

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53411; File No. SR-PCX-2006-21)

March 3, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Certificate of Incorporation of PCX Holdings, Inc.

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 3, 2006, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

PCX hereby submits to the Commission a proposed rule change to (x) further extend certain temporary exceptions from the voting and ownership limitations in the certificate of incorporation of PCX Holdings, Inc. (“PCXH”), a Delaware corporation and a parent company of PCX, originally approved by the Commission in an order issued on September 22, 2005 (the “SEC Order”)³ and extended pursuant to certain subsequent rule filings,⁴ so as to allow: (a)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (the “SEC Order”).

⁴ See Securities Exchange Act Release No. 53034 (December 28, 2005), 71 FR 636 (January 5, 2006) (the “First Extension Notice”) and Securities Exchange Act Release No. 53202 (January 31, 2006), 71 FR 6530 (February 8, 2006) (the “Second Extension Notice”).

Archipelago Holdings, Inc. (“Archipelago”), a Delaware corporation and the ultimate parent company of PCXH and PCX, to continue to (i) own Wave Securities, L.L.C. (“Wave”) and (ii) own and operate the ATS Inbound Router Function (as defined below) of Archipelago Trading Services, Inc. (“ATS”) and the Inbound Router Clearing Function (as defined below) of Archipelago Securities, L.L.C. (“Archipelago Securities”); and (b) Gerald D. Putnam, Chairman and Chief Executive Officer of Archipelago (“Mr. Putnam”), to own in excess of 5% of Terra Nova Trading, L.L.C. (“TNT”), in each case until March 31, 2006, and (y) to allow Archipelago Securities to provide certain transition services to Order Execution Services Holdings, Inc. (“OES”) and, in each case of (x) and (y), subject to the conditions set forth in this proposed rule filing.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change 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 III below. PCX 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

a. PCXH Acquisition and the Amendment of the PCXH Certificate of Incorporation

Archipelago operates the Archipelago Exchange (“ArcaEx”), an open, all-electronic stock market for the trading of equity securities that operates as a facility of PCX. On September 26, 2005, Archipelago completed its acquisition of PCXH and all of its wholly-owned subsidiaries,

including PCX and PCXE (the“PCXH Acquisition”). The PCXH Acquisition was accomplished by way of a merger of PCXH with a wholly-owned subsidiary of Archipelago, with PCXH being the surviving corporation in the merger and becoming a wholly-owned subsidiary of Archipelago.

The certificate of incorporation of PCXH (as amended to date, the“PCXH Certificate of Incorporation”) contains various ownership and voting restrictions on PCXH’s capital stock, which are designed to safeguard the independence of the self-regulatory functions of PCX and to protect the Commission’s oversight responsibilities. In order to allow Archipelago to own 100% of the capital stock of PCXH, prior to the completion of the PCXH Acquisition, PCX filed with the Commission a proposed rule change which sought to, among other things, amend the PCXH Certificate of Incorporation to create an exception from the voting and ownership restrictions for Archipelago and certain of its related persons (the“Original Rule Filing”).⁵ The Original Rule Filing, as amended by Amendment Nos. 1 and 2 thereto, was approved by the Commission on September 22, 2005⁶ and the amended PCXH Certificate of Incorporation became effective on September 26, 2005, upon the closing of the PCXH Acquisition.

Article Nine of the PCXH Certificate of Incorporation provides that no Person,⁷ either

⁵ See Pacific Exchange, Inc., Proposed Rule Change Relating to the Certificate of Incorporation of PCX Holdings, Inc., PCX Rules, and Bylaws of Archipelago Holdings, Inc., File No. SR-PCX-2005-90 (August 1, 2005).

⁶ See SEC Order, *supra* note 3.

