

that the “[t]he SIA Letter objected to the proposed rule change on the grounds that by requiring the AML Officer to be an associated person of the member firm, the proposed rule change would not permit larger member firms to designate an individual as the AML Officer unless that individual was an employee of the member itself.”<sup>14</sup> NASD clarified, however, that because NASD considers designated AML compliance persons to be associated persons for purposes of their activities on behalf of the member, the permissible structures for establishing AML programs are similar under the NASD proposal and the NYSE proposal.<sup>15</sup> Specifically, the NASD expressed the view that the NASD proposal “would not prohibit a member that is part of a diversified financial institution from designating an AML Officer that is employed by the member’s parent company, sister company, or other affiliate; however, if such a person is designated as a member’s AML Officer, NASD would consider that person to be an associated person of the member with respect to those activities performed on behalf of the member.”<sup>16</sup>

The NRS Letter requested clarification regarding which types of broker-dealers are required to test their AML procedures annually and which are permitted to have their AML programs tested every two years.<sup>17</sup> The NASD Response indicated that in “assessing how often a member must conduct independent tests, members should begin with the premise that they must test annually.”<sup>18</sup> NASD also noted that each member “should determine whether its business activities meet the requirements set forth in the rule” for testing every two years.<sup>19</sup> In addition, NASD stated: “If, after assessing its status, a member finds that there is an ambiguity in the application of the express standards for testing its AML program every two years (rather than on an annual or more frequent basis) to specific factual settings, the member may either seek interpretive guidance

from NASD staff or test the program on at least an annual basis.”<sup>20</sup>

#### IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>21</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs, preserve the independence of their testing personnel, and ensure the accuracy of their AML compliance person information.

#### V. Conclusions

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change, as amended (SR–NASD–2005–066), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Nancy M. Morris,**

*Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53031; File No. SR–NASD–2005–120]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Dissemination of TRACE Trade Information

December 28, 2005.

#### I. Introduction

On October 14, 2005, the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“SEC” or “Commission”), 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> a proposed rule change to amend NASD Rule 6250, which addresses dissemination of transaction information collected by NASD’s Trade Reporting and Compliance Engine (“TRACE”). The proposed rule change was published for comment in the **Federal Register** on November 7, 2005.<sup>3</sup> The Commission received one comment letter on the proposal, from The Bond Market Association (“BMA”).<sup>4</sup> On December 14, 2005, NASD submitted a response to the BMA Letter<sup>5</sup> and filed an amendment to the proposed rule change (“Amendment No. 1”).<sup>6</sup> This order approves the proposed rule change and issues notice of the filing of, and approves on an accelerated basis, Amendment No. 1.

#### II. Description of the Proposed Rule Change

##### Background

On January 23, 2001, the Commission approved NASD rules to establish TRACE, a facility for collecting and disseminating information on corporate bond transactions and to eliminate Nasdaq’s Fixed Income Pricing System (“FIPS”).<sup>7</sup> The TRACE rules became effective on July 1, 2002. Initially, TRACE disseminated transaction information only on investment-grade securities with an initial issuance size of \$1 billion or greater, and on 50 high-yield issues previously reported in the FIPS system (the “FIPS 50”). On January 31, 2003, the Commission approved an NASD proposal to expand TRACE dissemination to cover roughly 75% of the average daily trading volume of investment-grade securities.<sup>8</sup> On September 3, 2004, the Commission approved an NASD proposal to expand dissemination to include most secondary market transactions in all TRACE-eligible securities (except

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Securities Exchange Act Release No. 52700 (October 28, 2005), 70 FR 67523 (“Notice”).

<sup>4</sup> See letter from Micah S. Green, President and CEO, BMA, to Jonathan G. Katz, Secretary, Commission, dated November 29, 2005 (“BMA Letter”).

<sup>5</sup> See letter from Sharon K. Zackula, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2005 (“NASD Response Letter”).

<sup>6</sup> In Amendment No. 1, NASD provided a description of the implementation process for the proposed rule change and requested accelerated approval of the proposal.

<sup>7</sup> See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). FIPS, which was operated by Nasdaq, collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds.

<sup>8</sup> See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003).

<sup>14</sup> NASD Response, *supra* note 5, at 4.

