(D) Rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;

(E) Offerings of investment grade asset-backed securities;

(F) Offerings of convertible securities;

(G) Offerings of preferred securities; [and]

(H) Offerings of an investment company registered under the Investment Company Act of 1940; *and*

*(I) Offerings of securities (in ordinary share form or ADRs registered on Form F–6) that have a pre-existing market outside of the United States.*

([11]*10*) ''Restricted person'' means:

(A) Members or Other Broker/Dealers

(B) Broker/Dealer Personnel

(i) Any officer, director, general partner, associated person, or employee of a member or any other broker/dealer (other than a limited business broker/dealer);

(ii) Any agent of a member or any other broker/dealer (other than a limited business broker/dealer) that is engaged in the investment banking or securities business; or

(iii) An immediate family member of a person specified in subparagraph (B)(i) or (ii) if the person specified in subparagraph (B)(i) or (ii):

(a) Materially supports, or receives material support from, the immediate family member;

(b) Is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or

(c) Has an ability to control the allocation of the new issue.

(C) Finders and Fiduciaries

(i) With respect to the security being offered, a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and

(ii) An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.

(D) Portfolio Managers

(i) Any person who has authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account.

(ii) An immediate family member of a person specified in subparagraph (D)(i) that materially supports, or receives material support from, such person.

(E) Persons Owning a Broker/Dealer

(i) Any person listed, or required to be listed, in Schedule A of a Form BD (other than with respect to a limited business broker/dealer), except persons identified by an ownership code of less than 10%;

(ii) Any person listed, or required to be listed, in Schedule B of a Form BD (other than with respect to a limited business broker/dealer), except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A identified by an ownership code of less than 10%;

(iii) Any person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above;

(iv) Any person that directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, or other than with respect to a limited business broker/dealer);

(v) Any person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, or other than with respect to a limited business broker/dealer).

(vi) An immediate family member of a person specified in subparagraphs (E)(i)–(v) unless the person owning the broker/dealer:

(a) Does not materially support, or receive material support from, the immediate family member;

(b) Is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and has no ability to control the allocation of the new issue.

* * * * *

## VII. Solicitation of Comments on Amendment No. 5

Interested persons are invited to submit written data, views, and arguments on Amendment No. 5, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–60 and should be submitted by November 21, 2003.

## VIII. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[184] that the proposal (SR–NASD–99–60) and Amendment Nos. 1 to 4 thereto are approved, and that Amendment No. 5 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[185]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–27463 Filed 10–30–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48700; File No. SR–PCX–2003–35]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend Its Corporate Governance and Disclosure Policies

October 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 14, 2003, the Exchange filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule

[184] *Id.*

[185] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2003 (''Amendment No.1''). In Amendment No.1, the Exchange made changes to proposed rule text in PCX Rule 5.3(k)(5)(B)(ii)(a).

change, as amended, from interested persons.

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

The Exchange, through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE''), is proposing to amend its Corporate Governance and Disclosure Policies. The Exchange states that these changes are aimed at helping to restore investor confidence by strengthening listed companies' corporate governance practices.[4] The text of the proposed rule change, as amended, is set forth below.[5] Text in brackets indicates material to be deleted, and text in italics indicates material to be added.[6]

* * * * *

PCX Equities, Inc.

Rule 5

Listings

Rules 5.1–5.2–No change.

Section 3. Corporate Governance and Disclosure Policies

Corporate Governance and Disclosure Policies

Rule 5.3 The Corporation shall require that specific corporate governance and disclosure policies be established by domestic issuers of any equity security listed pursuant to Rule 5.2. *Issuers of securities under the Tier I designation must comply with the provisions of Rules 5.3(c)–(o). Issuers of securities under the Tier II designation must comply with the provisions of Rules 5.3(a)–(i)(4) and 5.3(k)(5). Issuers of any security that is listed pursuant to the Rules of the Corporation must comply with the provisions of Rule 5.3(k)(5).* [The Corporation, however, will not require an issuer of such security under the Tier II designations to comply with the provisions for an audit committee as set forth in this Rule 5.3(b).]

Rule 5.3(a)—No change.

Independent Directors [/Audit Committee]

Rule 5.3(b). Independent Directors [/Audit Committee]

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. [Such issuer shall maintain an audit committee. All audit committee members shall be independent directors that satisfy the audit committee requirement set forth below.

[(1) Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:

[(i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;

[(ii) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and

[(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

[(2) Composition/Expertise Requirement of Audit Committee Members.