⁷ ‘Person’ is defined to 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. PCXH Certificate of Incorporation, Article Nine, Section 1(b)(iv).

alone or together with its Related Persons,⁸ may own, directly or indirectly, shares constituting more than 40% of the outstanding shares of any class of PCXH capital stock,⁹ and that no Person, either alone or together with its Related Persons who is a trading permit holder of PCX or an equities trading permit holder of PCXE, may own, directly or indirectly, shares constituting more than 20% of any class of PCXH capital stock.¹⁰ Furthermore, the PCXH Certificate of Incorporation provides that, for so long as PCXH controls, directly or indirectly, PCX, no Person, either alone or with its Related Persons, may directly or indirectly vote or cause the voting of shares of PCXH capital stock or give any proxy or consent with respect to shares representing more than 20% of the voting power of the issued and outstanding PCXH capital stock.¹¹ The

⁸ The term “Related Person,” as defined in the PCXH Certificate of Incorporation, means (i) with respect to any person, all “affiliates” and “associates” of such person (as such terms are defined in Rule 12b-2 under the Act); (ii) with respect to any person constituting a trading permit holder of PCX or an equities trading permit holder of PCXE, any broker 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 PCXH. PCXH Certificate of Incorporation, Article Nine, Section 1(b)(iv).

⁹ PCXH Certificate of Incorporation, Article Nine, Section 1(b)(i). However, such restriction may be waived by the Board of Directors of PCXH pursuant to an amendment to the Bylaws of PCXH 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 PCX to carry out its functions and responsibilities as an “exchange” under the Act and is otherwise in the best interests of PCXH and its stockholders and PCX, and will not impair the ability of the Commission to enforce said Act, and such amendment shall not be effective until approved by said Commission; provided that the Board of Directors of PCXH 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 Act). PCXH Certificate of Incorporation, Article Nine, Sections 1(b)(i)(B) and 1(b)(i)(C).

¹⁰ Id., Article Nine, Section 1(b)(ii).

¹¹ Id., Article Nine, Section 1(c).

PCXH Certificate of Incorporation also places limitations on the right of any Person, either alone or with its Related Persons, to enter into any agreement with respect to the withholding of any vote or proxy.¹²

PCX proposed and the Commission approved an exception from the ownership and voting limitations described above to add a new paragraph at the end of Article Nine of the PCXH Certificate of Incorporation, which provides that for so long as Archipelago directly owns all of the outstanding capital stock of PCXH, these ownership and voting limitations shall not be applicable to the ownership and voting of shares of PCXH 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.¹³ These exceptions to the ownership and voting limitations, however, shall not apply to any “Prohibited Persons,”¹⁴ which is defined to mean any Person that is, or that has a Related Person that is (i) an OTP Holder or an OTP Firm (as defined in the rules of PCX)¹⁵ or

¹² Id.

¹³ Id., Article Nine, Section 4.

¹⁴ Id.

¹⁵ PCX rules define an “OTP Holder” to mean any natural person, in good standing, who has been issued an Options Trading Permit (“OTP”) by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities, or has been named as a Nominee. PCX Rule 1.1(q). The term “Nominee” means an individual who is authorized by an “OTP Firm” (a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange’s trading facilities) to conduct business on the Exchange’s trading facilities and to represent such OTP Firm in all matters relating to the Exchange. PCX Rule 1.1(n).

(ii) an ETP Holder (as defined in the rules of PCXE),¹⁶ unless such Person is also a ‘Permitted Person’ under the PCXH Certificate of Incorporation.¹⁷ The PCXH Certificate of Incorporation further provides that any Prohibited Person not covered by the definition of a Permitted Person who is subject to and exceeds the voting and ownership limitations imposed by Article Nine as of the date of the closing of the PCXH Acquisition shall be permitted to exceed the voting and ownership limitations imposed by Article Nine only to the extent and for the time period approved by the Commission.¹⁸

b. Wave

Wave is an introducing broker for Archipelago’s institutional customers and provides such customers with access to ArcaEx and other market centers. Because Wave, a broker-dealer and an ETP Holder of PCXE, is a wholly-owned subsidiary and, consequently, a Related Person, of Archipelago, it falls within the definition of ‘Prohibited Persons’ under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago’s ownership of PCXH would cause Wave, as an ETP Holder, to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation. Therefore, in connection with the PCXH

¹⁶ PCXE rules define an ‘ETP Holder’ to mean any sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an Equity Trading Permit, a permit issued by the PCXE for effecting approved securities transactions on the trading facilities of PCXE. PCXE Rule 1.1(n).

