

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53526; File No. SR-PCX-2006-19)

March 21, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (Now Known As NYSE Arca, Inc.);
Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2
Thereo Relating to Rebates and Credits a Market Maker is Eligible to Receive for Executions
That Result From Principal Acting as Agent Orders Sent to and Executed at Away Market
Centers

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”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule
change as described in Items I, II and III below, which Items were prepared by the PCX. On
March 15, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”)³ filed Amendment No. 1 to
the proposed rule change. On March 16, 2006, the Exchange withdrew Amendment No. 1 and
filed Amendment No. 2 to the proposed rule change.⁴ The Exchange has designated this
proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 6, 2006, the PCX filed a proposed rule change (SR-PCX-2006-24) to amend its rules to reflect the following name changes: (i) from PCX to NYSE Arca; (ii) from PCX Equities, Inc. to NYSE Arca Equities, Inc.; (iii) from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and (iv) from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. That proposed rule change became effective upon filing. Amendment No. 2 to the instant proposed rule change reflects these name changes. The Exchange states that it plans to subsequently file a proposed rule change to update such names in its Schedule of Rates and Charges (“Schedule”).

⁴ In Amendment No. 2, the Exchange made clarifying and technical changes to the original filing and added a provision in the Schedule that requires Market Makers to reimburse the Exchange for any excessive credits received by such Market Makers.

organization pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2) thereunder,⁶ which renders the proposal effective upon filing with the Commission.⁷ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its Schedule to create a credit associated with the fees that a Market Maker is charged for executions that result from principal acting as agent orders sent to and executed at away market centers. The Exchange also proposes to make a minor housekeeping correction to footnote 2 under the Trade Related Charges section of the Schedule. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange's Web site (<http://www.archipelago.com/regulation/filings.asp>) and at the Exchange's Office of the Secretary.

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. 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.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on March 16, 2006, the date on which the Exchange filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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

1. Purpose

The Exchange proposes to amend the Schedule in order to create a credit associated with the fees a Market Maker is charged for executions that result from principal acting as agent orders sent to and executed at away market centers.

Presently, the Exchange charges Market Makers a \$0.26 per contract fee for all transactions. On transactions that result when principal acting as agent orders are sent to and executed at away market centers, the Exchange presently rebates to the Market Maker the transaction fee of \$0.26. The Exchange believes that this rebate is warranted due to the fact a Market Maker acting in this capacity is doing so on behalf of public customer orders and receives no beneficial gain from the transaction. The rebate of the Exchange transaction fee of \$0.26 covers the fees assessed by the Exchange on these trades; it does not cover additional costs a Market Maker incurs in connection with executing the trade. In addition to the Exchange transaction fee, a Market Maker must pay a transaction fee at the away exchange and clearing costs associated with the trade.

To help offset the additional costs associated with principal acting as agent orders that are sent to and executed at away market centers, the Exchange proposes to credit Exchange Market Makers \$0.26 per contract on these transactions. This credit will be in addition to the \$0.26 rebate the Exchange rebates market Makers for these trades. The new \$0.26 credit is designed to offset additional costs associated with sending orders away and might not cover all costs associated with these types of trades. In the event that the total amount the Exchange credits a Market Maker for sending orders away is in excess of the total actual expenses incurred in sending the orders away, the Exchange would be entitled to a reimbursement of the excess

credits.⁸ Market Maker expenses associated with sending orders away to other market centers will be based on the total aggregate expenses incurred during a calendar month.

In a previous filing (SR-PCX-2006-15),⁹ the PCX eliminated the On Line Comparison fee associated with Market Maker transactions. A reference to that comparison fee was left inadvertently in the footnote attached to the Market Maker transaction fee. The Exchange now proposes to remove this reference to reconcile the footnote with the previously effective filing. Removing the reference to the comparison fee at this time will make no substantive change to the Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and Section 6(b)(4) of the Act¹¹ in particular, in that it provides for the equitable allocation of dues, fees and other charges among its OTP Firms, OTP Holders and other persons using its facilities for trading option contracts.

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

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

⁸ The Commission notes that the transaction fees charged by away market centers for principal acting as agent orders executed on away markets are pursuant to pilot programs scheduled to expire on July 31, 2006.

⁹ That proposed rule change was filed with the Commission on February 23, 2006 and became effective upon filing. See Securities Exchange Act Release No. 53485 (March 14, 2006).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 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 neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and paragraph (f)(2) of Rule 19b-4 thereunder¹³ because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-19 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ See supra note 7.

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-2006-19. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-PCX-2006-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).