

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

1. Purpose

In order to encourage greater use of Nasdaq routing facilities, Nasdaq is proposing to reduce its routing fees as follows:

(1) Nasdaq would reduce, from \$0.0015 to \$0.001, the fee per share executed for routing orders in New York Stock Exchange ("NYSE") listed securities to venues other than the NYSE;

(2) Nasdaq would reduce, from \$0.0035 to \$0.003, the fee per share executed for routing orders in securities listed on a venue other than the NYSE and routed to venues other than the American Stock Exchange ("AMEX");

(3) Nasdaq would reduce, from \$0.0035 to \$0.003, the fee per share executed for routing orders in Non-Nasdaq Exchange Traded Funds ("ETFs") to venues other than the NYSE or AMEX.

Finally, Nasdaq is proposing to eliminate the port fee waiver for Nasdaq's INET facility subscribers that for a calendar month average daily execution of orders in the INET system of in excess of 30 million shares of added liquidity. Nasdaq states that this port fee waiver is part of INET's legacy pricing structure and is inconsistent with Nasdaq's integrated pricing structure in which no other system provides such fee waivers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general, and with Section 15A(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. In particular, Nasdaq states that the proposal will reduce routing costs for market participants and more closely unify Nasdaq pricing policies across all of its systems.

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

Nasdaq does not believe that the proposed rule change will result in 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

Nasdaq states that written comments were neither solicited nor received.

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

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.

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. 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-NASD-2006-031 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-NASD-2006-031. 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 NASD. 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-NASD-2006-031 and should be submitted on or before April 13, 2006.

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

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53497; File No. SR-PCX-2005-122]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amending Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal from Registration

March 16, 2006.

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 October 24, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 Exchange.³ On January

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 6, 2006, the Exchange filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect the recent acquisition of PCX by Archipelago Holdings, Inc. ("Archipelago") and the merger of NYSE with Archipelago. See File No. SR-

Continued

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

6, 2006, the Exchange filed Amendent No. 1 to the proposed rule change.⁴ The Commission is publishing this notice and order to solicit comments on the proposal, as amended, from interested persons.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc., proposes to amend its rules governing the NYSE Arca Marketplace, the equities trading facility of NYSE Arca Equities, Inc. With this filing, the Exchange proposes to amend its rules to comply with new requirements under Commission Rule 12d2-2, as amended⁵ ("Rule 12d2-2") promulgated under Section 12(d)⁶ of the Act. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

The following version of Rule 5.4(b) shall remain effective until April 24, 2006: Rule 5.4(b). No changes.

The following version of Rule 5.4(b) shall become effective on April 24, 2006: Rule 5.4(b). An issuer proposing to withdraw a security from listing on the Corporation shall submit to the Corporation a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registrations, [and] a [statement setting forth in detail the reasons] letter from an authorized officer of the issuer providing the specific reasons cited by the board of directors of the issuer for the proposed withdrawal [and the facts in support thereof], and a copy of the Form 25 that the issuer has filed with the Securities and Exchange Commission in accordance with Rule 12d2-2 promulgated under Section 12(d) of the Securities Exchange Act of 1934, as amended, no later than the date of such filing. The issuer may be required, under special circumstances, to submit the proposed withdrawal to the shareholders for their vote at a meeting for which proxies are solicited provided the security is not also listed on another exchange having similar

requirements. *The Corporation, upon receiving written notification of the issuer's intent to withdraw its securities from listing and registration, shall post notice of such intent on the Exchange's website by the next business day and until the delisting becomes effective.*

* * * * *

The following version of Rule 5.5(m) shall remain effective until April 24, 2006: Rule 5.5(m). No changes.

The following version of Rule 5.5(m) shall become effective on April 24, 2006: Rule 5.5(m).

Delisting Procedures

Whenever the Corporation determines that it [is] *may be* appropriate to either suspend dealings in and/or remove securities from listing pursuant to Rule 5.3 or Rule 5.5, except for [other than routine] reasons *specified in subsection (a) of Rule 12d2-2 promulgated under Section 12(d) of the Securities Exchange Act of 1934, as amended* ("Exchange Act Rule 12d2-2") [(e.g., redemptions, maturities, etc.)], or violations of Rule 5.3(k)(5) in which case the Corporation shall initiate delisting a listed company's securities, it will follow, insofar as practicable, the following procedures:

(1) Consideration of Commencement of Delisting Action

(a) The Corporation shall notify the issuer in writing describing the basis on which the Corporation is considering the delisting of the company's security. Such notice shall be sent by certified mail and shall include the time and place of a meeting to be held by the Corporation to hear any reasons why the issuer believes its security should not be delisted. Generally, the issuer will be notified at least three (3) weeks prior to the meeting and will be requested to submit a written response.

[(2)] (b) If, after such meeting, the Corporation determines that the security should be delisted, the Corporation shall notify the issuer [by telephone] *in writing* (if possible, the same day of the meeting) [and in writing] of the delisting decision and the basis thereof. The written notice will also inform the issuer that it may appeal the decision to the Board of Directors and request a hearing.