<sup>15</sup> NASD Response, *supra* note 5, at 2–3. In footnote 6 of the NASD Response, the NASD clarified that while the Notice states “that ‘[s]erving as an AML Officer, by itself, would not make a person an associated person of an NASD member,’ as further discussed with the SEC staff, NASD believes that the AML Officer would be an associated person of the member, but only with respect to the activities performed on behalf of the member.”

<sup>16</sup> NASD Response, *supra* note 5, at 3–4.

<sup>17</sup> NRS Letter, *supra* note 4, at 1–2.

<sup>18</sup> NASD Response, *supra* note 5, at 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 15 U.S.C. 78o–3(b)(6).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30–3(a)(12).

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

transactions effected pursuant to Rule 144A of the Securities Act of 1933 ("Rule 144A transactions").<sup>9</sup> However, that proposal allowed for dissemination delays for securities rated BBB or lower in the new issue aftermarket and for larger transactions in infrequently traded, non-investment-grade bonds in the secondary market other than the new issue aftermarket. According to NASD, data on approximately 99% of all transactions and 95% of par value in TRACE-eligible securities are now disseminated immediately upon receipt by TRACE.

#### Current Proposal

NASD is proposing to amend NASD Rule 6250 to eliminate all remaining delays in the dissemination of information on transactions in TRACE-eligible securities (except Rule 144A transactions). Henceforth, information on all transactions (except Rule 144A transactions) would be disseminated immediately upon receipt of the transaction report. This proposed rule change represents the latest in a series of NASD proposals to gradually enhance transparency for transactions in TRACE-eligible securities.

#### Amendment No. 1

In Amendment No. 1, NASD described the implementation process for the proposed rule change and requested accelerated approval for the amended proposal. Upon effectiveness of the proposal, NASD will look to the date(s) on which transactions are executed and reported to determine the applicable dissemination protocol for TRACE-eligible securities that are still subject to delayed dissemination. For transactions that are *both executed and reported prior* to the effective date of this proposal, the old dissemination protocols will continue to apply, and information on these transactions will not be disseminated until the period of delay has run. Any transaction that is *executed prior* to the effective date but *reported after* the effective date (*i.e.*, reported late on an as/of basis) will be subject to the new protocols and disseminated immediately.

### III. Summary of Comments and NASD's Response

As noted above, the Commission received one comment letter from the BMA on the proposal, to which NASD has filed a response letter. In its letter, the BMA expressed its belief that the proposed immediate dissemination of

transaction information for illiquid, high-yield corporate debt securities "will further harm liquidity for this segment of the market."<sup>10</sup> Citing anecdotal evidence from "many U.S. dealers, EU fund managers trading U.S. high yield securities, and reported in the press,"<sup>11</sup> the BMA claimed that "TRACE has already hampered the ability of dealers and investors to trade large blocks of less liquid, lower-rated securities, and has led to increased market volatility for these securities."<sup>12</sup> The BMA urged NASD staff to continue to monitor the effect of TRACE on liquidity and, if necessary, to reconsider the immediate dissemination of TRACE information.<sup>13</sup> The BMA also requested that NASD release historical TRACE data to the public so that industry participants can conduct independent analyses and research on the effects of transparency on liquidity.<sup>14</sup>

In its response letter, NASD rejected the BMA's claim that the proposal would harm liquidity in the high-yield segment of the corporate bond market. NASD argued that such claims are not substantiated by research. NASD noted, for example, that the Bond Transaction Reporting Committee ("BTRC")<sup>15</sup> found no evidence that TRACE dissemination has harmed liquidity and voted unanimously to support the current proposal.<sup>16</sup> NASD indicated that it will continue to assess the impact of dissemination on trading and liquidity in TRACE-eligible securities<sup>17</sup> and stated that consideration of a request to provide non-public, historic data held by NASD in its capacity as a regulator is not relevant to consideration of the proposal.<sup>18</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>10</sup> BMA Letter at 2.

<sup>11</sup> *Id.* at 2–3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *See id.* at 3.

<sup>14</sup> *See id.* at 3–4.

<sup>15</sup> The BTRC is the advisory committee that was formed to advise NASD on liquidity issues and on how dissemination of TRACE information should be increased over time. The BTRC has ten members, five of whom were recommended by the staff of NASD and the other five of whom were recommended by the BMA.

<sup>16</sup> *See* NASD Response Letter at 2.

<sup>17</sup> *See id.*

<sup>18</sup> *See id.* at 3.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR–NASD–2005–120 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 20549–9303.

