

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54282; File No. SR-PCX-2005-54)

August 8, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Requiring OTP Holders and OTP Firms to Participate in the Federal Trade Commission's National Do-Not-Call Registry

On August 15, 2005, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) ("NYSE Arca")<sup>1</sup> filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed amendment to NYSE Arca Rule 9.20. On May 26, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On June 22, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The proposed rule change, as amended, was published for comment in the Federal Register on July 10, 2006.<sup>6</sup> The

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<sup>1</sup> On March 6, 2006, the Pacific Exchange, Inc. filed a rule proposal, effective upon filing, to amend its rules to reflect these name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; 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).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, NYSE Arca partially amended the text of proposed amended NYSE Arca Rule 9.20 and made conforming and technical changes to the original filing.

<sup>5</sup> In Amendment No. 2, NYSE Arca made additional changes to the text of proposed amended NYSE Arca Rule 9.20 and to the original filing.

<sup>6</sup> See Securities Exchange Act Release No. 54078 (June 30, 2006), 71 FR 38953 (July 10, 2006) (this notice listed incorrect filing dates for the initial proposal and Amendment No. 2).

Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The proposed amendment to NYSE Arca Rule 9.20 would replace the current text of Rule 9.20(b) with text that would require OTP Holders and OTP Firms to participate in the national do-not-call registry maintained by the Federal Trade Commission (“FTC”) and to follow applicable regulations of the Federal Communications Commission (“FCC”). The proposed amendment would make Rule 9.20(b) consistent with NYSE Rule 404A and requirements of FCC regulations applicable to broker-dealers engaged in telemarketing by including provisions concerning general telemarketing requirements, procedures, wireless communications, outsourcing telemarketing, pre-recorded messages, telephone facsimile or computer advertisements and caller identification. The amended rule would generally prohibit OTP Holders and OTP Firms, and their associated persons, from making telemarketing calls to people who have registered with the national do-not-call registry. The amended rule also would set forth firm-specific do-not-call restrictions, time-of-day restrictions, and disclosure requirements similar to those contained in the current rule.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things,

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<sup>7</sup> In approving this proposed rule change, the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, is designed to accomplish these ends by requiring OTP Holders and OTP Firms, and their associated persons, to observe time-of-day restrictions on telephone solicitations, maintain firm-specific do-not-call lists, and refrain from initiating telephone solicitations to investors and other members of the public who have registered their telephone numbers on the national do-not-call registry. The Commission also believes that the proposed rule change, as amended, establishes adequate procedures to prevent OTP Holders and OTP Firms, and their associated persons, from making telephone solicitations to do-not-call registrants, which should have the effect of protecting investors by enabling persons who do not want to receive telephone solicitations from members or member organizations to receive the protections of the national do-not-call registry, while providing appropriate exceptions to the rule's restrictions, which should promote just and equitable principles of trade.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-PCX-2005-54), as amended, be and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris  
Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).