



# ARCHIPELAGO EXCHANGE

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## APPLICATION AND CONTRACTS

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## APPLICATION PROCESS

### Filing Requirements

Prior to submitting the Application for Equity Trading Permit (“ETP”), an applicant Broker-Dealer must file a Uniform Application for Broker-Dealer Registration (Form-BD) with the Securities and Exchange Commission and register with the NASD Central Registration Depository.

### Checklist

Applicant Broker-Dealer must complete and submit all materials addressed in the Application Checklist (page 3) along with appropriate fees to:

Archipelago Exchange, LLC  
Attn: Client Services  
100 South Wacker Drive  
Suite 1800  
Chicago, IL 60606

**Note: All application materials sent to Archipelago will be reviewed by Archipelago’s Client Services department for completeness before forwarding to the PCXE. All applications are deemed confidential and are handled in a secure environment at Archipelago. An applicant may submit materials required by the application directly to the PCXE c/o Member Services, 115 Sansome Street, 7<sup>th</sup> Floor, San Francisco, CA 94104. Should an applicant submit materials to PCXE directly, PCXE will maintain the confidentiality of the materials and will provide Archipelago with information necessary for Archipelago to establish connectivity.**

**If you have questions on completing the application, you may direct them to:**

**Archipelago Client Services: Email: [clientservices@archipelago.com](mailto:clientservices@archipelago.com); Phone: (888) 689-7739, option 3**

**PCXE Membership: Email: [srs@pacificex.com](mailto:srs@pacificex.com); Phone (415) 393-4114**

### Application Process

- Following submission of the Application for Equity Trading Permit, fees and supporting documents to Archipelago, the application will be reviewed for accuracy and regulatory or other disclosures. This process generally takes up to ten (10) business days when PCX Equities, Inc. (“PCXE”) is not the DEA and up to thirty (30) business days for sole proprietors and applicant Broker-Dealers for whom PCXE will be the DEA.
- Applicant Broker Dealer is required to consult with an Archipelago Sales Representative to determine the most beneficial connectivity option. Archipelago will then coordinate the connectivity between the Applicant Broker Dealer and the Exchange.
- If review of Statutory Disqualification Disclosure information and/or a background investigation indicates that the applicant Broker-Dealer has an associated person(s) with a possible statutory disqualification, the PCXE will contact the representative of the applicant Broker-Dealer to discuss the statutory disqualification process.
- If it appears that the applicant Broker-Dealer has outstanding debt, civil judgment actions and/or regulatory disciplinary actions, the applicant Broker-Dealer will be contacted by the PCXE for further information.
- Applicants who have completed and returned all documents without indication of a statutory disqualification, outstanding debt, civil judgment actions and/or regulatory disciplinary actions will be presented to the PCXE for approval or disapproval without delay.
  - ✓ Applicant Broker-Dealers for whom PCXE will NOT be DEA will be granted preliminary approval based on the information provided in the Application for Equity Trading Permit; however, PCXE will also perform a complete background check of Applicant Broker-Dealer, and such trading privileges may be immediately revoked by PCXE depending on the results of such background check. Applicant Broker-Dealer will be subject to disciplinary action if false or misleading answers are given pursuant to the Application for Equity Trading Permit.
  - ✓ Applicant Broker-Dealers for whom PCXE will be DEA will be required to undergo a complete background check prior to PCXE approval.
- The PCX no longer accepts fingerprint cards. Fingerprint cards must be submitted directly to NASD within 30 days of filing the Form U4 for individuals who seek to register with the PCX or be approved by the PCX. Firms may request NASD-approved fingerprint cards through the Gateway Call Center at: (301) 869-6699. Fingerprint cards should be sent directly to: For Regular U.S. Mail: NASD, Registration and Disclosure Department, P.O. Box 9495, Gaithersburg, MD 20898-9495. P.O. Boxes will not accept courier or overnight deliveries. For Express/Overnight Mail Delivery: NASD, Registration and Disclosure Department, 9509 Key West Avenue, Rockville, MD 20850. If a phone number is required for the recipient, provide: (301) 869-6699. Your firm should receive the FBI search results in the “Fingerprint Status Received from FBI Notice Queue” within three business days after the card is sent to the FBI. Additional information regarding the submission of fingerprints to Web CRD may be obtained on the NASD Web site: [www.nasd.com/crd](http://www.nasd.com/crd).

- The PCXE will notify the applicant Broker-Dealer, in writing, of their Membership decision within five (5) business days of approval.
- Once connectivity is established, your Archipelago Sales Representative will inform you of your ability to trade.
- In the event an applicant Broker-Dealer is disapproved by the PCXE, the applicant Broker-Dealer has an opportunity to be heard upon the specific grounds for the disapproval, in accordance with the provisions of PCXE Rule 10.13. A disapproved applicant desiring to be heard must, within fifteen (15) calendar days of the applicant's receipt of notice of disapproval, notify PCXE by certified mail and file with PCXE a Petition for Review of such disapproval.

## APPLICATION CHECKLIST AND FEES

### CHECKLIST FOR NON-DEA BROKER-DEALERS

- Application for Equity Trading Permit
  - Section 1 through 8 MANDATORY
  - Section 11 only if you want to act as a Sponsoring ETP Holder
  - Section 12 only if you are not self-clearing
  - *If self-clearing, a Regional Interoffice Operations (RIO) letter will need to be supplied after the Broker-Dealer has been approved.*
- Form BD, Schedules & Disclosure Reporting Pages
- Form U4 for the following, if not available on Web CRD™. Fingerprint cards for the following need to be submitted directly to the NASD, if not available on Web CRD™:
  - Direct/Indirect Owners and Control Persons as listed on Form BD Schedule A
  - Designated Supervisors
- Most Recent Quarterly FOCUS Report or Notarized Financial Statement
- RealTick™ users only
  - General Townsend Analytics (“TAL”) License Agreement
  - Agreement for Receipt of Consolidated Network Data and NYSE Market Data
  - American Stock Exchange CTA Network B Agreement

### CHECKLIST FOR DEA BROKER-DEALERS

- Application for Equity Trading Permit
  - Section 1 through 10 MANDATORY
  - Section 11 only if you want to act as a Sponsoring ETP Holder
  - Section 12 only if you are not self-clearing
  - *If self-clearing, a Regional Interoffice Operations (RIO) letter will need to be supplied after the Broker-Dealer has been approved.*
- Form BD, Schedules & Disclosure Reporting Pages
- Form U4 for the following, if not available on Web CRD™. Fingerprint cards for the following need to be submitted directly to the NASD, if not available on Web CRD™.
  - Direct/Indirect Owners and Control Persons as listed on Form BD Schedule A
  - Designated Supervisors
  - All Authorized Traders
- Most Recent Quarterly FOCUS Report or Notarized Financial Statement
- Proprietary Accounts of Introducing Broker-Dealers (PAIB) Agreements, if applicable
- Organization Documents: Articles of Incorporation and Bylaws; Partnership Agreement; Limited Liability Company (“LLC”) Agreements, or Operating Agreement
- RealTick™ users only
  - General Townsend Analytic (“TAL”) License Agreement
  - Agreement for Receipt of Consolidated Network Data and NYSE Market Data
  - American Stock Exchange CTA Network B Agreement
- Copy of Written Supervisory Procedures
- \$125 Investigation Fee for each Control Person, Designated Supervisor and all Authorized Traders

**Please make Check Payable to: Pacific Exchange, Inc.**

Note: Each ETP Holder is responsible for maintaining a list of all Authorized Traders and such list must be made available to PCXE upon request and as required by PCXE Rule 7.30(a).

