

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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before February 28, 2001, in order to allow the Pilot to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through March 31, 2001. The extension of the Pilot will provide the Commission with additional time to review and evaluate the Extension Proposal.

The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately through March 31, 2001. 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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. 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 office of the NYSE. All submissions should refer to File No. SR-NYSE-01-04 and should be submitted by March 28, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44026; File No. SR-PCX-01-03]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto To Permit an Officer or Director of a Facility of PCX Equities To Serve on the PCX Equities Board of Directors**

February 28, 2001.

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 January 9, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. On February 20, 2001, PCX filed Amendment No. 1 to the proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, as amended.

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

The PCX proposes to amend the Bylaws of its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE" or "Corporation") to permit an officer or director of a facility of PCXE to serve on its Board of Directors. The text of the amended PCXE Bylaw is as follows:

Proposed additions are *italicized*.

ARTICLE III

Board of Directors

Number; Election; Qualification; Term Nomination

Sec. 3.02.

(a) The Board of Directors shall consist of not less than ten (10) or more

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

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

<sup>3</sup> See letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Marc F. McKayle, Special Counsel, Division of Market Regulation, Commission, dated February 16, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the filing to indicate its belief that the statutory basis for the Commission's approval of the proposed rule change is section 6(b)(3) of the Act, as opposed to section 6(b)(5). The Exchange also made clear that the proposed rule change would not alter the present compositional balance of the PCXE Board of Directors between public directors and directors affiliated with brokers or dealers, and that at least 20% of the PCXE Board of Directors, but no fewer than two, will continue to be nominated by the Equity Trading Permit Holders Nominating Committee whether the size of the Board remains at ten (10) or is expanded to twelve (12).

<sup>8</sup> 15 U.S.C. 78s(b)(93)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

than twelve (12) directors, with the Board of Directors currently contemplated to consist initially of ten (10) members. The authorized number of Directors shall be as determined from time to time by resolution of the Board of Directors. At least fifty percent (50%) of the Directors will be persons from the public and will not be, or be affiliated with, a broker or dealer in securities. At least twenty (20%) of the Directors (but no fewer than two (2) Directors) will be nominees of the ETP/Equity ASAP Nomination Committee, pursuant to Rule 3 of the Corporation. *An officer or director of a facility of the Corporation may serve on the Board of Directors.* The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

## 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

Currently, the Board of Directors may consist of not less than (10) or more than twelve (12) directors. Currently the Board of Directors consists of ten (10) members. The authorized number of Directors is determined from time to time by resolution of the Board of Directors. At least fifty percent (50%) of the Directors are persons from the public (*i.e.*, not a broker or dealer in securities or affiliate thereof). At least twenty (20%) of the Directors (but no fewer than two (2) Directors) will be nominees of the ETP/Equity ASAP Nomination Committee, pursuant to Rule 3 of the Corporation.<sup>4</sup>

The Exchange and its wholly-owned subsidiary, PCXE, propose to change this PCXE Bylaw to permit an officer or director of a facility of PCXE (Corporation) to serve on the Board of Directors of PCXE.

<sup>4</sup> The proposal will not alter the compositional or nomination criteria for the PCXE Board of Directors. See Amendment No. 1, *supra* note 3.

The PCX and PCXE have entered into various agreements with Archipelago Holding, L.L.C. ("Archipelago" or "Company") under which Archipelago Exchange, L.L.C. ("Arca"), a subsidiary of Archipelago Holdings, L.L.C. would operate Area as a facility of the PCXE.<sup>5</sup> PCX, through PCXE, recently proposed to create a new electronic trading facility of the PCXE called Archipelago Exchange. The proposed rule change would permit an Archipelago member, officer or director to serve on the Board of Directors.

The proposed Bylaw amendment calls for a designee of a "facility of the Corporation" to provide flexibility. Under the proposal, permitting a facility designee to serve on the PCXE Board of Directors would not decrease the number of public members or number of nominees of the ETP/Equity ASAP Nomination Committee serving on the Board.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(3),<sup>7</sup> in particular, in that it is consistent with the fair representation principles set forth in the Act.<sup>8</sup>

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

The Exchange 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

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

<sup>5</sup> See Securities Exchange Act Release No. 43608 (November 21, 2000), 65 FR 78822 (December 15, 2000) (Notice of File No. SR-PCX-00-25 proposing to create a new electronic trading facility of the PCXE called Archipelago Exchange).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(3).

<sup>8</sup> See Amendment No. 1, *supra* note 3.

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 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. 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 office of the PCX. All submissions should refer to File No. SR-PCX-01-03 and should be submitted by March 28, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44021; File No. SR-PHLX-01-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Rebate for Certain Fees Incurred in Connection with the Exchange's Payment for Order Flow Fee Program

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 January

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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