[(3)] (c) Concurrent with the Corporation's decision to delist the issuer's security, the Corporation will prepare a press announcement, which will be disseminated to the Market Makers and the investing public no later than the opening of trading the business day following the Corporation's decision (the Securities Qualification Department will also distribute the

information to the ETP Holders). Accordingly, the suspension of trading in the issuer's security will become effective at the opening of business on the day following the Corporation's decision.

(2) Appeal Procedures

[(4)] (a) If the issuer requests an appeal hearing, it must file its request along with (i) a \$2,500 delisting appeal fee and (ii) an answer to the causes specified by the Corporation with the Secretary of the Corporation no later than five (5) business days following service of notice of the proposed delisting. If the issuer does not request a hearing within the specified period of time, or it does not submit the \$2,500 fee to the Corporation in the form and manner prescribed, the Corporation will submit an application to the Securities and Exchange Commission to strike the security from list of companies listed on the Corporation. The Corporation will furnish a copy of such application to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated thereunder.

[(5)] (b) If a request for a hearing is made and the requirements of Rule 5.5(m)[(4)](2)(a) are met within the time specified, the issuer will be entitled to an appeal hearing and the Corporation will provide the issuer at least fifteen (15) business days notice of the time and place of the hearing.

[(6)] (c) The hearing shall be held before the Board Appeals Committee appointed by the Board of Directors for such purpose. Only those members of the Board Appeals Committee who attend the hearing may vote with respect to any decisions the Committee may make.

[(7)] (d) Any documents or other written material the issuer wishes to consider should be submitted to the appropriate office of the Corporation at least five (5) business days prior to the date of the hearing.

[(8)] (e) At the hearing, the issuer must prove its case by presenting testimony, evidence, and argument to the Board Appeals Committee. The form and manner in which the actual hearing will be conducted will be established by the Board Appeals Committee so as to assure the orderly conduct of the proceeding. At the hearing, the Board Appeals Committee may require the issuer to furnish additional written information that has come to its attention.

[(9)] (f) After the conclusion of the proceeding, the Board Appeals Committee shall make its decision. The decision of the Board Appeals Committee shall be in writing with one

PCX-2006-24. All references herein have been changed to reflect the aforementioned rule change.

⁴ See letter from David Strandberg, Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 5, 2006 ("Amendment No. 1"). In Amendment No. 1, PCX made changes to its rule text to clarify that the delisting procedures set forth therein apply to instances where the Exchange is considering delisting for reasons other than those set forth in subsection (a) of Rule 12d2-2.

⁵ 17 CFR 240.12d2-2.

⁶ 15 U.S.C. 78s(d).

copy served upon the issuer and the second copy filed with the Secretary of the Corporation. Such decision shall be final and conclusive. *If the decision is that the security should be removed from listing, the Corporation shall follow the procedures set forth below. If the decision is that the security should not be removed from listing, the issuer shall receive a notice to that effect from the Corporation.*

(3) *Public Notice of Delisting Action.* If the final decision is that the security of the issuer is to be removed from listing, then, no fewer than ten (10) days before the delisting becomes effective: (a) an application on Form 25 shall be submitted by the Corporation to the Securities and Exchange Commission to strike the security from listing and registration in accordance with Exchange Act Rule 12d2-2, [and] (b) a copy of such application shall be provided to the issuer in accordance with [Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated thereunder] Exchange Act Rule 12d2-2, and (c) public notice of the Corporation's final determination to delist the security shall be made via a press release and posting on the Corporation's website until the delisting is effective. [If the decision is that the security should not be removed from listing, the issuer shall receive a notice to that effect from the Corporation.]

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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 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, as amended. 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

NYSE Arca Equities Rule 5.4(b) sets forth the Exchange procedures that apply when an issuer proposes to withdraw a security from listing on the Exchange. Rule 5.5(m) provides the applicable procedures when the Exchange considers removing securities from listing. The Exchange proposes to

amend NYSE Arca Equities Rule 5.4(b) and NYSE Arca Equities Rule 5.5(m) to comply with new requirements under Rule 12d2-2 and to otherwise clarify the Exchange's withdrawal and delisting procedures. The Exchange will implement the proposed rule change immediately upon approval by the Commission.

The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to comply with new requirements under Rule 12d2-2 relating to voluntary delistings by issuers.⁷ Specifically, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to provide that an issuer proposing to withdraw a security from listing on the Exchange shall submit to the Exchange a copy of the Form 25 that the issuer has filed with the Commission in accordance with Rule 12d2-2 no later than the date of such filing. Further, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to provide that the Exchange, upon receiving notification by an issuer of its intent to withdraw its securities from listing and registration, will post notice of such intent on the Exchange's Web site by the next business day and will continue to post the notice until the delisting becomes effective.

