have the right, exercisable upon written notice to the holder or holders of record with respect to such shares, to redeem such shares for a price per share equal to the par value thereof, which right shall be exercisable by the Corporation upon the approval of the Board of Directors of the Corporation. Upon any such determination to redeem any such shares, written notice shall be given by the Secretary of the Corporation to the holder or holders of

record with respect to such shares at the address thereof appearing on the books of the Corporation which notice shall specify a date for redemption of the shares which shall be not less than ten (10) days nor more than thirty (30) days from the date of such notice. Any shares which have been so called for redemption shall not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to the holder or holders thereof and a sum sufficient to redeem such shares has been irrevocably deposited or set aside to pay the redemption price to the holder or holders of the shares upon surrender of certificates therefor.

4. Voting and Ownership of Shares by Archipelago Holdings, Inc. and its Related Persons. For as long as Archipelago Holdings, Inc., a Delaware corporation (“Archipelago”), directly owns all of the outstanding capital stock of the Corporation, the provisions of this Article Nine shall not be applicable to the voting and ownership of shares of the capital stock of the Corporation by (i) Archipelago, (ii) any Person which is a Related Person of Archipelago, either alone or together with its Related Persons, and (iii) any other Person to which Archipelago is a Related Person, either alone or together with its Related Persons, except for, in each case of clauses (i), (ii) and (iii) above, Prohibited Persons (as such term is defined below). As used in this Section 4 of this Article Nine, the term “Prohibited Person” means any Person which is, or which has a Related Person which is, (A) an OTP Holder (as such term is defined in the rules of the Pacific Exchange, Inc., as such rules may be in effect from time to time) or an OTP Firm (as such term is defined in the rules of the Pacific Exchange, Inc., as such rules may be in effect from time to time) or (B) an ETP Holder (as such term is defined in the rules of PCX Equities, Inc., as such rules may be in effect from time to time), except for, in each case of clauses (A) and

(B) above, Permitted Persons (as defined below). As used in this Section 4 of this Article Nine, the term “Permitted Person” means: (1) any broker or dealer approved by the United States Securities and Exchange Commission after June 20, 2005 to be a facility (as defined in Section 3(a)(2) of the Exchange Act) of Pacific Exchange, Inc.; (2) any Person approved by the United States Securities and Exchange Commission prior to it becoming subject to the provisions of this Article Nine with respect to voting and ownership of shares by such Person; and (3) any Person which is a Related Person of Archipelago solely by reason of beneficially owning, either alone or together with its Related Persons, less than 20% of the outstanding shares of capital stock of Archipelago. Any other Prohibited Person not covered by the definition of a Permitted Person who would be subject to and exceed the voting and ownership limitations imposed by this Article Nine as of the date of the closing of the transactions contemplated by the agreement and plan of merger, dated as of January 3, 2005, among the Corporation, Archipelago and New Apple Acquisitions Corporation, a Delaware corporation and a wholly-owned subsidiary of Archipelago (as such agreement and plan of merger may be amended or modified from time to time), shall be permitted to exceed such limitations imposed by this Article Nine only to the extent and for the time period approved by the United States Securities and Exchange Commission.

Article Ten

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the

application of any receiver or receivers appointed for this Corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

Article Eleven

The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended. No amendment or repeal of this paragraph shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any act or omission on the part of such director occurring prior to such amendment or repeal.

The private property, whether real or personal, of directors and officers of the Corporation shall not be subject to the payment of corporate debts to any extent whatsoever.

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees or agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification and advancement) through bylaw provisions, agreements with such directors, officers, employees, agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law of the State of Delaware, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders, and others.

Article Twelve

The stockholders shall be entitled to receive, when and if declared by the Board, out of the assets of the Corporation which are by law available therefor, dividends payable in cash, stock or otherwise.

Article Thirteen

Preemptive rights shall not exist with respect to shares of stock or securities convertible into shares of stock of this Corporation.

Article Fourteen

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in any manner now or hereafter permitted by law, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of this Certificate of Incorporation, (a) the affirmative vote of at least 75% of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of

directors, voting together as a single class, but not less than a majority of such outstanding shares, shall be required to amend in any respect or repeal any provision of this Certificate of Incorporation, and (b) for so long as this Corporation shall control, directly or indirectly, Pacific Exchange, Inc., before any amendment to or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, the same shall be submitted to the Board of Directors of Pacific Exchange, Inc. and if said Board shall determine that the same must be filed with or filed with and approved by the United States Securities and Exchange Commission before the same may be effective, under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder by said Commission or otherwise, then the same shall not be effective until filed with or filed with and approved by said Commission, as the case may be.

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SIXTH: This Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the corporation in accordance with Sections 241 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, PCX Holdings, Inc. has caused this certificate to be signed by
its Chairman and Chief Executive Officer and Secretary this __ day of [January], 200[4]5.

[Philip D. DeFeo,]Chairman and Chief
Executive Officer

[Kathryn L. Beck,]Secretary