[(i) Each audit committee will consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company (''Independent'');

[(ii) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and

[(iii) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

[(3) Independence Requirement of Audit Committee Members. In addition to the definition of Independent provided in 5.3(b)(2)(i), the following restrictions shall apply to every audit committee member:

[(i) Employees. A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. ''Affiliate'' includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

[(ii) Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (*e.g.*, a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated.

[''Business relationships'' can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer

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[4] The Commission notes that the PCX will consider amendments to the proposed rule change once the Commission approves proposals on corporate governance matters filed by other exchanges. Telephone conversation between Steven B. Matlin, Senior Counsel, PCX, and Ira L. Brandriss, Special Counsel, Division of Market Regulation (''Division''), Commission, on October 23, 2003.

[5] The rule text as set forth herein includes several minor technical revisions that the Exchange has committed to correct by filing an amendment. Telephone conversation between Steven B. Matlin, Senior Counsel, PCX, and Ira L. Brandriss, Special Counsel, Division, Commission, on October 23, 2003.

[6] The Commission notes that the PCX listing rules provide standards for the listing of two different tiers of securities, to which the proposed rule change makes reference. As stated in PCX Rule 5.2(b): ''A listing under the Tier I designation generally signifies that the company has achieved maturity and high status in its industry in terms of assets, earnings, and shareholder interest, and acceptance. The Tier II designation is limited, except for specific circumstances as discussed [earlier in the provision], to the listing of common stock, preferred stock, bonds and debentures, and warrants. A listing under the Tier II designation generally signifies that the company has limited commercial operations, lower capitalization, and lacks a demonstrated earnings history.''

or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

[(iii) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

[(iv) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. ''Immediate Family'' includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

[(v) Notwithstanding the requirements of subparagraphs (3)(i) and (3)(iv), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

[(4) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

[(i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

[(ii) the financial literacy of the audit committee member;

[(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

[(iv) the annual review and reassessment of the adequacy of the audit committee charter.

[(5) ''Officer'' has the meaning specified in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

[(6) Initial Public Offering. Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing.]

Rules 5.3(c)–(i)(4)—No change.

Rule 5.3(j) Corporate Governance Guidelines/Code of Conduct

*(1) Corporate Governance Guidelines. Listed companies must adopt and disclose corporate governance guidelines. Each listed company's Web site must include its corporate governance guidelines, the charters of its most important committees (including at least the audit, compensation and nominating committees) and the company's code of business conduct and ethics. Each company's annual report must state that the foregoing information is available on its Web site, and that the information is available in print to any shareholder who requests it. The following subjects must be addressed in the corporate governance guidelines:*

*(A) Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in subsection (k) below. Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.*

*(B) Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.*

*(C) Director access to management and, as necessary and appropriate, independent advisors.*

*(D) Director compensation. These guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate).*

*(E) Director orientation and continuing education.*

*(F) Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.*

*(G) Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.*

*(2) Code of Business Conduct and Ethics. Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers. The code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. The code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. All codes should address the following topics:*

*(A) Conflicts of interest. A conflict of interest occurs when an individual's private interest interferes in any way, or even appears to interfere, with the interests of the corporation as a whole.*

*(B) Corporate opportunities. Employees, officers and directors should be prohibited from (1) taking for themselves opportunities that are discovered through the use of corporate property, information or position; (2) using corporate property, information, or position for personal gain; and (3) competing with the company.*

*(C) Confidentiality. Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.*

*(D) Fair dealing. Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practices.*

*(E) Protection and proper use of company assets. All employees, officers and directors should protect the company's assets and ensure their efficient use.*

*(F) Compliance with laws, rules and regulations. The company should proactively promote compliance with laws, rules and regulations, including insider trading laws.*

*(G) Encouraging the reporting of any illegal or unethical behavior to appropriate personnel. The company should proactively promote ethical behavior. The company must ensure that employees know that the company will not allow retaliation for reports made in good faith.*

Independent Directors/Board Committees

Rule 5.3(k) Independent Directors/Board Committees

*The Corporation shall require that each listed domestic issuer have a majority of independent directors on its board of directors, except that a domestic issuer of which more than 50% of the voting power is held by an individual, a group or another company need not have a majority of independent directors on its board or have nominating/corporate governance and compensation committees composed of independent directors as set forth in Rule 5.3(k). However, all such controlled companies must have at least a minimum three person audit committee and otherwise comply with the audit committee requirements provided for in this Rule 5.3(k)(5).*