## EXPLANATION OF TERMS

*For purposes of this application, the following terms shall have the following meanings:*

**Applicant Broker-Dealer** – is the Broker-Dealer organization applying for an Equity Trading Permit or amending this form.

**Associated Person** - a person who is a partner, officer, director, member of a LLC, trustee of a Business Trust, or employee of an ETP Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP Holder.

**Authorized Trader** – a person who may submit orders to Archipelago’s trading facilities on behalf of his or her ETP Holder or Sponsored Participant.

**Clearing Services** - a Broker-Dealer who receives and executes customers’ instructions, prepares trade confirmations, sends the money related to the trades, arranges for the physical movement of securities, and shares responsibility with an introducing broker-dealer for compliance with regulatory requirements.

**Control** – (as defined on Form-BD) the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise. Any person that (1) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (2) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (3) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.

**Central Registration Depository System (Web CRD™)** – A computerized database with information on registered representatives. The CRD contains employment history, exam scores, licensing information, and disciplinary actions.

**Designated Examining Authority (DEA)** – the SEC will designate one Self-Regulatory Organization (“SRO”) to be a Broker-Dealer’s examining authority, when the Broker-Dealer is a Member or ETP Holder of more than one SRO. Every Broker-Dealer is assigned a DEA, who will examine the Broker-Dealer for compliance with financial responsibility rules.

**Designated Supervisor** – refers to any person that is a partner, director, or officer exercising executive responsibility (or having similar status or functions) for supervising Authorized Trader(s) (“AT”) (as defined in PCXE Rule 1.1(g)).

**Direct Owners/Executive Officers** – refers to (1) a director, general partner or officer exercising executive responsibility (or having similar status or function); or (2) directly or indirectly has the right to vote 5% or more of a class of voting security or has the power to sell or direct the sale of 5% or more of a class of voting securities; (3) is entitled to receive 5% or more of the net profits; (4) in the case of a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution or have contributed, 5% or more of the capital; or (5) in the case of a LLC, those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC’s capital, and if managed by elected managers, all elected managers.

**ETP or ETP Holder**– an Equity Trading Permit issued by the Corporation for effecting approved securities transactions on the Corporation’s trading facilities. An ETP may be issued to a Sole Proprietor, Partnership, Corporation, LLC or other organization which is a registered Broker or Dealer, pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and which has been approved by the Corporation.

**Financial Arrangement** – (1) the direct financing of an ETP Holder’s dealings upon the Exchange; (2) any direct equity investment or profit sharing arrangement; or (3) any consideration over the amount of \$5,000.00 including, but not limited to, gifts, loans, annual salaries or bonuses.

**Market Maker** -are obligated to maintain continuous two-sided Q Orders in those securities in which the Market Maker is registered to trade, pursuant to PCXE Rule 7.23(a).

**Market Maker Authorized Trader (“MMAT”)** – an authorized trader who performs market-making activities pursuant to Rule 7, on behalf of a Market Maker.

**PCXE** – PCX Equities, Inc. (a wholly owned subsidiary of the Pacific Exchange, Inc.).

**Primary Business** - refers to greater than 50% of the ETP Holder’s business.

**Self-Regulatory Organization (SRO)** - each exchange or national securities association is an SRO. Each SRO must have rules that provide for the expulsion, suspension and other discipline of member Broker-Dealers for violation of the SRO’s rules.



# ARCHIPELAGO EXCHANGE

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**APPLICATION FOR EQUITY TRADING PERMIT**

## SECTION 1 – ORGANIZATIONAL PROFILE

Date: \_\_\_\_\_ SEC #: \_\_\_\_\_ CRD: \_\_\_\_\_ MPID: \_\_\_\_\_  
(If NASDAQ Participant)

APPLICATION  AMENDMENT

### GENERAL INFORMATION

Name of Applicant Broker-Dealer: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

### TYPE OF ORGANIZATION

Corporation  Limited Liability Company  Partnership  Sole Proprietor

### TYPE OF BUSINESS ACTIVITY TO BE CONDUCTED WITH EQUITY TRADING PERMIT (Check all that apply)

Market Maker\*  Public Customer Business  Clearing Services  Firm Proprietary Trading  
 Trader\*\*  Other \_\_\_\_\_

\* Please also complete Application for Registration of Market Makers/Odd Lot Dealers

\*\* Traders as defined in PCXE Rule 2.4(b)(10)(A) are subject to Series 7 testing requirements for DEA ETPs

### OTHER BUSINESS ACTIVITIES CONDUCTED BY APPLICANT BROKER-DEALER (Check all that apply)

Investment Banking  Public Customer Business  Options Market Making  Proprietary Day Trading  
 Other \_\_\_\_\_

### OTHER SELF-REGULATORY ORGANIZATION MEMBERSHIPS (Check all that apply)

American Stock Exchange (AMEX)  Boston Stock Exchange (BSE)  Chicago Board Options Exchange (CBOE)  
 Chicago Stock Exchange (CHX)  National Stock Exchange (CSE)  International Securities Exchange (ISE)  
 National Association of Securities Dealers (NASD)  New York Stock Exchange (NYSE)  
 Philadelphia Stock Exchange (PHLX)

### APPLICANT'S DESIGNATED EXAMINING AUTHORITY ("DEA")

Pacific Exchange, Inc. (PCX / PCXE)  Other \_\_\_\_\_

## SECTION 2 – MEMBERSHIP AGREEMENT

Applicant Broker-Dealer agrees to abide by the Bylaws and Rules of PCX Equities, Inc., as amended from time to time, and all circulars, notices, interpretations, directives or decisions adopted by PCX Equities, Inc.

Applicant Broker-Dealer authorizes any SRO, commodities exchange, governmental agency or similar entity to furnish to PCXE, upon its request, any information that such person may have concerning the ability, business activities, and reputation of applicant Broker-Dealer or its associated persons, and releases such person or entity from any and all liability in furnishing such information. Applicant Broker-Dealer authorizes PCXE to make available to any governmental agency, SRO, commodities exchange or similar entity, any information it may have concerning the applicant Broker-Dealer or its associated persons, and releases PCXE from any and all liability in furnishing such information.

Applicant Broker-Dealer acknowledges its obligation to update any and all information contained in any part of this application, including termination of membership with another SRO, which may cause a change in the applicant Broker-Dealer's DEA. It is understood that in that event, additional information may be required by PCXE.

\_\_\_\_\_  
Applicant Broker-Dealer

\_\_\_\_\_  
Signature of Authorized Officer, Partner,  
Managing Member or Sole Proprietor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**SECTION 3 – FINANCIAL DISCLOSURE**

**FINANCIAL STATEMENT**

I have attached a copy of the applicant Broker-Dealer’s most recent Quarterly FOCUS Report or Notarized Financial Statement.

**SOURCE OF CAPITAL**

Explain the source of applicant Broker-Dealer’s capital

\_\_\_\_\_

**PROPRIETARY ACCOUNTS OF INTRODUCING BROKER-DEALERS (PAIB)**

Do you hold a Proprietary Account as an Introducing Broker-Dealer (PAIB) Yes No

\* If Yes: An introducing Broker-Dealer must notify its DEA in writing when it has entered into a PAIB Agreement with a clearing Broker-Dealer regarding the net capital treatment of assets held in proprietary accounts. Assets (cash and securities) held in trading accounts without a PAIB Agreement are considered to be non-allowable in the computation of net capital under SEC Rule 15c3-1. If PCXE is your DEA, please enclose a copy of all PAIB Agreements you have entered into with a clearing broker-dealer.

