

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-53545; File No. SR-NYSEArca-2006-06)**

**March 23, 2006**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Extending the Time Period By Which the Exchange Will Amend the NASD-PCX Agreement Pursuant to Rule 17d-2**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 21, 2006, NYSE Arca, Inc. (“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 the Exchange. On March 23, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Exchange revised the statutory basis section of the filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The Exchange has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b-4(f)(6)(iii).

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

The Exchange is proposing to amend its undertaking<sup>7</sup> to extend for 90 days from the date of this filing the time period by which the Exchange will amend and restate the agreement between the National Association of Securities Dealers, Inc. (“NASD”) and the Exchange currently in place pursuant to Rule 17d-2 under the Act<sup>8</sup> (the “NASD-PCX Agreement” or the “Agreement”). As described in more detail below, the revisions to the NASD-PCX Agreement will expand the scope of the NASD’s regulatory responsibility.

**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 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**

On September 22, 2005, the Commission approved a proposed rule change submitted by the Exchange relating to the acquisition of PCX Holdings, Inc. (now known as NYSE Arca Holdings, Inc.)<sup>9</sup> by Archipelago Holdings, Inc.<sup>10</sup> In that filing, the Exchange (formerly known as

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<sup>7</sup> See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (approving SR-PCX-2005-90, as amended).

<sup>8</sup> 17 CFR 240.17d-2. See Securities Exchange Act Release No. 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (File No. 4-267).

<sup>9</sup> See SR-PCX-2006-24.

the Pacific Exchange, Inc.) committed to amend the NASD-PCX Agreement within 90 days of the Commission's approval of SR-PCX-2005-90 to expand the scope of the NASD's regulatory functions under the NASD-PCX Agreement so as to encompass all of the regulatory oversight and enforcement responsibilities with respect to the broker-dealer affiliate of Archipelago Holdings, Inc., Archipelago Securities, L.L.C. ("Archipelago Securities").<sup>11</sup> The Exchange submitted a subsequent filing on December 21, 2005 requesting a 90-day extension with respect to the requirements discussed above.<sup>12</sup> The Exchange and the NASD (collectively, the "Parties") have executed an amended and restated agreement and, on January 20, 2006, the Parties filed the amended and restated agreement with the Commission but have not yet received Commission approval of the amended and restated agreement.

The Exchange believes that an extension of time for an additional 90 days from the date of this filing to amend the NASD-PCX Agreement will give the Commission staff sufficient time to publish and take action on the proposal. There is currently a plan in place (i.e., the NASD-PCX Agreement) allocating to the NASD the responsibility to receive regulatory reports from Archipelago Securities, to examine Archipelago Securities for compliance and to enforce compliance by Archipelago Securities with the Act, the rules and regulations thereunder and the rules of the NASD, and to carry out other specified regulatory functions with respect to Archipelago Securities. The Exchange notes that the current NASD-PCX Agreement will

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<sup>10</sup> See Securities Exchange Act Release No. 52497, supra note 7.

<sup>11</sup> Archipelago Securities acts as the outbound order router for the NYSE Arca Marketplace and, as such, is regulated as an exchange "facility" of the Exchange and NYSE Arca Equities, Inc.

<sup>12</sup> See Securities Exchange Act Release No. 52995 (December 21, 2005), 70 FR 77232 (December 29, 2005) (notice of filing and immediate effectiveness of SR-PCX-2005-140, as amended). This 90-day extension period expired on March 21, 2006.

remain in full force and effect during the interim period, and the Exchange will continue to abide by the terms of the agreement. The Exchange believes, therefore, that the requested extension of time is consistent with the Act and the rules and regulations thereunder, and will not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

## **2. Statutory Basis**

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)<sup>13</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>14</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

**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, as amended, were neither solicited nor received by the Exchange.

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

Because the foregoing rule: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,<sup>15</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

The Exchange has requested that the Commission waive the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Because the current time period expired on March 21, 2006, such waiver will allow the Exchange to remain in compliance with its undertaking made in connection with the Commission’s approval of SR-PCX-2005-90 to amend the NASD-PCX Agreement. The Commission notes that the Exchange has filed with the Commission, on January 20, 2006, an

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<sup>15</sup> Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

executed amended and restated agreement. Extending the compliance date for the Exchange's undertaking by an additional 90 days will provide time for the Exchange to respond to any comments from the Commission's staff on the amended and restated agreement, as well as provide time for publication of, and action on, the amended and restated agreement. The Commission further notes that the current Commission-approved NASD-PCX Agreement will remain in full force and effect during the interim period, and the Exchange will continue to abide by the terms of that Agreement. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>18</sup>

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.<sup>19</sup>

#### **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

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<sup>18</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 23, 2006, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number NYSEArca-2006-06 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 NYSEArca-2006-06. 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 the filing also will be available for inspection and copying at the principal office of 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 NYSEArca-2006-06 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.<sup>20</sup>

Nancy M. Morris  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).