In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to clarify that the issuer, when proposing to withdraw its securities from listing and registration, must submit to the Exchange a "letter from an authorized officer of the issuer providing the specific reasons cited by the board of directors of the issuer for the proposed withdrawal," rather than a "statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof." The Exchange wishes to make this clarification because it has received several inquiries from issuers on this particular part of the rule.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.5(m) to comply with new requirements under Rule 12d2-2 relating to the delisting procedures that apply when the Exchange determines that it may be appropriate to remove securities from listing.⁸ Specifically, the Exchange proposes new Rule 5.5(m)(3) to provide that, in the event the Exchange makes a final decision to remove the security of an issuer from listing, the Exchange will take the following actions, no fewer than ten (10) days before the delisting becomes effective: (i) An application on Form 25 will be submitted by the

Exchange to the Commission to strike the security from listing and registration in accordance with Rule 12d2-2; (ii) a copy of such application will be provided to the issuer in accordance with Rule 12d2-2; and (iii) public notice of the Exchange's final determination to delist the security will be made via a press release and posting on the Exchange's website until the delisting is effective. In connection with this proposed change, the Exchange also proposes to make reference to the above public notice procedures in the appeal procedures discussion in new NYSE Arca Equities Rule 5.5(m)(2)(f).

The Exchange also proposes to amend NYSE Arca Equities Rule 5.5(m) to make certain clarifications. In the introductory paragraph of the Rule, the Exchange proposes to clarify that the delisting procedures set forth therein apply to instances where the Exchange is considering delisting for reasons other than those set forth in subsection (a) of Rule 12d2-2. In addition, the Exchange proposes to include headings in the Rule that clarify that the delisting procedures apply: (i) When the Exchange is considering commencement of delisting action, (ii) when an issuer chooses to appeal the Exchange's initial determination and, (iii) when the Exchange takes final delisting action. In addition, the Exchange proposes to clarify in NYSE Arca Equities Rule 5.5(m)(1)(b) that the Exchange, when considering commencement of delisting action, will notify the issuer in writing, if possible, the same day of the meeting, rather than by telephone. The Exchange proposes this clarification because it is in accordance with the Exchange's current practices.

2. Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)⁹ of the Act, in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and 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

⁷ Rule 12d2-2(c)(2)(iii) and (c)(3).

⁸ Rule 12d2-2(b).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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, as amended, were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2005-122 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-2005-122. 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 offices of the NYSE Arca, Inc. 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-2005-122 and should be submitted on or before April 13, 2006.

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

Nancy M. Morris,
Secretary.

[FR Doc. E6-4182 Filed 3-22-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53518; File No. SR-Phlx-2005-93]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, 4 and 5 Thereto To Amend Its By-Laws and Charter in Connection With a Restructuring of Its Board of Governors

March 20, 2006.

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 December 30, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 the Phlx. On February 16, 2006, the Exchange filed Amendment No. 1 to the proposed rule change;³ on March 10, 2006, the Exchange filed Amendment No. 2 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Phlx revised the proposed definitions of the terms "Independent" and "Material Relationship" that are to be included in the Exchange's By-Laws and made clarifying changes to the purpose section and to the rule text of the proposed rule change.

proposed rule change;⁴ on March 17, 2006, the Exchange filed Amendment No. 3 to the proposed rule change;⁵ and on March 20, 2006, the Exchange filed Amendment Nos. 4⁶ and 5⁷ to the proposed rule change. 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 By-Laws and Charter to revise the current structure of the Phlx Board of Governors ("Board"). Specifically, the Exchange proposes to: (i) Voluntarily conform to certain aspects of the Commission's proposed SRO Governance Rulemaking, including the incorporation of the concept of "independent directors;"⁸ (ii) create a single Vice-Chairman of the Board; (iii) eliminate the distinction between On-Floor and Off-Floor Governors; (iv) make changes to the election of Governors in the By-Laws and Charter; and (v) make other modifications, including revising the composition of various Phlx standing committees. The text of the proposed rule change, as amended, is available at the Commission's Public Reference Room, at the Exchange's Web site (<http://www.phlx.com>) and at the Exchange's principal office.

⁴ In Amendment No. 2, the Phlx incorporated the proposed definition of "Independent Governor" in the Exchange's Restated Certificate of Incorporation ("Charter"); incorporated the definition of "Annual Independence Review" in the Exchange's By-Laws; revised the rule text to clarify the standards to be applied by the Nominating, Elections and Governance Committee in evaluating nominees for Independent Governor; described in the purpose section of the proposed rule change the selection criteria for the position of Vice-Chairman; and made clarifying changes to the rule text.

⁵ In Amendment No. 3, the Phlx revised the purpose section and the rule text of the proposed rule change to set forth that the Nominating, Elections and Governance Committee shall be composed of five persons as follows: Three Independent Governors (one of whom must be a Designated Independent Governor), one Stockholder Governor, and one Member Governor.

⁶ In Amendment No. 4, the Phlx deleted revisions, as proposed in the original filing, that would have capitalized the term "member" in various Charter provisions and reinstated in the Charter a reference to "member (as such term is defined in the Exchange Act)."

⁷ In Amendment No. 5, the Phlx revised the statutory basis section of the proposed rule change.

⁸ See Securities Exchange Act Release No. 50669 (November 18, 2004), 69 FR 71126 (December 8, 2004) ("Proposed SRO Governance Rulemaking").