

proposes to amend its fee schedule for services provided to ETP Holders⁴ and Sponsored Participants⁵ that use the Archipelago Exchange ("ArcaEx") by: (1) Reducing the per-share odd-lot transaction fee for Nasdaq securities;⁶ (2) reducing the per-share odd-lot routing service fee for Nasdaq securities; and (3) clarifying the application of the market data revenue credit for Tracking Orders.

The text of the proposed rule change is available at the principal offices of the PCX and at the Commission.

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 had 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 reduce the per-share odd-lot transaction fee charged to ETP Holders and Sponsored Participants (collectively "Users") that execute trades on ArcaEx. The PCX currently charges all Users a transaction fee of \$0.03 per share for odd-lot orders executed in Nasdaq securities on ArcaEx.⁷ The PCX is proposing to reduce this odd-lot transaction fee to \$0.004 per share, and will leave unchanged its current odd-lot fee for listed securities. The rationale for this change is to adjust the odd-lot transaction fee for Nasdaq securities to a more competitive level to accommodate Users' interest in sending odd-lot orders to ArcaEx. ArcaEx evaluated the economics of lowering the odd-lot transaction fee for Nasdaq

securities and determined that it was feasible, given the costs involved.

The PCX also proposes to reduce the per share transaction fee for odd-lot orders in Nasdaq securities that are routed away and executed by another market center or participant. The PCX proposes to reduce the routing service fee from \$0.03 to \$0.004 per share to conform to the proposed fee of \$0.004 per share that will apply to odd-lot orders executed on ArcaEx.⁸ Again, for competitive reasons, the PCX will leave unchanged its current odd-lot routing service fee for listed securities.

With respect to PCX's market data revenue credit for exchange-listed securities, the PCX proposes to amend its fee schedule to clarify the application of this credit for Tracking Orders.⁹ Specifically, the PCX is adding a footnote¹⁰ to make it clear that a User who submits a Tracking Order instruction that subsequently matches against an inbound marketable order will not be entitled to receive the liquidity provider credit.¹¹ The PCX believes that this change will more accurately define the liquidity provider credit that the Exchange pays to Users who help promote liquidity, transparency and price discovery.

2. Statutory Basis

The PCX believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act¹² in general, and furthers the objectives of section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among PCX members.

⁸ The Exchange notes that odd-lot orders that are created as a result of a partial fill of a round lot that are subsequently routed away and executed on another market will continue to be subject to the \$0.004 per share fee applicable to round lot orders.

⁹ The Tracking Order Process, which is available during Core Trading Hours only, is the fourth step of the ArcaEx execution algorithm. Any User may submit an instruction to ArcaEx for the parameters of a Tracking Order. The parameters include: the maximum aggregate size; the maximum tradeable size; the price in relation to the NBB; and the relevant security. See PCX Rule 7.37(c) for a detailed description of the Tracking Order Process.

¹⁰ The current footnote 2 in the PCX's fee schedule relating to the "Drop Copy" Processing Fee is being renumbered as footnote 3.

¹¹ Under its market data revenue sharing program, PCX shares a portion of its gross revenues derived from market data fees (i.e., tape revenue) with any User that provides liquidity by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order or Working Order processes.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

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

PCX neither solicited nor received written comments concerning the proposed rule change.

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

Because the PCX represents that the foregoing rule change establishes or changes a due, fee, or other charge imposed by the PCX, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2) thereunder.¹⁵ At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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.¹⁶

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

¹⁴ 15 U.S.C. 78b(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs. See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) ("Abrogation Order"). The Commission's publication of the instant proposed rule change, which codifies an existing practice in the Exchange's market data revenue sharing program, should not be construed as resolving the issues raised in the Abrogation Order.

⁴ See PCX Rule 1.1(n) (defining "ETP Holder").

⁵ A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCX] Rule 7.29." See PCX Rule 1.1(tt).

⁶ See PCX Rule 1.1(aa) (defining "Nasdaq Security").

⁷ The PCX notes that the odd-lot portion of a mixed lot are subject to the \$0.03 per share transaction fee. Also, odd-lot orders that are created as a result of a partial fill of a round lot on ArcaEx will continue to be excluded from this fee.