**SUBORDINATED LOANS**

Have any subordinated loans been made to applicant Broker-Dealer?  Yes (Explain below)  No

\_\_\_\_\_

**FINANCIAL OR CONTROLLING INTERESTS**

Does the applicant Broker-Dealer have a financial or controlling (as defined in Form-BD) interest (through direct or indirect stock or bond ownership, through outstanding loans, or otherwise) in any organization engaged in a securities, financial or related business?

Yes (Explain below)  No

\_\_\_\_\_

**FINANCIAL ARRANGEMENT**

Does the applicant Broker-Dealer have a financial arrangement with any other Broker-Dealer?

Yes (Explain below)  No

Type of Arrangement:

Direct Equity Investment  Any consideration over \$5,000  Profit Sharing  Direct Financing

Terms of Arrangement (include the names of all participants in the arrangement, and the nature and terms of the arrangement):

\_\_\_\_\_

**OUTSTANDING DEBT (Check all that apply)**

Does the applicant Broker-Dealer owe money to any of the following?

- Any PCXE member or member organization or PCXE ETP Holder
- Any other national securities or commodities exchange or national securities association
- Any member of any other national securities or commodities exchange or national securities association

Explain to whom the money is owed and the dollar amount. Attach a copy of arrangements made for repayment of this debt and evidence of an agreement of repayment. \_\_\_\_\_

No, the applicant Broker-Dealer does not owe money to any of the above referenced persons or entities.

**SECTION 4 – DIRECT OWNERS/INDIRECT OWNERS/EXECUTIVE OFFICERS**

Please list the following individuals: (A) each Approved Person as defined in PCXE Rule 1.1(d)<sup>1</sup>; and (B) each Person as defined in PCXE Rule 6.18(b)(2)<sup>2</sup>. **You may submit multiple copies of this form, if needed, or attach a document containing all of the information requested.**

Name: \_\_\_\_\_ CRD# \_\_\_\_\_

Title or Affiliation: \_\_\_\_\_  Designated Supervisor of Authorized Traders

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Form U4 is current and accessible for this person on Web CRD™
- A Form U4 is enclosed for this person with the required \$125 Investigation fee and Fingerprint card has been submitted to the NASD.
- For this individual, the conditions set forth in footnote 3 are satisfied; accordingly, applicant will not submit Fingerprint Cards for this individual.

Name: \_\_\_\_\_ CRD# \_\_\_\_\_

Title or Affiliation: \_\_\_\_\_  Designated Supervisor of Authorized Traders

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Form U4 is current and accessible for this person on Web CRD™
- A Form U4 is enclosed for this person with the required \$125 Investigation fee and Fingerprint card has been submitted to the NASD.
- For this individual, the conditions set forth in footnote 3 are satisfied; accordingly, applicant will not submit Fingerprint Cards for this individual.

<sup>1</sup> Pursuant to PCXE Rule 1.1(d), the term “Approved Person” shall refer to a person who is not an ETP Holder, nor an employee or an Allied Person of an ETP Holder, and who: (1) is a director of an ETP Holder, or (2) controls an ETP Holder, or (3) beneficially owns, directly or indirectly, 5% or more of the outstanding equity securities of an ETP holder, or (4) has contributed 5% or more of the partnership capital; and who has been approved by the Corporation as an Approved Person.

<sup>2</sup> PCXE Rule 6.18(b)(2) refers to the designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the Associated Persons of the ETP Holder. Pursuant to PCXE Rule 1.1(f), the term “Associated Person” shall refer to a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an ETP Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP Holder.

<sup>3</sup> PCX will not require physical submission of Fingerprint Cards as a component of this application if all the following conditions are satisfied: (i) PCX does not serve as the DEA to the ETP applicants; (ii) Individuals covered by an ETP application have experienced no changes in firm affiliation relative to primary employment since the date fingerprints were originally recorded; and (iii) Fingerprint records referenced in item (ii) are readily available on Web CRD™.

**SECTION 5 – STATUTORY DISQUALIFICATION DISCLOSURE**

Pursuant to the Securities Exchange Act of 1934, as amended ("the Act"), PCXE may deny (or may condition) trading privileges or may bar a natural person from becoming associated (or may condition an association) with an ETP Holder for the same reasons that the Securities and Exchange Commission may deny or revoke a broker-dealer registration under the Act. The Act provides for Statutory Disqualification if a person has:

- Been expelled, barred or suspended from membership in or being associated with an member of a self regulatory organization;
  - had broker, dealer or similar privileges denied or suspended or caused such denial or suspension of another;
  - Violated any provision of the Act; or
  - Been convicted of a theft or securities related misdemeanor or any felony within ten (10) years of the date of applying for membership status or becoming an Associated Person.
- Check here if you DO NOT have person(s) associated with the applicant broker-dealer who is or may be subject to Statutory Disqualification.
- Check here if you DO have person(s) associated with the applicant broker-dealer who is or may be subject to Statutory Disqualification.\*

Please identify any such person(s) associated with the applicant Broker-Dealer who is or may be subject to Statutory Disqualification. Additionally, identify any such person(s) who are associated with the applicant Broker-Dealer and who have been approved for association or continued association by another SRO due to a Statutory Disqualification.

- \* Attach a sheet identifying any such person(s), including the following information:
1. Name and social security number of the person(s).
  2. Copies of documents relating to the Statutory Disqualification.
  3. Description of each such person’s duties (for non-registered individuals, this should include a statement indicating if the position allows access to books, records, funds or securities).
  4. Explanation of action taken or approval given by any other SRO regarding each person.

On behalf of \_\_\_\_\_ (Applicant Broker-Dealer), I hereby attest and affirm that I have read and understand the above and the attached information, and that the answers and the information provided (including copies of any documents) are true and complete to the best of my knowledge. I acknowledge that PCXE shall rely on the information provided pursuant to this Notice in order to preliminarily approve or deny Applicant Broker-Dealer’s application for trading privileges, but that PCXE will also perform a complete background check of Applicant Broker-Dealer, and such trading privileges may be immediately revoked by PCXE depending on the results of such background check. I understand that Applicant Broker-Dealer will be subject to a disciplinary action if false or misleading answers are given pursuant to this Notice. I also acknowledge the obligation of Applicant Broker-Dealer to submit to PCXE any amendment to any document submitted as part of its application, including but not limited to this Notice, within fifteen (15) business days of such amendment or change.

\_\_\_\_\_  
Signature of Authorized Officer, Partner  
Managing Member, or Sole Proprietor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## SECTION 6 - SUPERVISION

Each ETP Holder must identify the person(s) that is a member, partner, director, or officer exercising executive responsibility (or having similar status or functions) for supervising an Authorized Trader(s) as defined in PCXE Rule 1.1(g). ETP Holders for whom PCXE will be DEA must provide a copy of their Written Supervisory Procedures (“WSP”) with their Application.

- Applicant Broker-Dealer's WSP are enclosed.