*(1) Independent Directors. For purposes of this Rule 5.3(k), no director qualifies as independent unless the board of directors affirmatively determines that the director has no material relationship with the listed company, either directly or as a partner, shareholder or officer of an organization that has a relationship with the company. Companies must disclose these determinations. The basis for a board determination that a relationship is not material must be disclosed in the company's annual proxy statement. A board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination.*

*In addition, the following directors do not qualify as independent directors:*

*(A) A director who is a former employee of the listed company whose employment ended within the past five years.*

*(B) A director who is, or in the past three years has been, affiliated with or employed by a (present or former) auditor of the company (or of an affiliate). Such director cannot be independent until three years after the end of either the affiliation or the auditing relationship.*

*(C) A director who is, or in the past five years has been, part of an interlocking directorate in which an executive officer of the listed company serves on the compensation committee of another company that concurrently employs the director.*

*(D) A director with an immediate family member in any the foregoing categories. Immediate family includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.*

*(2) Regularly Scheduled Non-Management Directors Executive Sessions. The non-management directors of each company must meet at regularly scheduled executive sessions without management. Non-management directors are all those who are not company officers, and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason. There need not be a single presiding director at all executive sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the annual proxy statement. Alternatively, a company may disclose the procedure by which a presiding director is selected for each executive session. In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group.*

*(3) Nominating/Corporate Governance Committee. Listed companies must have a Nominating Committee/Corporate Governance Committee composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. The committee must have a written charter that addresses:*

*(A) The committee's purpose, which at a minimum, must be to: identify individuals qualified to become board members, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; and develop and recommend to the board a set of corporate governance principles applicable to the company.*

*(B) The committee's goals and responsibilities, which must reflect, at a minimum, the board's criteria for selecting new directors, and oversight of the evaluation of the board and management.*

*(C) An annual performance evaluation of the committee.*

*(D) Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.*

*(E) The committee's authority to retain and terminate any search firm to be used to identify director candidates, including the sole authority to approve the search firm's fees and other retention terms.*

*If a company is required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.*

*Boards may allocate the responsibilities of the nominating/corporate governance committee and the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. Any such committee must have a published committee charter.*

*Controlled companies need not comply with the requirements of this provision.*

*(4) Compensation Committee. Listed companies must have a compensation committee composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. The committee must have a written charter that addresses:*

*(A) The committee's purpose which, at a minimum, must be to discharge the board's responsibilities relating to compensation of the company's executives, and to produce an annual report on executive compensation for inclusion in the company's proxy statement, in accordance with applicable rules and regulations.*

*(B) The committee's duties and responsibilities, which, at a minimum, must be to:*

*(i) Review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation.*

*(ii) Make recommendations to the board with respect to incentive-compensation plans and equity-based plans.*

*(C) An annual performance evaluation of the compensation committee.*

*(D) Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.*

*(E) The committee's authority to retain and terminate a consultant to assist in the evaluation of a director, CEO or senior executive compensation. The Committee shall have the sole authority to approve the consultant's fees and other retention terms.*

*Controlled companies need not comply with the requirements of this provision.*

*(5) Audit Committee.*

*(A) General Provisions.*

*(i) Each listed company must have an audit committee as defined by Section 3(a)(58) of the Securities and Exchange Act of 1934. The audit committee must be composed entirely of independent directors. The audit committee must comply with all the rules and procedures set forth in Rule10A–3 of the Securities and Exchange Act of 1934. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the issuer to the Corporation, may remain an audit committee member of the listed issuer until the earlier of the next annual meeting or special meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent. Should an individual who ceases to be independent for reasons outside the member's reasonable control remain a member of the audit committee after the time permitted by this Rule 5.3(k)(5)(A)(i), then the Corporation shall remove the issuer's securities from listing pursuant to the procedures set forth in Rule 5.5(m).*

*(ii) Listed issuers, other than foreign private issuers and small business issuers (as defined in Rule 12b–2 of the Securities and Exchange Act of 1934), must be in compliance with this Rule 5.3(k)(5) by the earlier of their first annual shareholders meeting after January 15, 2004, or October 31, 2004. Foreign private issuers and small business issuers must be in compliance with this Rule 5.3(k)(5) by July 31, 2005.*

*(iii) If an executive officer of a listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this Rule 5.3(k)(5), the listed issuer must promptly notify the Corporation of such noncompliance.*