¹⁷ ‘Permitted Person’ is defined to mean: (A) any broker or dealer approved by the Commission after June 20, 2005 to be a facility (as defined in Section 3(a)(2) of the Act) of PCX; (B) any Person that has been approved by the Commission prior to it becoming subject to the provisions of Article Nine of the PCXH Certificate of Incorporation with respect to the voting and ownership of shares of PCXH capital stock by such Person; and (C) any Person that 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 Archipelago capital stock. PCXH Certificate of Incorporation, Article Nine, Section 4.

¹⁸ Id.

Acquisition, PCX requested a temporary exception from the ownership and voting limitations in the PCX Certificate of Incorporation for Archipelago's ownership of Wave until December 31, 2005, subject to the condition that during that interim period Archipelago would continue to maintain and comply with its current information barriers between Wave, on the one hand, and PCX, PCXE and other subsidiaries of Archipelago that are facilities of PCX or PCXE, on the other hand.¹⁹

The Commission approved PCX's rule proposal regarding Wave (the "Original Wave Exception").²⁰ In the SEC Order, the Commission stated that the affiliation of an exchange with one of its members that provides inbound access to the exchange—in direct competition with other members of the exchange—raises potential conflicts of interest between the exchange's regulatory responsibilities and its commercial interests, and the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.²¹ However, noting that the conditions to be imposed during the interim period were designed to mitigate potential conflicts of interest and the potential for unfair competitive advantage, the Commission concluded that it would be appropriate and consistent with the Act to allow a limited, temporary exception for Archipelago to continue its ownership of Wave.²² In granting the approval for the Original Wave Exception,

¹⁹ See Original Rule Filing, *supra* note 5, at 36-37, and Amendment No. 2 to the Original Rule Filing (September 16, 2005) ("Amendment No. 2"), at 4.

²⁰ See SEC Order, *supra* note 3, at 56960.

²¹ *Id.* at 56959.

²² *Id.*

the Commission also noted that in addition to being a member of PCX, Wave is a member of the National Association of Securities Dealers, Inc. (NASD), a self-regulatory organization (‘SRO’) not affiliated with Archipelago, and the NASD has been designated by the Commission as the ‘Designated Examining Authority’ for Wave pursuant to Rule 17d-1 of the Act.²³ Furthermore, during the interim period, Wave would continue to be covered by the scope of an agreement between NASD and PCX, which was entered into pursuant to Rule 17d-2 under the Act²⁴ (the ‘17d-2 Agreement’) and provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including Wave.²⁵

In accordance with the terms of the Original Wave Exception, Archipelago has been working to sell its ownership interests in Wave. Due to uncertainties in the timing of the negotiations regarding the sale, on December 19, 2005, the Exchange submitted a proposed rule filing (the ‘Original Extension Rule Filing’) requesting an extension of the Original Wave Exception to January 31, 2006, subject to the same conditions as applied to the Original Wave

²³ Id. Pursuant to Rule 17d-1 under the Act, where a member of the Securities Investor Protection Corporation is a member of more than one SRO, the Commission shall designate to one of such organizations the responsibility of examining such member for compliance with the applicable financial responsibility rules. In making such designation, the Commission shall take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among SROs, and the development of a national market system for the clearance and settlement of securities transactions. 17 CFR 240.17d-1.

²⁴ Rule 17d-2 under the Act provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibilities to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. 17 CFR 240.17d-2.

²⁵ See SEC Order, supra note 3, at 56959.