**Name and Title of Person responsible for maintaining WSPs:** \_\_\_\_\_  
**(Please identify the person responsible for maintaining the Broker-Dealer’s WSPs, whether or not they are enclosed.)**

PCXE Rules state:

- (a) Adherence to Law – No Equity Trading Permit Holder or Associated Person of an Equity Trading Permit Holder may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Exchange. Every Equity Trading Permit Holder must supervise persons associated with the Equity Trading Permit Holder as to assure compliance therewith.
- (b) Supervisory System – Each Equity Trading Permit Holder for whom PCXE is DEA must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and PCXE Rules. Final responsibility for proper supervision will rest with the Equity Trading Permit Holder. The Equity Trading Permit Holder’s supervisory system must provide, at a minimum, for the following:
- (1) The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.
  - (2) The designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the Equity Trading Permit Holder.
  - (3) The Equity Trading Permit Holder must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.
  - (4) Each Equity Trading Permit Holder must designate and specifically identify to PCXE one or more persons who will be responsible for such supervision.
- (c) Written Procedures – Each Equity Trading Permit Holder must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with PCXE Rules.

Pursuant to this rule, WSPs should describe the following:

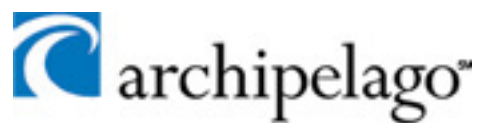
- Specific identification of the individual(s) responsible for supervision – either by name or by title and position.
- The supervisory steps and reviews to be taken by the appropriate supervisor – this process should identify any exception reports and/or other documents being reviewed and the substantive area being reviewed (e.g., limit order protection, trade reporting, etc.). If an ETP Holder employs automated systems as part of its supervisory system, those systems should also be generally described.
- The frequency of such reviews – this should be more specific than simply providing for “a review” or a “review from time to time.” The frequency of reviews should be described (i.e., daily, weekly, monthly, quarterly, or annually).
- How reviews will be documented, for example, initialing order tickets or filling out review logs. The procedures should also provide for the documentation of steps taken as a result of supervisory reviews.

For Market Makers, the WSPs and supervisory systems of firms engaged in market making activities must address, at a minimum, trading practice rules (i.e., passive market making, firm quote rule compliance, limit order protection), trading systems, trade reporting, rules compliance and any other material aspect of the firm’s market making business. WSPs should include the following subject areas:

- Size conventions
- Coordination of quotations, trades and trade reports
- Improper collaboration and coordination of Market Maker activities
- Failure to honor quotations
- Harassment
- Late and inaccurate trade reporting

**ALL EQUITY TRADING PERMIT HOLDERS MUST KEEP ABREAST OF CHANGES IN LAWS, RULES AND REGULATIONS, MARKET PRACTICES AND INDICATED PATTERNS OF NON-COMPLIANCE AND MUST MODIFY THEIR SUPERVISORY PROCEDURES AND SYSTEMS AS NECESSARY.**

Questions regarding PCXE Rules on WSPs may be directed to the Department of Financial and Operational Compliance (FOCD):  
Email: [focd@pacificex.com](mailto:focd@pacificex.com); Phone: (415) 835-4899.



# ARCHIPELAGO EXCHANGE

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## CONTRACTS

**SECTION 7 – ARCHIPELAGO™ USER AGREEMENT**

This User Agreement, with an Effective Date as of the date executed by Archipelago Exchange, LLC. (hereinafter “Archipelago”), is made by and between Archipelago, an Illinois corporation, with its principal offices located at 100 S. Wacker Drive, Suite 1800, Chicago, IL 60606 and the User, as identified below. Archipelago operates the Archipelago Exchange™, which is an electronic communications and trading facility of PCXE for securities. Archipelago will provide User with the services of the Archipelago Exchange pursuant to the terms of this User Agreement. Use of the Archipelago Exchange is governed by the Certificate of Incorporation, Bylaws, Rules and Procedures of the PCXE, as amended from time to time, (“PCXE Rules”).

User: \_\_\_\_\_

Business Address: \_\_\_\_\_

Corporate Form: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Type of User       ETP Holder                                       Sponsored Participant

Telephone: \_\_\_\_\_ Primary Contact: \_\_\_\_\_

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Archipelago will provide User with services of the Archipelago Exchange pursuant to the User Agreement General Terms and Conditions, which are attached hereto and incorporated herein by reference. The following Agreements will be incorporated herein by reference, if the User has initialed the space below.

\_\_\_\_\_ TAL Agreement (Required for Users accessing the Archipelago Exchange through RealTick™. By initialing the space provided, User agrees to be bound by the TAL License Agreement and to pay the requisite fee, if any, for the use of RealTick. User is also obligated to execute applicable market data agreements, Schedules A and B of the TAL Subscriber Agreement.)

\_\_\_\_\_ Routing Agreement (Required for ETP Holders that elect to route orders through Archipelago, to other market centers and Broker-Dealers. By initialing the space provided, User agrees to be bound by the Archipelago Securities Routing Agreement and to pay the requisite fees, if any, for order routing.)

In witness whereof, the parties hereby cause this User Agreement to be executed by their duly authorized representatives. Signature on this cover sheet is in lieu of and has the same effect as signature on each page of the attached documents.

Accepted on behalf of User:

Accepted on behalf of Archipelago Exchange, LLC:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

With Notices to: User Name: \_\_\_\_\_

Archipelago Exchange, LLC

Contact Name: \_\_\_\_\_

Attention: Client Services

Address: \_\_\_\_\_

100 S. Wacker Drive, Suite 1800

City, State, Zip: \_\_\_\_\_

Chicago, IL 60606

## SECTION 7 – ARCHIPELAGO™ USER AGREEMENT (CONTINUED)

Provided that User is an authorized ETP Holder (as defined herein) or a Sponsored Participant (as defined herein) in good standing with PCXE and has paid the requisite fees, Archipelago will provide User with access to the Archipelago Exchange™ pursuant to these general terms and conditions, which User hereby acknowledges and accepts. User agrees to abide by these general terms and conditions and be bound by the Certificate of Incorporation, Bylaws, Rules and Procedures of the PCXE, as amended from time to time, (“PCXE Rules”) with respect to the Archipelago Exchange.

For purposes of this Agreement, an “ETP” shall refer to an Equity Trading Permit issued by the PCXE for effecting approved securities transactions on the Archipelago Exchange. An “ETP Holder” shall refer to a Sole Proprietorship, Partnership, Corporation, LLC or other organization in good standing that has been issued an ETP in accordance with PCXE Rules. A Sponsored Participant shall refer to a person that has entered into a sponsorship arrangement with an ETP Holder (a “Sponsoring ETP Holder”) as described in Section 1(e) below. An Authorized Trader shall refer to a person authorized to submit orders to the Archipelago Exchange on behalf of his or her User. As used in this Agreement, the requirement that a User “comply with PCXE Rules” or “act in compliance with PCXE Rules” (or such other similar phrases) shall mean, with respect to a Sponsored Participant, that such Sponsored Participant shall comply with PCXE Rules as if it were an ETP Holder.

### 1. RIGHTS AND OBLIGATIONS.

(a) **Archipelago Exchange (“ArcaEx”).** Pursuant to the terms and conditions of this User Agreement, Archipelago grants the User a personal, non-exclusive, non-transferable right to access the ArcaEx solely for the intended purpose and only in accordance with the then-current PCXE Rules. For purposes of this User Agreement, the “intended purpose” is to place orders with the ArcaEx for execution and to receive information from the ArcaEx about such orders. The User is solely and exclusively responsible for any hardware, software, communication equipment, communication services, information formatting requirements or other items or services necessary for accessing and using the ArcaEx.