*(iv) To be eligible for continued listing, a listed issuer must comply with all of the requirements set forth in this Rule 5.3(k)(5). Except as provided for in Rule 5.3(k)(5)(A)(i), should a listed issuer fail to comply with any of the requirements set forth in this Rule 5.3(k)(5) for a period of six (6) consecutive months, then the Corporation shall remove the issuer's securities from listing pursuant to the procedures set forth in Rule 5.5(m). A listed issuer who is not in compliance with the requirements of Rule 5.3(k)(5) must provide the Corporation with plan of remediation within 15 days after notifying the Corporation of such noncompliance. The listed issuer must provide the Corporation with written monthly updates on the progress of the plan of remediation.*

*(B) Written Charter. The audit committee must have a written charter that addresses:*

*(i) The committee's purpose which, at a minimum, must be to:*

*(a) Assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the company's internal audit function and independent auditors.*

*(b) Prepare the report that SEC rules require be included in the company's annual proxy statement.*

*(ii) The duties and responsibilities of the audit committee, which, at a minimum, must be to:*

*(a) Be directly responsible for the appointment, compensation, retention, and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.*

*(b) At least annually, obtain and review a report by the independent auditor describing the firm's internal quality control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company.*

*(c) Discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosure under ''Management Discussion and Analysis of Financial Condition and Results of Operations.''*

*(d) Discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies.*

*(e) Engage independent counsel and other advisers, as it determines necessary to carry out its duties.*

*(f) Discuss policies with respect to risk assessment and risk management.*

*(g) Meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors.*

*(h) Review with the independent auditor any audit problems or difficulties and management's response.*

*(i) Set clear policies for hiring employees or former employees of the independent auditors.*

*(j) Report regularly to the board of directors.*

*(k) Review major issues regarding accounting principles and financial statement presentations; including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies.*

*(l) Review analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses*

*of the effects of alternative GAAP methods on the financial statements.*

*(m) Review the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company.*

*(n) Review earnings press releases (paying particular attention to any use of ''pro forma,'' or ''adjusted'' non-GAAP, information), as well as financial information and earnings guidance provided to analysts and rating agencies.*

*(o) Establish procedures for: (1) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters and (2) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting, internal accounting controls or auditing matters.*

*(iii) An annual performance evaluation of the audit committee.*

*(C) Composition/Expertise Requirement of Audit Committee Members.*

*(i) Each audit committee will consist of at least three independent directors, as defined in Rule 5.3(k)(1).*

*(ii) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee.*

*(iii) At least one member of the audit committee must have accounting or related financial management expertise, as the board of directors interprets such qualification in its business judgment.*

*(D) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:*

*(i) Any determination that the company's board of directors has made regarding the independence of directors.*

*(ii) The financial literacy of the audit committee member.*

*(iii) The determination that at least one of the audit committee members has accounting or related financial management expertise.*

*(iv) The annual review and reassessment of the adequacy of the audit committee charter.*

*(6) Internal Audit Function. Each listed company must have an internal audit function. This does not necessarily mean that a company must establish a separate internal audit department or dedicate employees to the task on a full-time basis. It is sufficient for the company to have in place an appropriate control process for reviewing and approving its internal transactions and accounting. A company may outsource this function to a firm other than its independent auditors.*

*Rule 5.3(l). Reserved*

*CEO Certification*

*Rule 5.3(m). CEO Certification*

*Each listed company CEO must certify to the Corporation each year that he or she is not aware of any violation by the company of the Corporation's corporate governance listing standards. The certification filed with the Corporation, as well as the CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure, must be disclosed in the listed company's annual report to shareholders.*

*Listed Foreign Private Issuers*

*Rule 5.3(n). Listed Foreign Private Issuers*

*Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Corporation's listing standards. Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5). Listed foreign private issuers may provide this disclosure either on their Web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the Web site, the annual report shall so state and provide the web address at which the information may be obtained.*

*Deadline for Compliance*

*Rule 5.3(o). Deadline for Compliance*

*Tier I listed issuers, other than Tier I foreign private issuers and Tier I small business issuers (as defined in Rule 12b–2 of the Securities and Exchange Act of 1934), must be in compliance with all applicable sections of Rule 5.3 by the earlier of (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Tier I foreign private issuers and Tier I small business issuers must be in compliance with all applicable sections of Rule 5.3 by July 31, 2005.*

Section 4. Suspension, *Public Reprimand* or Issuer Withdrawal from Listing

¶ 7957E Suspension/*Public Reprimand*

Rule 5.4(a). The *Corporation* [Board of Directors] may suspend dealings in or institute proceedings to remove any security from listed or unlisted trading privileges. *The Corporation may issue a public reprimand letter to any listed company that violates a Corporation listing standard. The Corporation shall remove any security from listed or unlisted trading privileges if the listed company violates any provisions of Rule 5.3(k)(5).*

Rule 5.4(b)—No change.