All submissions should refer to File Number SR–NASD–2005–120. 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–2005–120 and should be submitted on or before January 26, 2006.

### V. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>19</sup> Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act<sup>20</sup> in that it is designed to prevent fraudulent and

<sup>19</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78o–3(b)(6).

<sup>9</sup> *See* Securities Exchange Act Release No. 50317 (September 3, 2004), 69 FR 55202 (September 13, 2004) ("September 2004 Order").

manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In the September 2004 Order, the Commission approved a TRACE rule to expand transaction dissemination to include secondary market transactions in all TRACE-eligible securities (except Rule 144A transactions), with information on transactions in certain securities disseminated on a delayed basis. In that order, the Commission expressed concern that the remaining dissemination delays could unnecessarily restrict the availability of useful transaction information to investors. The Commission noted that the two studies commissioned by NASD to address the relationship between transparency and liquidity found no conclusive evidence that TRACE dissemination has had an adverse effect on liquidity. Therefore, the Commission stated that it expected NASD to submit a proposed rule change to eliminate the remaining delays in disseminating TRACE information no later than November 1, 2005.<sup>21</sup> NASD has done so.

The Commission believes that this proposal, by eliminating all remaining delays in the dissemination of transaction information on TRACE-eligible securities (except Rule 144A transactions), should provide investors with more up-to-date, and hence more reliable, transaction information for these securities and enhance overall transparency in the corporate bond market. Enhanced transparency for these remaining TRACE-eligible securities should increase the fairness and efficiency of the debt markets, thereby promoting the protection of investors and the public interest. In regard to the BMA's comment that increased transparency has harmed liquidity in high-yield debt securities, the Commission notes that the BTRC has reviewed TRACE statistical data, econometric analyses, and other information and has found no conclusive evidence that the recently increased levels of transparency in these securities have adversely affected corporate bond market liquidity. Furthermore, the BTRC has recommended to NASD that information on all transactions in TRACE-eligible securities (except Rule 144A transactions) be disseminated immediately upon NASD's receipt of the transaction report. The Commission has not been presented with any objective evidence to support the BMA's assertion that immediate dissemination of

transaction information harms liquidity for high-yield debt securities.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>22</sup> Amendment No. 1 does not make any substantive changes to the proposal but rather offers technical guidance about how transaction data in the affected TRACE-eligible securities will be disseminated in the few days immediately after the rule change becomes effective. Accordingly, the Commission believes that the accelerated approval of Amendment No. 1 is appropriate.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NASD-2005-120) is approved and that Amendment No. 1 thereto is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53034; File No. SR-PCX-2005-139]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Certificate of Incorporation of PCX Holdings, Inc.

December 28, 2005.

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 December 19, 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 and II below, which Items have been prepared by PCX. On December 23, 2005, PCX filed Amendment No. 1 to the proposed

rule change.<sup>3</sup> PCX filed the proposed 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. 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

PCX proposes to submit to the Commission a proposed rule change to extend temporary exceptions from the voting and ownership limitations in the certificate of incorporation of PCX Holdings, Inc. ("PCXH"), a Delaware corporation and a parent company of PCX, approved by the Commission in an order issued on September 22, 2005 (the "SEC Order")<sup>6</sup>, so as to allow (a) Archipelago Holdings, Inc. ("Archipelago"), a Delaware corporation and the ultimate parent company of PCXH and PCX, to continue to (i) own Wave Securities, L.L.C. ("Wave") until January 31, 2006 and (ii) own and operate the ATS Inbound Router Function (as defined below) of Archipelago Trading Services, Inc. ("ATS") and the Inbound Router Clearing Function (as defined below) of Archipelago Securities, L.L.C. ("Archipelago Securities") until January 31, 2006, and (b) Gerald D. Putnam, Chairman and Chief Executive Officer of Archipelago ("Mr. Putnam"), to own in excess of 5% of Terra Nova Trading, L.L.C. ("TNT") and continue to serve as a director of TAL Financial Services ("TAL") until January 31, 2006, in each case, subject to the conditions set forth in this filing.

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

In its filing with the Commission, 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. PCX has prepared summaries, set forth in Sections A, B,

<sup>3</sup> In Amendment No. 1, the Exchange modified the duration of certain extensions that the Exchange proposed in the original filing and made certain technical amendments to the original 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> See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (the "SEC Order").

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> *Id.*

<sup>24</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.

<sup>21</sup> See 69 FR at 55204.