Exception described above.²⁶ The extension took effect immediately upon the filing of the Original Extension Rule Filing.²⁷ On January 19, 2006, Archipelago entered into a definitive agreement for the sale of Wave to Merrill Lynch.²⁸ The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of certain regulatory approvals. Because of uncertainties in the timing of the regulatory approvals, on January 27, 2006, the Exchange submitted another proposed rule filing (the“Second Extension Rule Filing”) requesting a further extension of the Original Wave Exception to the earlier of (x) the closing date of the merger of Archipelago and the New York Stock Exchange, Inc. (the“Archipelago NYSE Merger”)²⁹ and (y) March 31, 2006, subject to the same conditions as applied to the Original Wave Exception described above.³⁰ The second extension took effect immediately upon the filing of the Second Extension Rule Filing.³¹

c. ATS Inbound Router Function and the Inbound Router Clearing Function

Archipelago currently owns ATS, a wholly owned subsidiary that is a broker-dealer and

²⁶ See Pacific Exchange, Inc., Proposed Rule Change Relating to the Certificate of Incorporation of PCX Holdings, Inc., File No. SR-PCX-2005-139 (December 19, 2005), as amended by Amendment No. 1 thereto (December 23, 2005).

²⁷ See First Extension Notice, *supra* note 4, at 640.

²⁸ Merrill Lynch is neither a Related Person of Archipelago nor a“Prohibited Person”under the PCXH Certificate of Incorporation.

²⁹ The closing of the Archipelago NYSE Merger is currently expected to occur on March 7, 2006.

³⁰ See Pacific Exchange, Inc., Proposed Rule Change Relating to the Certificate of Incorporation of PCX Holdings, Inc., File No. SR-PCX-2006-04 (January 27, 2006).

³¹ See the Second Extension Notice, *supra* note 4, at 6534.

an ETP Holder of PCXE. The business of ATS consists of, among other things, acting as an introducing broker for non-ETP Holder broker or dealer clients for securities traded on ArcaEx (the“ATS Inbound Router Function”). Archipelago Securities, a wholly-owned subsidiary of Archipelago, is a registered broker-dealer, a member of the NASD and an ETP Holder. In addition to its other functions, Archipelago Securities provides clearing functions for trades executed by the ATS Inbound Router Function (the“Inbound Router Clearing Function”).

Because ATS, a broker-dealer and an ETP Holder of PCXE, is a wholly-owned subsidiary and, consequently, a Related Person, of Archipelago, it falls within the definition of ‘Prohibited Persons’ under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago’s ownership of PCXH would cause ATS to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation. Likewise, because Archipelago Securities, a broker-dealer and an ETP Holder of PCXE, is a wholly owned subsidiary and, consequently, a Related Person, of Archipelago, and the approvals of Archipelago Securities set forth elsewhere in the SEC Order were limited in scope and did not include its Inbound Router Clearing Function, it falls within the definition of“Prohibited Persons” under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago’s ownership of PCXH would cause Archipelago Securities to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation.

Therefore, in connection with the PCXH Acquisition, PCX requested a temporary exception from the ownership and voting limitations in the PCXH Certificate of Incorporation for Archipelago’s ownership and operation of the ATS Inbound Router Function and the Inbound Router Clearing Function until the earlier of (i) the closing date of the Archipelago NYSE Merger and (ii) March 31, 2006, subject to the following conditions: (1) the revenues derived by