Section 5. Maintenance Requirements and Delisting Procedures

¶7957G Maintenance Requirements and Delisting Procedures

Rule 5.5(a). The Corporation does not rate or evaluate any security dealt in on the Corporation. In making a determination concerning listing and delisting it acts normally upon information furnished it by the issuer, and it does not verify this information from independent sources or gather independent information about the issuers whose securities are dealt in on the Corporation.

As a matter of policy, when a listed company fails to meet any of the listing maintenance requirements and has more than one class of securities listed, the Corporation will give consideration to delisting all such classes. However, the Corporation may continue the listing of one class of securities regardless of its decision to delist another class, *except for failure to comply with Rule 5.3(k)(5) in which case all such classes shall be delisted.* The securities of a company will be subject to suspension and/or withdrawal from listing and registration as a listed issue if the Corporation finds that a listed company fails to meet the maintenance requirements as set forth in this Rule 5.5, or fails to comply with the Corporation's listing policies or agreements.

Commentary:

.01 When the issuer fails to meet any provision of the applicable maintenance requirements of this Rule 5.5, the Exchange shall determine whether to suspend dealings in the security and/or request the issuer to take action to remedy any identified deficiency. Should the issuer fail to correct any deficiency, the Exchange shall take action to delist the security.

.02 Securities listed under the Tier I designation will not be granted waivers from the Corporation's maintenance

requirements. Any security that no longer meets the Tier I maintenance requirements, but meets the Tier II maintenance requirements, will be reclassified as a Tier II security. The Corporation, however, may grant a waiver for the continued listing of any security in cases where the security remains listed on either the NYSE, Amex, or Nasdaq National Market; provided, however, that the Corporation determines that there is a reasonable basis for a waiver. In such cases, the security will be included under the Tier II designation.

.03 Any security approved by the Board of Directors for listing prior to July 22, 1994 must meet one of the following:

(a) To qualify for inclusion under the Tier I designation, a security must meet the applicable initial listing requirements as set forth in Rule 5.2 (including any index product listed pursuant to Rule 8); however, a security listed on either the NYSE, Amex, or Nasdaq National Market may be designated as a Tier I security so long as it meets the applicable Tier I maintenance requirements in this Rule 5.5; or

(b) Any security not meeting the applicable maintenance requirements must do so within six months of July 22, 1994. Until such time, the former standards will be applied and the security will be designated as a Tier II security.

Rule 5.5(b)—(l)—No change.

¶7957T Delisting Procedures

Rule 5.5(m). Whenever the Corporation determines that it is appropriate to either suspend dealings in and/or remove securities from listing pursuant to *Rule 5.3 or* [this] Rule 5.5, except for other than routine reasons (*e.g.*, redemptions, maturities, etc.) *or violations of Rule 5.3(k)(5) in which case the Corporation shall initiate delisting a listed company's securities*, it will follow, insofar as practicable, the following procedures:

(1) The Corporation shall notify the issuer in writing describing the basis on which the Corporation is considering the delisting of the company's security. Such notice shall be sent by certified mail and shall include the time and place of a meeting to be held by the Corporation to hear any reasons why the issuer believes its security should not be delisted. Generally, the issuer will be notified at least three (3) weeks prior to the meeting and will be requested to submit a written response.

(2) If, after such meeting, the Corporation determines that the security should be delisted, the Corporation shall notify the issuer by telephone (if possible, the same day of the meeting) and in writing of the delisting decision and the basis thereof. The written notice will also inform the issuer that it may appeal the decision to the Board of Directors and request a hearing.

(3) Concurrent with the Corporation's decision to delist the issuer's security, the Corporation will prepare a press announcement, which will be disseminated to the Market Makers and the investing public no later than the opening of trading the business day following the Corporation's decision (the Securities Qualification Department will also distribute the information to the ETP Holders). Accordingly, the suspension of trading in the issuer's security will become effective at the opening of business on the day following the Corporation's decision.

(4) If the issuer requests an appeal hearing, it must file its request along with (i) a $2,500 delisting appeal fee and (ii) an answer to the causes specified by the Corporation with the Secretary of the Corporation no later than five (5) business days following service of notice of the proposed delisting. If the issuer does not request a hearing within the specified period of time, or it does not submit the $2,500 fee to the Corporation in the form and manner prescribed, the Corporation will submit an application to the Securities and Exchange Commission to strike the security from list of companies listed on the Corporation. The Corporation will furnish a copy of such application to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated there under.