(b) **Restrictions on Use; Security.** User may not sell, lease, furnish or otherwise permit or provide access to the ArcaEx or any information or data made available therein to any other entity or to any individual that is not User’s employee, customer or agent or a User’s Sponsored Participant. User accepts full responsibility for its employee’s, customers’, and agent’s use of the Archipelago Exchange, including any Sponsored Participants’ use, which use must comply with the PCXE Rules and the User’s obligations under this User Agreement. User will take reasonable security precautions to prevent unauthorized use of or access to the ArcaEx, including unauthorized entry of information into the ArcaEx, or the information and data made available therein. User understands and agrees that User is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(c) **User Information.** User hereby grants to ArcaEx a perpetual, non-exclusive, world-wide, irrevocable, royalty-free, fully-paid-up license to use, reproduce, display, compile and modify the information and data supplied by User to the ArcaEx, including without limitation, information or data of or related to User’s customers and agents. User represents and warrants that, with respect to such information and data (i) User owns or has sufficient rights in and to such information and data to authorize ArcaEx to perform all of its obligations under this User Agreement with respect thereto and that may be required for User’s or Archipelago’s use of such information, (ii) use or delivery of such information by User or Archipelago will not violate the proprietary rights (including, without limitation, any privacy rights) of any party, and (iii) use or delivery of the information by User or Archipelago will not violate any applicable law or regulation.

(d) **Fees.** User will pay when due all amounts payable to third parties arising from User’s access to the ArcaEx. Such amounts include, but are not limited to, applicable exchange and regulatory fees.

(e) **Sponsored Participants.** Notwithstanding Archipelago’s execution and delivery to User of a copy of this Agreement, if User is a Sponsored Participant, and not an ETP Holder, as a condition to initiating and continuing access to the ArcaEx, (i) User must enter into and maintain customer agreements with one or more Sponsoring ETP Holders establishing proper relationship(s) and account(s) through which User may trade on the ArcaEx. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in the PCXE Rules.

(f) **Order Designation.** All orders other than orders entered into the ArcaEx by a Sponsored Participant, and any trades resulting there from shall be the responsibility of the ETP Holder from which they originated.

### 2. PCXE RULES.

(a) **Compliance with PCXE Rules.** User represents and warrants that: (i) it will use the Archipelago Exchange only if and when it is duly authorized to use the Archipelago Exchange pursuant to PCXE Rules and User is an ETP Holder or User is a Sponsored Participant; (ii) it will only use the ArcaEx in compliance with the PCXE Rules; and, (iii) it is and will remain responsible for its use of the Archipelago Exchange and the use of the ArcaEx by any of its employees, customers, and agents or by any Sponsored Participants whose use of the ArcaEx is sponsored by the User; (iv) it will maintain and keep current a list of all Authorized Traders who may obtain access to the ArcaEx on behalf of the User and/or the User’s Sponsored Participant(s); and (v) it will familiarize all Authorized Traders with all of User’s obligations under this Agreement and will assure that they receive appropriate training prior to any use or access to the ArcaEx.

## SECTION 7 – ARCHIPELAGO™ USER AGREEMENT (CONTINUED)

(b) **Monitoring.** User acknowledges and agrees that PCXE will monitor the use of the ArcaEx by User for compliance with all applicable laws and regulations, including, without limitation, the PCXE Rules. User acknowledges its responsibility to monitor its employees, agents and customers for compliance with the PCXE Rules, the rules and regulations of any self-regulatory organizations of which User is a member and all applicable federal and state laws.

(c) **Integrity of ArcaEx.** User will not (i) materially alter the information or data supplied to or received from the Archipelago Exchange in violation of the PCXE Rules, (ii) materially affect the integrity of the information or data supplied to or received from the ArcaEx, or (iii) supply or render information or data to or from the ArcaEx that is illegal, inaccurate, unfair, uninformative, fictitious, misleading or discriminatory. User will not permit its employees, agents or customers to interfere with or adversely affect the ArcaEx or any use thereof by any other authorized individuals or entities.

(d) **Indemnity.** User agrees to indemnify, defend and hold ArcaEx, the Pacific Exchange, Inc. and PCXE harmless from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and attorneys' fees, arising from or as a result of User's breach of its obligations under this User Agreement or otherwise from its use of the ArcaEx.

### 3. CHANGE OF ARCHIPELAGO EXCHANGE.

User acknowledges and agrees that nothing in this User Agreement constitutes an understanding by Archipelago to continue the ArcaEx or any aspect in its current form. Archipelago may from time to time make additions, deletions or modifications to the ArcaEx. User acknowledges and agrees that Archipelago may temporarily or permanently, unilaterally condition, modify or terminate the right of any individuals or entities to access, receive or use the Archipelago Exchange in accordance with the PCXE Rules. Further, Archipelago may temporarily or permanently terminate the right of any individuals or entities to access the ArcaEx at any time if so instructed by PCXE.

### 4. OWNERSHIP.

User acknowledges and agrees that all patents, copyrights, trade secrets, trademarks and other property rights in or related to the ArcaEx and the information and data made available through the ArcaEx (including compilation rights in information and data) are and will remain the exclusive property of Archipelago, ArcaEx or its or their licensors. User will attribute the source as appropriate under all circumstances.

### 5. INFORMATION.

(a) **Confidentiality.** Both parties acknowledge that (i) the ArcaEx and the information and data made available therein, incorporate confidential and proprietary information developed, acquired by or licensed to Archipelago, including confidential information of the PCXE or other entities, and (ii) each party may receive or have access to other proprietary or confidential information disclosed and marked as confidential by the disclosing party (collectively, the "Information"). The receiving party will use the disclosing party's Information solely to perform its obligations under this User Agreement. The receiving party will take all precautions necessary to safeguard the confidentiality of the disclosing party's Information, including without limitation, (i) those taken by the receiving party to protect its own confidential information and (ii) those which the disclosing party may reasonably request from time to time.

(b) **Disclosure.** The receiving party will not disclose, in whole or in part, the disclosing party's Information to any person, except as specifically authorized under this User Agreement. User may not disclose any data or compilations of data made available to User by Archipelago without the express, prior written authorization of Archipelago. User acknowledges that any and all information provided to the ArcaEx by the User will be disclosed to PCXE for use in accordance with the PCXE Rules. User hereby consents to such disclosure. Archipelago may also disclose Information in accordance with its regulatory obligations.

(c) **Unauthorized Use or Disclosure.** The parties acknowledge that any unauthorized use or disclosure of the disclosing party's Information may cause irreparable damage to the disclosing party. If an unauthorized use or disclosure occurs, the receiving party will immediately notify the disclosing party and take at its expense all steps necessary to recover the disclosing party's Information and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If the receiving party fails to take these steps in a timely and adequate manner, the disclosing party may take them at the receiving party's expense, and the receiving party will provide the disclosing party with its reasonable cooperation in such actions that the disclosing party may request.

(d) **Limitation.** The receiving party will have no confidentiality obligation with respect to any portion of the disclosing party's Information that (i) the receiving party independently developed before receiving the Information from the disclosing party, (ii) the receiving party lawfully obtained from a third party under no obligation of confidentiality, (iii) is or becomes available to the public other than as a result of an act or omission of the receiving party or any of its employees or (iv) the receiving party is compelled to disclose pursuant to legal process provided by a court of competent jurisdiction or other governmental entity to whose jurisdiction the receiving party is subject.

