

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments 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 proposed 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-NASD-2006-091 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-2006-091. 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 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-2006-091 and should be submitted on or before September 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴²

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54279; File No. SR-NASD-2006-070]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change To Amend the Safe Harbor for Business Expansions

August 7, 2006.

On June 2, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Interpretative Material 1011-1 (Safe Harbors for Business Expansions) ("IM-1011-1") to limit the types of violations of Rule 2110 (Standards of Commercial Honor and Principles of Trade) that would result in a member being ineligible to use the safe harbor for business expansions and to make certain technical changes.³ The proposed rule change was published for comment in the **Federal Register** on July 5, 2006.⁴ The Commission received no

comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with Section 15A of the Act⁵ and the rules and regulations thereunder.⁶ Specifically, the Commission finds the proposal to be consistent with Section 15A(b)(6) of the Act,⁷ in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD has stated that when a member or individual is charged with violating an NASD rule, NASD frequently charges a violation of Rule 2110 as part of NASD's action. Thus, the inclusion of Rule 2110 in IM-1011-1, without any limitation, often results in members being ineligible to use the safe harbor if they (or any of their principals) have violated any other NASD rule, which was not the intended effect. The proposed rule change would deem a member ineligible to use the safe harbor only where the finding of a violation of Rule 2110 by the member or a principal of the member raises significant investor protection issues because the violation involves unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports, or excessive markups.⁸ Limiting the types of violations of Rule 2110 that constitute "disciplinary history" for purposes of IM-1101-1 would allow additional firms to rely on the safe harbor, consistent with the original intent of the safe harbor provision and the promotion of just and equitable principles of trade, while at the same time ensuring the protection of investors and the public interest by deeming a member ineligible to use the safe harbor where the violation of Rule 2110 by the member or a principal presents significant investor protection issues.

⁵ 15 U.S.C. 78o-3.

⁶ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ A member would not be eligible to rely on the safe harbor for material changes in business operations if the member or any of its principals have been found, within the past five years, to have violated Rule 2110 in the context of one or more of these enumerated activities (or to have violated any of the other rules specified in IM-1011-1). The proposed limits on violations of Rule 2110 mirror the limits on Rule 2110 with respect to the public release of disciplinary complaints. See IM-8310-2 (Release of Disciplinary and Other Information Through BrokerCheck) and the related *Notice to Members* 97-42 (July 1997).

⁴² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The safe harbor permits a member to expand its business operations without having to submit an application pursuant to Rule 1017 to receive NASD approval before acting.

⁴ See Securities Exchange Act Release No. 54051 (June 27, 2006), 71 FR 38194 (SR-NASD-2006-070).

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR–NASD–2006–070), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris,

Secretary.

[FR Doc. E6–13220 Filed 8–11–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54283; File No. SR–PCX–2005–97]

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 ETP Holders To Participate in the Federal Trade Commission's National Do-Not-Call Registry

August 8, 2006.

On August 15, 2005, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (“NYSE Arca”) ¹ filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b–4 thereunder,³ a proposed amendment to NYSE Arca Equities Rule 9.20. On May 26, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change.⁴ On June 21, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change.⁵ The proposed rule change, as amended, was published for comment in the **Federal Register** on July 10, 2006.⁶ The Commission received no comments on the proposal. This order

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30–3(a)(12).

¹ 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).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b–4.

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

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

⁶ See Securities Exchange Act Release No. 54079 (June 30, 2006), 71 FR 38957 (July 10, 2006) (this notice listed an incorrect filing date for the initial proposal).

approves the proposed rule change, as amended.

The proposed amendment to NYSE Arca Equities Rule 9.20 would replace the current text of Rule 9.20(b) with text that would require ETP Holders 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 ETP Holders 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.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, 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 ETP Holders 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

⁷ 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).

⁸ 15 U.S.C. 78f(b)(5).

prevent ETP Holders 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,⁹ that the proposed rule change (SR–PCX–2005–97), as amended, be and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris,

Secretary.

[FR Doc. E6–13241 Filed 8–11–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54282; File No. SR–PCX–2005–54]

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

August 8, 2006.

On August 15, 2005, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (“NYSE Arca”) ¹ filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b–4 thereunder,³ a proposed amendment to NYSE Arca Rule 9.20. On May 26, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change.⁴ On June 22,

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30–3(a)(12).

¹ 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).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b–4.

⁴ 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.