(5) If a request for a hearing is made and the requirements of Rule 5.5(m)(4) are met within the time specified, the issuer will be entitled to an appeal hearing and the Corporation will provide the issuer at least fifteen (15) business days notice of the time and place of the hearing.

(6) The hearing shall be held before the Board Appeals Committee appointed by the Board of Directors for such purpose. Only those members of the Board Appeals Committee who attend the hearing may vote with respect to any decisions the Committee may make.

(7) Any documents or other written material the issuer wishes to consider should be submitted to the appropriate office of the Corporation at least five (5) business days prior to the date of the hearing.

(8) At the hearing, the issuer must prove its case by presenting testimony, evidence, and argument to the Board Appeals Committee. The form and manner in which the actual hearing will be conducted will be established by the Board Appeals Committee so as to assure the orderly conduct of the proceeding. At the hearing, the Board Appeals Committee may require the issuer to furnish additional written information that has come to its attention.

(9) After the conclusion of the proceeding, the Board Appeals Committee shall make its decision. The decision of the Board Appeals Committee shall be in writing with one copy served upon the issuer and the second copy filed with the Secretary of the Corporation. Such decision shall be final and conclusive. If the decision is that the security of the issuer is to be removed from listing, an application shall be submitted by the Corporation to the Securities and Exchange Commission to strike the security from listing and registration, and a copy of such application shall be provided to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated there under. If the decision is that the security should not be removed from listing, the issuer shall receive a notice to that effect from the Corporation.

* * * * *

**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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

In light of the recent failures of a number of significant companies due to the lack of diligence, ethics and controls, the PCXE chose to review its corporate governance and disclosure policies. In September 2002, the PCXE Board of Directors formed a subcommittee to review the PCXE's current corporate governance and disclosure standards. The goal of the subcommittee was to enhance the accountability, integrity, and

transparency of the Exchange's listed companies.

In addition to reviewing the PCXE's corporate governance and disclosure policies, the subcommittee also reviewed the changes mandated by the Sarbanes-Oxley Act of 2002. In a release effective April 25, 2003, the Commission directed all national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by the Sarbanes-Oxley Act of 2002.[7] These requirements relate to the independence of audit committee members, the audit committee's responsibility to select and oversee the issuer's independent accountant, procedures for handling complaints regarding the issuer's accounting practices, the authority of the audit committee to engage advisors, and funding for the independent auditor and any outside advisors engaged by the audit committee.

The Exchange represents that the proposed new corporate governance and disclosure policies are designed to further the ability of honest and well-intentioned directors, officers, and employees to perform their functions effectively. The resulting proposal would also allow shareholders to more easily and efficiently monitor the performance of companies and directors in order to reduce the instances of lax and unethical behavior.

The proposals for new corporate governance and disclosure policies would be codified in PCXE Rule 5.3. The new standards in PCXE Rule 5.3 would apply to listed companies designated as Tier I issuers except for the new provisions on audit committees that are mandated by the Sarbanes-Oxley Act of 2002.[8] These provisions, which are contained in Rule 5.3(k)(5), would apply to all PCX listed securities.

Listed issuers, other than foreign private issuers and small business issuers, would have to be in compliance with Rule 5.3(k)(5) by the earlier of: (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Foreign private issuers and small business issuers that are listed would have to be in compliance with the new listing rules by July 31, 2005.

Tier I listed issuers, other than Tier I foreign private issuers and Tier I small business issuers (as defined in Rule 12b–2 of the Act[9]), would have to be in compliance with all applicable sections of Rule 5.3 by the earlier of: (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Tier I foreign private issuers and Tier I small business issuers would have to be in compliance with all applicable sections of Rule 5.3 by July 31, 2005.

The following are proposed requirements that would become incorporated in the PCXE's corporate governance and disclosure policies.

(1) Listed companies must adopt and disclose corporate governance guidelines.

Listed companies would be required to adopt and disclose corporate governance guidelines. Each listed company's Web site would be required to include its corporate governance guidelines, the charters of its most important committees (including at least the audit, compensation and nominating committees), and the company's code of business conduct and ethics. Each company's annual report would have to state that the foregoing information is available on its Web site, and that the information is available in print to any shareholder who requests it.

The following subjects would have to be addressed in the corporate governance guidelines:

• *Director qualification standards.* These standards should, at minimum, reflect the independence requirements set forth in proposed subsection 5.3(k). Companies may also address other substantive qualification requirements including policies limiting the number of boards on which a director may sit and director tenure, retirement, and succession.

• *Director responsibilities.* These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

• *Director access.* Directors must be given access to management and, as necessary and appropriate, independent advisors.