Archipelago from the ATS Inbound Router Function will not exceed 7% of the consolidated revenues of Archipelago (determined on a quarterly basis); (2) the ATS Inbound Router Function will not accept any new clients following the closing of Archipelago's acquisition of PCXH; and (3) Archipelago will continue to maintain and comply with its current information barrier between the ATS Inbound Router Function on the one hand and PCX, PCXE and the other subsidiaries of Archipelago that are facilities of PCX or PCXE on the other hand.³² The Commission approved PCX's rule proposal regarding the ATS Inbound Router Function and the Inbound Router Clearing Function (the "Original Inbound Router Exception").³³ In the SEC Order, the Commission stated that the affiliation of an exchange with one of its members that provides inbound access to the exchange—in direct competition with other members of the exchange—raises potential conflicts of interest between the exchange's regulatory responsibilities and its commercial interests, and the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.³⁴ However, noting that the conditions to be imposed during the interim period were designed to mitigate potential conflicts of interest and the potential for unfair competitive advantage, the Commission concluded that it would be appropriate and consistent with the Act to allow a limited, temporary exception for Archipelago to continue its ownership of the ATS Inbound Router Function and the Inbound Router Clearing Function.³⁵ In granting the approval for the Original Inbound Router Exception, the Commission also noted that in addition to being a member of PCX, ATS is a member of the NASD and the NASD has been designated

³² See Amendment No. 2, *supra* note 19, at 5-6.

³³ See SEC Order, *supra* note 3, at 56960.

³⁴ *Id.* at 56959.

by the Commission as the “Designated Examining Authority” for ATS pursuant to Rule 17d-1 of the Act.³⁶ Furthermore, during the interim period, ATS would continue to be covered by the scope of the 17d-2 Agreement,³⁷ which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including ATS.³⁸

In accordance with the terms of the Original Inbound Router Exception, Archipelago has been working to sell its ownership interest in the ATS Inbound Router Function. Due to uncertainties in the timing of the negotiations regarding the sale and the uncertainty of the closing date of the Archipelago NYSE Merger, in the Original Extension Rule Filing, as amended by Amendment No. 1 thereto, the Exchange requested an extension of the Original Inbound Router Exception to January 31, 2006, subject to the same conditions as applied to the Original Inbound Router Exception described above.³⁹ The extension took effect immediately upon the filing of Amendment No. 1 to the Original Extension Rule Filing.⁴⁰ On December 23, 2005, Archipelago entered into a definitive agreement for the sale of the ATS Inbound Router Function to OES.⁴¹ The definitive agreement conditions the sale on the satisfaction of a number of closing conditions, including the receipt of NASD and other regulatory approvals. In light of the fact that the sale of the ATS Inbound Router Function was unlikely to be consummated by

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Id.

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Id. See supra note 23 for a description of Rule 17d-1 under the Act.

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See supra note 24.

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See SEC Order, supra note 3, at 56959.

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See the Original Extension Rule Filing, supra note 26, at 13-14.

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See the First Extension Notice, supra note 4, at 640.

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OES is neither a Related Person of Archipelago nor a “Prohibited Person” under the PCXH Certificate of Incorporation.

January 31, 2006, in the Second Extension Rule Filing, the Exchange requested that the Original Inbound Router Exception be further extended to the earlier of (x) the closing date of the Archipelago NYSE Merger and (y) March 31, 2006, subject to the same conditions as applied to the Original Inbound Router Exception described above.⁴² The extension took effect immediately upon the filing of the Second Extension Rule Filing.⁴³

d. TNT

TNT is a wholly owned subsidiary of TAL Financial Services, LLC (“TAL”) and Mr. Putnam indirectly owns a 40% interest in TAL. Accordingly, Mr. Putnam indirectly owns in excess of 5% of TNT. The management committee of TAL performs on behalf of TNT the functions usually associated with a board of directors and executive committee of a corporation. Mr. Putnam is one of the five members of the TAL management committee. Because TNT, a broker-dealer and an ETP Holder of PCXE, is a Related Person of Archipelago by virtue of Mr. Putnam’s ownership of in excess of 5% of TNT and service as a member of the management committee of TAL, it falls within the definition of “Prohibited Persons” under the PCXH Certificate of Incorporation. Consequently, absent an exception, Archipelago’s ownership of PCXH would cause TNT to exceed the voting and ownership limitations imposed by Article Nine of the PCXH Certificate of Incorporation. Therefore, in connection with the PCXH Acquisition, the Commission approved the Exchange’s request for a temporary exception for Mr. Putnam to continue to own in excess of 5% of TNT and continue to serve as a director of TAL until December 31, 2005 (the “Original TNT Exception”).⁴⁴ In the SEC Order, the Commission

⁴² See the Second Extension Rule Filing, supra note 30, at 11-14.