### 6. DISCLAIMER OF WARRANTY.

THE ARCHIPELAGO EXCHANGE IS MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE ARCAEX AND ANY DATA, SOFTWARE OR INFORMATION MADE AVAILABLE THEREIN BY ARCHIPELAGO, PCXE OR ITS OR THEIR LICENSORS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY

## **SECTION 7 – ARCHIPELAGO™ USER AGREEMENT (CONTINUED)**

ARCHIPELAGO, PCXE OR ITS OR THEIR AGENTS, AFFILIATES, LICENSORS OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF SATISFACTORY QUALITY, ACCURACY, UNINTERRUPTED USE, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

### **7. NO LIABILITY FOR TRADES.**

USER UNDERSTANDS AND AGREES THAT (I) ARCHIPELAGO IS NOT DIRECTLY OR INDIRECTLY A PARTY TO OR A PARTICIPANT IN ANY TRADE OR TRANSACTION ENTERED INTO OR OTHERWISE CONDUCTED THROUGH THE ARCHIPELAGO EXCHANGE, AND (II) ARCHIPELAGO IS NOT LIABLE IN ANY MANNER TO ANY PERSON (INCLUDING WITHOUT LIMITATION THE USER AND ANY PERSON FOR WHOM THE USER IS AUTHORIZED TO TRADE OR ACT) FOR THE FAILURE OF ANY PERSON ENTERING INTO A TRADE OR TRANSACTION BY MEANS OF THE ARCHIPELAGO EXCHANGE TO PERFORM SUCH PERSON'S SETTLEMENT OR OTHER OBLIGATIONS UNDER SUCH TRADE OR TRANSACTION. NEITHER ARCHIPELAGO, PCXE, OR ITS OR THEIR AGENTS, AFFILIATES OR LICENSORS WILL BE LIABLE FOR ANY LOSSES, DAMAGES, OR OTHER CLAIMS, ARISING OUT OF THE ARCAEX OR ITS USE. ANY LOSSES, DAMAGES, OR OTHER CLAIMS, RELATED TO A FAILURE OF THE ARCHIPELAGO EXCHANGE TO DELIVER, DISPLAY, TRANSMIT, EXECUTE, COMPARE, SUBMIT FOR CLEARANCE AND SETTLEMENT, OR OTHERWISE PROCESS AN ORDER, MESSAGE, OR OTHER DATA ENTERED INTO, OR CREATED BY, THE ARCHIPELAGO EXCHANGE WILL BE ABSORBED BY THE USER OR THE ETP HOLDER SPONSORING THE USER, THAT ENTERED THE ORDER, MESSAGE OR OTHER DATA INTO THE ARCAEX. IF THIS SECTION IS DEEMED TO CONFLICT WITH ANY OTHER SECTION OF THIS USER AGREEMENT, THIS SECTION WILL SUPERCEDE SUCH OTHER SECTION.

### **8. NO CONSEQUENTIAL DAMAGES.**

UNDER NO CIRCUMSTANCES WILL ARCHIPELAGO, PCXE OR ITS OR THEIR AGENTS, AFFILIATES OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE, CLAIM OR EXPENSE, INCLUDING WITHOUT LIMITATION ANY DIRECT, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON USER'S CLAIMS OR THE CLAIMS OF ITS CUSTOMERS, EMPLOYEES OR AGENTS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF THE ARCAEX, INTERRUPTION IN USE OR AVAILABILITY THE ARCAEX, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION.

### **9. TERM AND TERMINATION.**

This User Agreement will be effective as of the Effective Date and will remain in effect thereafter until terminated by either party upon notice to the other party. Termination will be effective at the close of trading in the affected markets and applications on the day that notice of termination is received by the other party hereto. Archipelago may terminate this User Agreement immediately if (i) the User is in breach of this User Agreement for any reason, (ii) any representations made by the User in connection with this User Agreement are or become false or misleading or (iii) Archipelago is notified that User is no longer a ETP Holder or Sponsored Participant in good standing of the PCXE or otherwise authorized to access the Archipelago Exchange. Upon the termination of this User Agreement for any reason, all rights granted to User hereunder will cease. The provisions of Sections 2(d), 5, 6, 7, 8, 9, and 12 will survive the termination or expiration of this User Agreement for any reason. In no event will termination of this User Agreement relieve User of any obligations incurred through its use of the ArcaEx.

### **10. ASSIGNMENT.**

User shall not assign, delegate or otherwise transfer this User Agreement or any of its rights or obligations hereunder without Archipelago's prior approval, which will not be unreasonably withheld. Archipelago may assign or transfer this User Agreement or any of its rights or obligations hereunder to a related or unrelated party upon notice to User.

### **11. FORCE MAJEURE.**

Notwithstanding any other term or condition of this User Agreement to the contrary, neither Archipelago nor User will be obligated to perform or observe their obligations undertaken in this User Agreement if prevented or hindered from doing so by any circumstances found to be beyond their control.

### **12. MISCELLANEOUS.**

All notices or approvals required or permitted under this User Agreement must be given in writing to the address specified above. Any waiver or modification of this User Agreement will not be effective unless executed in writing and signed by the other party. This User Agreement will bind each party's successors-in-interest. This User Agreement will be governed by and interpreted in accordance with the internal laws of the State of New York, USA. All disputes, claims or controversies between the parties hereto will be submitted to arbitration in New York, New York pursuant to the applicable PCXE Rules, if permissible under such rules, and otherwise under the rules of the American Arbitration Association; provided, however, that nothing herein will prevent Archipelago from seeking interim injunctive relief in any court of competent jurisdiction. Both parties submit to the non-exclusive jurisdiction of the state and federal courts in and for New York, New York, USA for the resolution of any dispute arising under this User Agreement. If any provision of this User Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this User Agreement. No action arising out of any claimed breach of this User Agreement may be brought by either party more than one (1) year after the cause of action arose. This User Agreement, together with the applicable PCXE Rules, constitutes the complete and entire statement of all conditions and representations of the agreement between Archipelago and User with respect to its subject matter and supersedes all prior writings or understandings.

## **SECTION 8 –ROUTING AGREEMENT**

Provided that User is an ETP Holder of PCXE and subject to a valid, ongoing User Agreement with the Archipelago Exchange, Inc.; Archipelago Securities, LLC (hereinafter “Archipelago Securities”), a broker-dealer registered in accordance with Section 15(a) of the Securities Exchange Act of 1934, agrees to act as agent to User for the purpose of providing certain routing services, as described herein, provided that User is bound by the terms and conditions of this Routing Agreement and any applicable rules and interpretations of the PCXE Rules. Whereas Archipelago Securities provides certain order routing services for the PCXE, and User desires to use the order routing facilities of the PCXE and the ArcaEx, for good and valuable consideration, User and Archipelago Securities agree as follows:

### **1. ROUTING SERVICES.**

Archipelago Securities, a wholly owned subsidiary of Archipelago Holdings, Inc., agrees to act as agent of the User for routing orders entered into the ArcaEx to the applicable market centers or broker-dealers for execution, whenever such routing is required in accordance with PCXE Rules. User understands and agrees that orders executed on its behalf shall at all times be subject to the terms and conditions of the PCXE Rules.

### **2. ORDERS NOT ELIGIBLE FOR ROUTING SERVICES.**

User agrees that Archipelago Securities will not execute any orders that are not eligible for order routing in accordance with PCXE Rules. For example, PCXE Rules may provide that if a User has indicated that an order must not be routed to another market center for execution (*i.e.*, by designating an order as a fill-or-return or fill-or-return plus order), the order will not be eligible for routing services provided by Archipelago Securities.