• *Director compensation.* These guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate).

• *Director orientation.* The company must provide an orientation and continuing education for its directors.

• *Management succession.* Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.

• *Annual performance evaluation of the board.* The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.

(2) Code of Business Conduct.

Listed companies would have to adopt and disclose a code of business conduct and ethics for directors, officers, and employees, and promptly disclose any waivers of the code for directors or executive officers. The code of business conduct and ethics would have to require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and would have to be promptly disclosed to shareholders. The code of business conduct and ethics would also have to contain compliance standards and procedures that would facilitate the effective operation of the code.

All codes should address the following topics:

• *Conflicts of interest.* A conflict of interest occurs when an individual's private interest interferes in any way, or even appears to interfere, with the interests of the corporation as a whole.

• *Corporate opportunities.* Employees, officers and directors should be prohibited from: (i) Taking for themselves opportunities that are discovered through the use of corporate property, information, or position; (ii) using corporate property, information, or position for personal gain; and (iii) competing with the company.

• *Confidentiality.* Employees, officers, and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.

• *Fair dealing.* Each employee, officer, and director should endeavor to deal fairly with the company's customers, suppliers, competitors, and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practices.

• *Protection and proper use of company assets.* All employees, officers, and directors should protect the company's assets and ensure their efficient use.

• *Compliance with laws, rules and regulations.* The company should proactively promote compliance with

[7] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003).

[8] *See* PCXE Rule 5.3(k)(5).

laws, rules, and regulations, including insider trading laws.

• *Encouraging the reporting of any illegal or unethical behavior to appropriate personnel.* The company should proactively promote ethical behavior. The company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

(3) Listed companies must have a majority of independent directors.

Each domestic issuer would be required to have a majority of independent directors on its board of directors, except that a domestic issuer of which more than 50% of the voting power is held by an individual, a group, or another company would not need to have a majority of independent directors on its board or have nominating/corporate governance and compensation committees composed of independent directors. However, all such controlled companies would be required to have at least a minimum three-person audit committee and otherwise comply with the audit committee requirements.

(4) In order to tighten the definition of ''independent director'' for purposes of these standards:

(a) No director would qualify as independent unless the board of directors affirmatively determines that the director has no material relationship with the listed company, either directly or as a partner, shareholder, or officer of an organization that has a relationship with the company. Companies would have to disclose these determinations.

The basis for a board determination that a relationship is not material would have to be disclosed in the company's annual proxy statement. A board could adopt and disclose categorical standards to assist it in making determinations of independence, and could make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards would have to be specifically explained. A company would be required to disclose any standard it adopts. In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board would be required to disclose the basis for its determination.

(b) In addition, the following directors would not qualify as independent directors:

(i) A director who is a former employee of the listed company whose employment ended within the past five years.

(ii) A director who is, or in the past three years has been, affiliated with or employed by a (present or former) auditor of the company (or of an affiliate). Such director could not be independent until three years after the end of either the affiliation or the auditing relationship.

(iii) A director who is, or in the past five years has been, part of an interlocking directorate in which an executive officer of the listed company serves on the compensation committee of another company that concurrently employs the director.

(iv) A director with an immediate family member in any of the foregoing categories. Immediate family includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(5) Regularly Scheduled Executive Sessions without Management.

In order to empower non-management directors to serve as a more effective check on management, non-management directors of each company would have to meet at regularly scheduled executive sessions without management. Non-management directors are all those who are not company officers, and include such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason. There would not need to be a single presiding director at all executive sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name would have to be disclosed in the annual proxy statement. Alternatively, a company could disclose the procedure by which a presiding director is selected for each executive session. In order that interested parties may be able to make their concerns known to the non-management directors, a company would be required to disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group.

(6) Nominating/Corporate Governance Committee.

Listed companies would be required to have a Nominating Committee/Corporate Governance Committee composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee would not need to be an independent director.

The committee would be required to have a written charter that addresses:

• The committee's purpose, which, at a minimum, would be required to be: to identify individuals qualified to become board members, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; and to develop and to recommend to the board a set of corporate governance principles applicable to the company.

• The committee's goals and responsibilities, which would be required to reflect, at a minimum, the board's criteria for selecting new directors, and oversight of the evaluation of the board and management.

• An annual performance evaluation of the committee.

• Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.

• The committee's authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.

If a company is required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors would not need to be subject to the nominating committee process.

Boards could allocate the responsibilities of the nominating/corporate governance committee and the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee would not need to be an independent director. Any such committee would be required to have a published committee charter.