⁴³ See the Second Extension Notice, supra note 4, at 6534.

⁴⁴ See SEC Order, supra note 3, at 56960-61.

stated that it believes that such a temporary exception is appropriate and consistent with the Act because it will eliminate the affiliation between TNT and Archipelago but allow Mr. Putnam a reasonable amount of time to effectuate such actions necessary to eliminate the affiliation.⁴⁵

Mr. Putnam has been working to eliminate the affiliation with TNT. In light of the fact that the sale of Mr. Putnam's interest in TNT was unlikely to be consummated by December 31, 2005, in the Original Extension Rule Filing, as amended by Amendment No. 1 thereto, the Exchange also requested an extension of the Original TNT Exception to January 31, 2006.⁴⁶ The extension took effect immediately upon the filing of Amendment No. 1 to the Original Extension Rule Filing.⁴⁷ In the Second Extension Rule Filing, the Exchange requested that the Original TNT Exception be further extended to the earlier of (x) the closing date of the Archipelago NYSE Merger and (y) March 31, 2006.⁴⁸ The extension took effect immediately upon the filing of the Second Extension Rule Filing.⁴⁹

e. Further Extensions of the Temporary Exceptions

i. Wave

Since the execution of the definitive agreement with Merrill Lynch regarding the sale of Wave, Archipelago has been working to complete the sale as soon as possible upon satisfaction of the closing conditions contemplated by the agreement. It is unlikely that the sale will be completed before the expected closing date of the Archipelago NYSE Merger because of the regulatory approvals required in order to complete the transaction. Such approvals, however, are

⁴⁵ Id. at 56960.

⁴⁶ See the Original Extension Rule Filing, supra note 26, at 15-16.

⁴⁷ See the First Extension Notice, supra note 4, at 640.

⁴⁸ See the Second Extension Rule Filing, supra note 30, at 14-15.

⁴⁹ See the Second Extension Notice, supra note 4, at 6534.

currently expected to be received by early March 2006 and Archipelago would then close the sale as soon as practicable thereafter. To that end, the Exchange hereby proposes to further extend the Original Wave Exception to March 31, 2006, subject to the same conditions as applied to the Original Wave Exception described above. In requesting such extension, Archipelago and the Exchange note that the NASD is the “Designated Examining Authority” for Wave pursuant to Rule 17d-1 of the Act. Furthermore, during the interim period, Wave would continue to be covered by the scope of the 17d-2 Agreement, which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including Wave. Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original Wave Exception and the Original Wave Extension outlined above, while allowing Archipelago to complete the sale of Wave.

ii. ATS Inbound Router Function and the Inbound Router Clearing Function

Since the execution of the definitive agreement with OES regarding the sale of the ATS Inbound Router Function, Archipelago has been working to complete the sale as soon as possible upon satisfaction of the closing conditions contemplated by the agreement. It is unlikely that the sale will be completed before the expected closing date of the Archipelago NYSE Merger because of the regulatory approvals required in order to complete the transaction. Such approvals, however, are currently expected to be received by early March 2006 and Archipelago would then close the sale as soon as practicable thereafter. To that end, the Exchange hereby proposes to further extend the Original Inbound Router Exception to March 31, 2006, subject to the same conditions as applied to the Original Inbound Router Exception described above. In requesting such extension, Archipelago and the Exchange note that the NASD is the “Designated

Examining Authority' for ATS pursuant to Rule 17d-1 of the Act. Furthermore, during the interim period, ATS would continue to be covered by the scope of the 17d-2 Agreement, which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including ATS. Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original Inbound Router Exception and the Original Inbound Router Extension outlined above, while allowing Archipelago to complete the sale of the ATS Inbound Router Function.