### **3. CANCELLATION; MODIFICATION OF ORDERS.**

User agrees that any requests regarding cancellation or modification of orders shall be subject to the PCXE Rules. User understands that such rules may provide that requests to cancel orders while the order is routed away to another market center and remains outside the Archipelago Exchange will be processed by Archipelago Securities, subject to the applicable trading rules of the relevant market center.

### **4. TRANSMISSION OF ORDER INSTRUCTIONS.**

User agrees that all orders on its behalf must be transmitted to Archipelago Securities through the ArcaEx. User agrees that the ArcaEx is its exclusive mechanism for purposes of transmitting orders on its behalf to Archipelago Securities and for receiving notice regarding such orders. Archipelago Securities shall be entitled to rely upon and act in accordance with any order instructions received from the ArcaEx on behalf of User. User agrees that all order executions effected on behalf of User pursuant to this agreement shall be reported by Archipelago Securities to the ArcaEx. The User shall be notified of such executions through the ArcaEx.

### **5. CLEARANCE AND SETTLEMENT.**

User agrees that all transactions executed on its behalf shall be processed in accordance with the PCXE Rules. If User is an ETP Holder, User agrees that orders executed on its behalf by Archipelago Securities shall be automatically processed by the Archipelago Exchange for clearance and settlement on a locked-in basis. If User is a Sponsored Participant, User agrees that all orders executed on its behalf by Archipelago Securities shall be cleared and settled, using the relevant Sponsoring ETP Holder’s mnemonic (or its clearing firm’s mnemonic as applicable).

### **6. TERM OF AGREEMENT.**

This Routing Agreement will be effective as of the Effective Date and will remain in effect thereafter until terminated by either party upon notice to the other party. Termination will be effective at the close of trading in the affected markets and applications on the day that notice of termination is received by the other party hereto. Archipelago Securities may terminate this Routing Agreement immediately if (i) the User is in breach of this Routing Agreement for any reason, (ii) any representations made by the User in connection with this Agreement or the User Agreement are or become false or misleading or (iii) User is no longer a ETP Holder or Sponsored Participant of the PCXE or otherwise authorized to access the ArcaEx. Upon the termination of this Agreement or the User Agreement for any reason, all rights granted to User hereunder will cease. The provisions of Paragraphs 7, 8, 9 and 10 will survive the termination or expiration of this Routing Agreement for any reason. In no event will termination of this Routing Agreement relieve User of any obligations incurred through its use of the ArcaEx.

### **7. INDEMNITY.**

User agrees to indemnify, defend and hold Archipelago Securities harmless from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and attorneys’ fees, arising from or as a result of User’s breach of its obligations under this Agreement or otherwise from its use of the Archipelago Securities routing services.

### **8. DISCLAIMER OF WARRANTY.**

ROUTING SERVICES ARE PROVIDED “AS IS” AND WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE ROUTING SERVICE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY ARCHIPELAGO SECURITIES, PCXE OR ITS OR THEIR AGENTS, AFFILIATES, LICENSORS OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF SATISFACTORY QUALITY, ACCURACY, UNINTERRUPTED USE, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT) AND ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

**SECTION 8 – ARCHIPELAGO SECURITIES™ ROUTING AGREEMENT (CONTINUED)**

**9. NO LIABILITY FOR TRADES.**

USER UNDERSTANDS AND AGREES THAT (1) ARCHIPELAGO SECURITIES IS NOT LIABLE IN ANY MANNER TO ANY PERSON (INCLUDING WITHOUT LIMITATION THE USER AND ANY PERSON FOR WHOM THE USER IS AUTHORIZED TO TRADE OR ACT) FOR THE FAILURE OF ANY PERSON ENTERING INTO A TRADE OR TRANSACTION BY MEANS OF THE ARCHIPELAGO EXCHANGE TO PERFORM SUCH PERSON'S SETTLEMENT OR OTHER OBLIGATIONS UNDER SUCH TRADE OR TRANSACTION. NEITHER ARCHIPELAGO SECURITIES, OR ITS AGENTS, AFFILIATES OR LICENSORS WILL BE LIABLE FOR ANY LOSSES, DAMAGES, OR OTHER CLAIMS, ARISING OUT OF THE ROUTING SERVICE OR ITS USE. ANY LOSSES, DAMAGES, OR OTHER CLAIMS, RELATED TO A FAILURE OF ARCHIPELAGO SECURITIES TO DELIVER, DISPLAY, TRANSMIT, EXECUTE, COMPARE, SUBMIT FOR CLEARANCE AND SETTLEMENT, OR OTHERWISE PROCESS AN ORDER, MESSAGE, OR OTHER DATA ENTERED INTO, OR CREATED BY, THE ARCHIPELAGO EXCHANGE WILL BE ABSORBED BY THE USER OR THE ETP HOLDER SPONSORING THE USER, THAT ENTERED THE ORDER, MESSAGE OR OTHER DATA INTO THE ARCHIPELAGO EXCHANGE. IF THIS SECTION IS DEEMED TO CONFLICT WITH ANY OTHER SECTION OF THIS USER AGREEMENT, THIS SECTION WILL SUPERCEDE SUCH OTHER SECTION.

**10. NO CONSEQUENTIAL DAMAGES.** UNDER NO CIRCUMSTANCES WILL ARCHIPELAGO SECURITIES, PCXE OR ITS OR THEIR AGENTS, AFFILIATES OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE, CLAIM OR EXPENSE, INCLUDING WITHOUT LIMITATION ANY DIRECT, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON USER'S CLAIMS OR THE CLAIMS OF ITS CUSTOMERS, EMPLOYEES OR AGENTS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF ROUTING SERVICES, INTERRUPTION IN USE OR AVAILABILITY OF ARCHIPELAGO SECURITIES, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION.

**11. ASSIGNMENT.**

User shall not assign, delegate or otherwise transfer this Routing Agreement or any of its rights or obligations hereunder without Archipelago Securities' prior approval, which will not be unreasonably withheld. Archipelago Securities may assign or transfer this Routing Agreement or any of its rights or obligations hereunder to a related or unrelated party upon notice to User.

**12. FORCE MAJEURE.**

Notwithstanding any other term or condition of this Routing Agreement to the contrary, neither Archipelago Securities nor User will be obligated to perform or observe their obligations undertaken in this Routing Agreement if prevented or hindered from doing so by any circumstances found to be beyond their control.

**13. MISCELLANEOUS.**

All notices or approvals required or permitted under this Routing Agreement must be given in writing to the address specified above. Any waiver or modification of this Routing Agreement will not be effective unless executed in writing and signed by the other party, provided that this agreement shall at all times be interpreted to effect the rules and interpretations of the PCXE, as applicable. This Routing Agreement will bind each party's successors-in-interest. This Routing Agreement will be governed by and interpreted in accordance with the internal laws of the State of New York, USA. All disputes, claims or controversies between the parties hereto will be submitted to arbitration in New York, New York. This Routing Agreement, together with the applicable PCXE Rules, constitutes the complete and entire statement of all conditions and representations of the agreement between Archipelago Securities and User with respect to its subject matter and supersedes all prior writings or understandings.

