

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49466; File No. SR-PCX-2004-21)

March 24, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4² thereunder, notice is hereby given that on March 11, 2004, 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 have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Pacific Exchange, Inc., through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), proposes to amend its fee schedule for services provided to ETP Holders³ and Sponsored Participants⁴ that use the Archipelago Exchange (“ArcaEx”) by: (1) imposing a per-share transaction fee of \$0.001 for round lot orders for NYSE listed securities that take liquidity from the ArcaEx Book, and (2) reducing the per-share transaction fee for round lot orders for NYSE listed securities routed outside the ArcaEx Book from \$0.004 to \$0.001. The fee schedule will remain unchanged for NYSE round lot orders residing in the ArcaEx Book that execute against inbound orders, NYSE odd lots, NYSE Cross Orders and credits, NASDAQ, Amex and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See PCXE Rule 1.1(n) (defining “ETP Holder”).

⁴ See PCXE Rule 1.1(tt) (defining “Sponsored Participant”).

other Tape B listed stocks. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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**SCHEDULE OF FEES AND CHARGES
FOR EXCHANGE SERVICES**

ARCHIPELAGO EXCHANGE: TRADE RELATED CHARGES

EXCHANGE TRANSACTIONS

ETP Holders and Sponsored Participants¹

Round Lots

<u>NYSE Listed Securities</u>	[No transaction fee for orders executed in the Book] No transaction fee for orders executed in the Book against inbound orders <u>\$0.001 per share for orders that take liquidity from the Book</u> <u>\$0.001 per share for orders routed outside the Book</u>
Listed Securities (except NYSE Listed Securities)	\$0.003 per share (applicable to inbound orders executed against orders residing in the Book)
Nasdaq Securities	\$0.003 per share (applicable to inbound orders executed against orders residing in the Book)
Routing Service	\$0.004 per share (applicable to orders in listed, <u>except NYSE Listed Securities</u> , and Nasdaq securities routed away and executed by another market center or participant)

¹These transaction fees do not apply to: (1) Directed Orders, regardless of account type, that are matched within the Directed Order Process; (2) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the Directed Order, Display Order,

Working Order, and Tracking Order processes (however, any unfilled or residual portion of a retail customer's order that is routed away and executed by another market center or participant will incur this transaction fee); (3) orders executed in the Opening Auction and the Market Order Auction; (4) Cross Orders; (5) commitments received through ITS; and (6) participants in the Nasdaq UTP Plan that transmit orders via telephone.

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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 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 IV below. The 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

The PCX proposes to modify the per-share round lot transaction fees for NYSE listed securities charged to ETP Holders and Sponsored Participants that execute trades on ArcaEx. The PCX currently does not charge ETP Holders or Sponsored Participants a transaction fee when round lot orders in NYSE listed securities entered by the ETP Holder or the Sponsored Participant take liquidity from the ArcaEx Book. The PCX proposes to implement a \$0.001 transaction fee for round lot orders that take liquidity from the ArcaEx Book. The PCX also proposes to reduce the transaction fee it charges for round lot orders in NYSE listed securities routed outside the ArcaEx book to \$0.001 from \$0.004 per share. The rationale for these

changes is to make the pricing for executions on the ArcaEx in NYSE listed securities more competitive.⁵ The PCX evaluated the economics of modifying transaction fees for NYSE listed securities and determined that this was feasible and appropriate, given the costs involved and competitive concerns.

2. Statutory Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,⁶ in general, and Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the

⁵ The PCX believes that the proposed rule change will cause its fees to be more closely comparable to those of its competitors, and states that the reduction in the routing fee will enhance its competitive position. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, Bridget Farrell, Regulatory Analyst, Archipelago Holdings, LLC, and Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Elizabeth MacDonald, Attorney, Division of Market Regulation ("Division"), Commission, March 16, 2004, and telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Terri Evans, Assistant Director, Division, and Elizabeth MacDonald, Attorney, Division, March 22, 2004.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

Act⁸ and subparagraph (f)(2) of Rule 19b-4⁹ thereunder because it changes a fee imposed by the PCX. At any time within 60 days of the filing of such 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.¹⁰

IV. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-PCX-2004-21, and 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, comments may be sent in hard copy or by e-mail, but not by both methods. 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 will also be available for inspection and copying at the principal

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ See 15 U.S.C. 78(b)(3)(C).

office of the PCX. All submissions should refer to File No. SR-PCX-2004-21 and should be submitted by [insert date 21 days after publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).