iii. TNT

Since the approval of the Original TNT Exception, Mr. Putnam has been working in good faith to sell his interest in TNT to at or below the 5% level. In light of the fact that the sale of Mr. Putnam's interest in TNT is unlikely to be consummated before the expected closing date of the Archipelago NYSE Merger, the Exchange hereby proposes to extend the Original TNT Exception to March 31, 2006, subject to the following conditions which shall apply during that period. First, Mr. Putnam shall resign as a member of the management committee of TAL. Second, Mr. Putnam shall continue to abstain, as he has abstained in the past, from directing the respective day-to-day operations of TAL or TNT or otherwise participating in the respective management or businesses of TAL or TNT. Third, Mr. Putnam shall not exercise any voting rights with respect to any equity interests of TAL or in excess of 5% of voting rights with respect to TNT. The second and third conditions, however, shall be subject to the following exception: Mr. Putnam shall be permitted to act or vote in a manner otherwise prohibited by such condition if Mr. Putnam's action or exercise of voting rights would be necessary to approve and consummate the sale of Mr. Putnam's interest in TNT in accordance with the foregoing.

In requesting such extension, Archipelago and the Exchange note that the NASD is the ‘Designated Examining Authority’ for TNT pursuant to Rule 17d-1 of the Act. Furthermore, during the interim period, TNT would continue to be covered by the scope of the 17d-2 Agreement, which provides for a plan concerning the regulatory responsibilities of NASD with respect to certain members of PCX, including TNT. Archipelago and the Exchange believe that this extension would be in keeping with the policy justifications for the Original TNT Exception and the Original TNT Extension outlined above, while allowing Mr. Putnam a reasonable amount of time to effectuate the actions necessary to eliminate the affiliation between TNT and Archipelago.

iv. Inbound Router Transition Services

In connection with the sale of the ATS Inbound Router Function to OES, in order to ensure the successful integration of the ATS Inbound Router Function into OES and to maintain consistency in customer services, Archipelago has agreed to provide certain transition services to OES. Specifically, Archipelago Securities will continue to provide clearing functions for trades executed by existing customers of the ATS Inbound Router Function for a period of 90 days after the sale of the ATS Inbound Router Function to OES (the ‘Inbound Router Transition Services’). As described in Item 3.1.c, because Archipelago Securities is a broker-dealer and an ETP Holder of PCXE, it is deemed a Related Person of Archipelago under the PCXH Certificate of Incorporation. Because the exceptions granted in the SEC Order and the exceptions requested elsewhere in this rule filing with respect to Archipelago Securities are limited in scope, absent a specific exception for the Inbound Router Transition Services, Archipelago Securities would fall within the definition of ‘Prohibited Persons’ under the PCXH Certificate of Incorporation. Therefore, the Exchange hereby requests the Commission’s approval of a temporary exception for

Archipelago Securities, who would be subject to and exceed the ownership and voting limitations imposed by the PCXH Certificate of Incorporation, so that Archipelago Securities would be permitted to exceed such limitations to the following extent and for the following time period: Archipelago Securities may, for a period of up to 90 days following the closing of the sale of the ATS Inbound Router Function to OES, provide the Inbound Router Transition Services to OES, subject to the condition that Archipelago Securities may only provide such services to existing customers of the ATS Inbound Router Function.

2. Statutory Basis

The Exchange believes that the proposed rule change in this filing is consistent with Section 6(b)⁵⁰ of the Act, in general, and furthers the objectives of Section 6(b)(1),⁵¹ in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5),⁵² in particular, because the rules summarized herein would create a governance and regulatory structure with respect to the operation of the equities and options business of PCX that is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

⁵⁰ 15 U.S.C. 78f(b).

⁵¹ 15 U.S.C. 78f(b)(1).