Execution of this Agreement by an ETP Holder may be effected by initialing the User Agreement for the ArcaEx or, alternatively, by signing in the space provided below:

Accepted on behalf of ETP Holder:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# ARCHIPELAGO EXCHANGE

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**DEA APPLICATION REQUIREMENTS  
SPONSORING PARTICIPANT CONSENT  
LETTER OF CONSENT (IF NOT SELF-CLEARING)**

**SECTION 9 – AUTHORIZED TRADER REGISTRATION - To be completed by DEA ETPs ONLY .**

**Provide the information requested below for each Authorized Trader associated with the applicant ETP Holder, for whom the PCXE will be the Designated Examining Authority ("DEA").**

Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Form U4 and Fingerprints are enclosed, along with a \$125 Investigation Fee and \$35 Fingerprint Fee.
- Proof of Series 7 Examination Date and Score is enclosed.
- Request for a Series 7 Waiver with supporting documentation pursuant to PCXE Rule 2.4(c) is enclosed.

Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Form U4 and Fingerprints are enclosed, along with a \$125 Investigation Fee and \$35 Fingerprint Fee.
- Proof of Series 7 Examination Date and Score is enclosed.
- Request for a Series 7 Waiver with supporting documentation pursuant to PCXE Rule 2.4(c) is enclosed.

Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Form U4 and Fingerprints are enclosed, along with a \$125 Investigation Fee and \$35 Fingerprint Fee.
- Proof of Series 7 Examination Date and Score is enclosed.
- Request for a Series 7 Waiver with supporting documentation pursuant to PCXE Rule 2.4(c) is enclosed.

Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Form U4 and Fingerprints are enclosed, along with a \$125 Investigation Fee and \$35 Fingerprint Fee.
- Proof of Series 7 Examination Date and Score is enclosed.
- Request for a Series 7 Waiver with supporting documentation pursuant to PCXE Rule 2.4(c) is enclosed.

Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

- Form U4 and Fingerprints are enclosed, along with a \$125 Investigation Fee and \$35 Fingerprint Fee.
- Proof of Series 7 Examination Date and Score is enclosed.
- Request for a Series 7 Waiver with supporting documentation pursuant to PCXE Rule 2.4(c) is enclosed.

Additional Authorized Traders are submitted in a separate document attached hereto.

**SECTION 10 – DESIGNATED EXAMINING AUTHORITY (DEA) REQUIREMENTS**

**ITSFEA COMPLIANCE ACKNOWLEDGMENT**

**This form should be completed by a Director, Officer, General Partner or Individual responsible for ensuring that the Broker-Dealer's ITSFEA Compliance Procedures are followed. In the future, this certification must be completed and filed with PCXE along with the Broker-Dealer's year-end FOCUS Report (Form X-17A-5).**

Broker-Dealer: \_\_\_\_\_  
SEC #. \_\_\_\_\_

The undersigned states and certifies as follows:

It is understood that should any Director, Officer, General Partner or Associated Person (as defined in PCXE Rule 1.1(d)) of the Broker-Dealer acquire material, non-public information concerning a corporation whose securities are publicly traded, it may be a violation of PCXE Rules and Federal securities laws to misuse such information or trade any securities issued by the corporation, or any options or other derivative securities based thereon, while such information remains non-public.

It is further understood that should any Director, Officer, General Partner or Associated Person of the Broker-Dealer obtain material, non-public information concerning the market in a security or group of securities, it may be a violation of PCXE Rules and Federal securities laws to make improper use of such information in connection with trading in the security, group of securities or any option or other derivative based thereon.

It is also understood that it may be a violation of PCXE Rules and Federal securities laws to disclose to any other person or entity any non-public, material corporate or market information that may be acquired regarding a publicly traded security or group of securities.

Additionally, the Broker-Dealer represents that it has established written procedures reasonably designed to prevent misuse of material non-public information by the Broker-Dealer or by any of the Broker-Dealer's Directors, Officers, General Partners or Associated Persons, taking into consideration the nature of the Broker-Dealer's business.

The Individual(s) responsible for overseeing and supervising the specific element of the member firm or organization's ITSFEA Compliance procedures has reviewed (or supervised the review of) the Broker-Dealer's proprietary, error account(s), and any outside brokerage securities accounts of Directors, Officers, General Partners, and Associated Persons with the Broker-Dealer, in accordance with the specific provisions (including timing and type of review) detailed in and required by the firm's written ITSFEA compliance procedures.

Based upon the assessment of the adequacy of those procedures and of the authority and diligence of the person(s) carrying out those procedures (except as to any securities transactions involving the possible misuse of non-public information which already have been reported to the PCXE), there is no reasonable cause to believe that any Director, Officer, General Partner, or Associated Persons of the Broker-Dealer has misused, made improper use of, or disclosed material non-public information, or may otherwise be in violation of PCXE Rule 6.3.

\_\_\_\_\_  
Signature of Authorized Officer, Partner  
Managing Member, or Sole Proprietor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## SECTION 11 – SPONSORING PARTICIPANT CONSENT

To be completed if applicant Broker-Dealer intends to act as a Sponsoring ETP Holder (see PCXE Rule 7.29). Please make copies for each Sponsored Participant.

On behalf of the Applicant Broker-Dealer, the undersigned hereby notifies PCXE that it intends to act as a Sponsoring ETP Holder for the following Sponsored Participant:

Full Legal Name: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

We are an ETP Holder in good standing, or hereby make application to become an ETP Holder and have been designated by the Sponsored Participant to execute, clear and settle transactions resulting on or through the ArcaEx™.

We acknowledge and agree that any orders entered into the Archipelago Exchange by the Sponsored Participant or any person acting on behalf of or in the name of the Sponsored Participant that identify us as the Sponsoring ETP Holder and any execution occurring as a result of such orders are binding in all respects on us. In that regard, we acknowledge and agree that we are responsible for all related contractual and regulatory obligations. We hereby acknowledge and agree that we are responsible for any and all actions taken by the Sponsored Participant or any person acting on behalf of or in the name of the Sponsored Participant on or through the ArcaEx.

\_\_\_\_\_  
Applicant Broker-Dealer

\_\_\_\_\_  
Signature of Authorized Officer, Partner,  
Managing Member, or Sole Proprietor

\_\_\_\_\_  
Print Name

Title \_\_\_\_\_

Date \_\_\_\_\_

**SECTION 12 – CLEARING LETTER OF CONSENT**

**NOTICE OF CONSENT –To be completed by Clearing ETP Holder of applicant Broker-Dealer.**

The undersigned hereby represents the clearing agency named below, a member of the National Securities Clearing Corporation (“NSCC”), and an approved ETP Holder of the ArcaEx, a facility of PCXE.

The undersigned Clearing ETP Holder hereby agrees to accept full financial responsibility for all transactions effected through and carried in all accounts held by the following Applicant Broker-Dealer with the clearing agency:

\_\_\_\_\_  
Applicant Broker-Dealer

\_\_\_\_\_  
CRD# and/or SEC File#

This section shall be deemed a letter of guarantee, letter of authorization, or notice of consent pursuant to PCXE Rules and may be relied upon by PCXE, the Pacific Exchange, Inc., the NSCC and their respective members. This Notice of Consent shall be subject to PCXE Rules, as amended from time to time, and shall remain in effect until revoked in writing by the Clearing ETP Holder.

\_\_\_\_\_  
Clearing ETP Holder (Broker-Dealer Name)

\_\_\_\_\_  
Clearing ETP Holder (NSCC Clearing #)

\_\_\_\_\_  
Signature of Authorized Officer, Partner or  
Managing Member of Clearing ETP Holder

\_\_\_\_\_  
Signature of Authorized Officer, Partner or  
Managing Member, or Sole Proprietor of ETP Holder

\_\_\_\_\_  
Print Name / Title

\_\_\_\_\_  
Print Name / Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date