⁵² 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities; and 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

III. 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 Number SR-PCX-2006-21 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-2006-21. 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 such filing also will be available for inspection and copying at the principal office of the PCX. 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-2006-21 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Discussion of Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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.⁵³ In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,⁵⁴ which requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules or regulations thereunder, and the rules of the exchange. The Commission also finds that the

⁵³ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁴ 15 U.S.C. 78f(b)(1).

proposal is consistent with Section 6(b)(5) of the Act,⁵⁵ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Pursuant to Section 19(b)(2) of the Act,⁵⁶ the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice thereof in the Federal Register pursuant to Section 19(b)(2) of the Act.⁵⁷

The Commission believes that the requested extensions for Wave, the ATS Inbound Router Function and the Inbound Router Clearing Function are consistent with the terms and conditions set forth in the SEC Order originally approving such exceptions on a temporary basis and the subsequent extensions of such exceptions, and, as such, do not raise any new or novel issues. The Commission notes that: (1) the requested extensions are limited in duration; (2) Archipelago has entered into definitive agreements for the sale of Wave and the ATS Inbound Router Function; and (3) the Exchange expects that such transactions will close in early March, but may not have closed prior to March 7, 2006, the anticipated closing date of the Archipelago NYSE Merger.⁵⁸ Because the current exceptions are set to expire the earlier of (i) the closing date of the Archipelago NYSE Merger and (ii) March 31, 2006, the Commission believes that

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78s(b)(2).

⁵⁷ Id.

permitting PCX to extend the exceptions for Wave, the ATS Inbound Router Function and the Inbound Router Clearing Function until March 31, 2006 will permit Archipelago to avoid disruption of the operation of the services currently provided.

The current exception with respect to Mr. Putnam's ownership of TNT also is set to expire the earlier of (i) the closing date of the Archipelago NYSE Merger (which is intended to close on March 7, 2006) and (ii) March 31, 2006. The Exchange represents that, although Mr. Putnam has been working in good faith to reduce his stake in TNT, he will not be able to complete the sale of his interest in TNT before the expiration of the current exception. Thus, absent an extension, TNT would be in violation of the PCXH ownership and voting limitations. The Commission believes that the requested extension to permit Mr. Putnam to continue to own in excess of 5% of TNT until March 31, 2006, subject to certain conditions, is consistent with the Act and finds good cause to accelerate approval of such proposed rule change. The Commission notes that the extension is limited in scope and duration and is subject to certain conditions that will apply during the extension period. Specifically, Mr. Putnam shall: (1) resign as a member of the management committee of TAL; (2) continue to abstain from directing the day-to day operations of TAL or TNT or otherwise participate in the day to day operations of TAL or TNT; and (3) not exercise any voting rights with respect to any equity interests of TAL or in excess of 5% of voting rights with respect to TNT. The Commission believes that these conditions should serve to limit the potential for conflicts of interest during the interim period.

The Commission also believes that the requested exception to allow Archipelago Securities to provide certain transition services to OES for a period of 90 days after the sale of

⁵⁸ See supra note 29.

the Inbound Router Function to OES, subject to the condition that Archipelago Securities may only provide such services to existing customers of the ATS Inbound Router Function, is consistent with the Act and the protection of investors and the public interest in that the provision of such services would facilitate the sale of the ATS Inbound Router Function and provide customers continuity of service during the transition period following such sale.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act the rules and regulations thereunder, and finds that good cause exists to accelerate approval of the proposed rule change, pursuant to Section 19(b)(2) of the Act.⁵⁹

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶⁰ that the proposed rule change (SR-PCX-2006-21) is approved on an accelerated basis. Specifically, Archipelago may continue to own Wave, and may continue to own and operate the ATS Inbound Router Function and the Inbound Router Clearing Function, until March 31, 2006, subject to the conditions described above; Mr. Putnam may continue to own in excess of 5% of TNT until March 31, 2006, subject to the conditions described above; and Archipelago Securities may provide transition services to OES as described above, subject to the conditions described above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶¹

Jill M. Peterson
Assistant Secretary

⁵⁹ Id.

⁶⁰ Id.

⁶¹ 17 CFR 200.30-3(a)(12).