Controlled companies would not need to comply with the requirements of this provision.

(7) Compensation Committee.

Listed companies would be required to have a compensation committee composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee would not need to be an independent director.

The committee would be required to have a written charter that addresses:

• The committee's purpose which, at a minimum, would be required to be: to discharge the board's responsibilities relating to compensation of the

company's executives, and to produce an annual report on executive compensation for inclusion in the company's proxy statement, in accordance with applicable rules and regulations.

• The committee's duties and responsibilities, which, at a minimum, would be required to be to:

(i) Review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation.

(ii) Make recommendations to the board with respect to incentive-compensation plans and equity-based plans.

• An annual performance evaluation of the compensation committee.

• Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.

• The committee's authority to retain and terminate a consultant to assist in the evaluation of a director, CEO or senior executive compensation. The Committee would need to have the sole authority to approve the consultant's fees and other retention terms.

Controlled companies would not need to comply with the requirements of this provision.

(8) Audit Committee.

Each listed company would be required to have an audit committee as defined by Section 3(a)(58) of the Act.[10] The audit committee would have to be composed entirely of independent directors. The audit committee would be required to comply with all the rules and procedures set forth in Rule 10A–3 of the Act.[11] If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, could remain an audit committee member of the listed issuer until the earlier of the next annual or special meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent. Should an individual who ceases to be independent for reasons outside the member's reasonable control remain a member of the audit committee after the time permitted, then the Exchange would be required to remove the issuer's securities from listing.

Listed issuers, other than foreign private issuers and small business issuers (as defined in Rule 12b–2 of the Act[12]), would have to be in compliance with Rule 5.3(k)(5) by the earlier of their first annual shareholders meeting after January 15, 2004, or October 31, 2004. Foreign private issuers and small business issuers would have to be in compliance with Rule 5.3(k)(5) by July 31, 2005.

If an executive officer of a listed issuer becomes aware of any material noncompliance by the listed issuer with the audit committee requirements, the listed issuer would be required to promptly notify the Exchange of such noncompliance.

To be eligible for continued listing, a listed issuer would have to comply with all of the audit committee requirements. Except for the situation where an audit committee member ceases to be independent for reasons outside the member's reasonable control, should a listed issuer fail to comply with any of the audit committee requirements for a period of 6 consecutive months, then the Exchange would be required to remove the issuer's securities from listing. A listed issuer who is not in compliance with the requirements of Rule 5.3(k)(5) would have to provide the Corporation with a plan of remediation within 15 days after notifying the Corporation of such noncompliance. The listed issuer would have to provide the Corporation with written monthly updates on the progress of the plan of remediation.

The audit committee would be required to have a written charter that addresses:

• The committee's purpose, which, at a minimum, would be required to be to:

(i) Assist board oversight of: (a) The integrity of the company's financial statements, (b) the company's compliance with legal and regulatory requirements, (c) the independent auditor's qualifications and independence, and (d) the performance of the company's internal audit function and independent auditors.

(ii) Prepare the report that SEC rules require be included in the company's annual proxy statement.

• The duties and responsibilities of the audit committee, which, at a minimum, would be required to be to:

(i) Be directly responsible for the appointment, compensation, retention, and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.

(ii) At least annually, obtain and review a report by the independent auditor describing the firm's internal quality control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company.

(iii) Discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosure under ''Management Discussion and Analysis of Financial Condition and Results of Operations.''

(iv) Discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies.

(v) Engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(vi) Discuss policies with respect to risk assessment and risk management.

(vii) Meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function), and with independent auditors.

(viii) Review with the independent auditor any audit problems or difficulties and management's response.

(ix) Set clear policies for hiring employees or former employees of the independent auditors.

(x) Report regularly to the board of directors.

(xi) Review major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies.

(xii) Review analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses

[10] 15 U.S.C. 78c(a)(58).

[11] 17 CFR 240.10A–3.

[12] 17 CFR 240.12b–2.

of the effects of alternative GAAP methods on the financial statements.

(xiii) Review the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company.

(xiv) Review earnings press releases (paying particular attention to any use of ''pro forma,'' or ''adjusted'' non-GAAP, information), as well as financial information and earnings guidance provided to analysts and rating agencies.

(xv) Establish procedures for: (a) The receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters, and (b) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting, internal accounting controls or auditing matters.

• An annual performance evaluation of the audit committee.

The composition of the Audit Committee would be required to be as follows:

(i) Each audit committee would be required to consist of at least three independent directors.

(ii) Each member of the audit committee would be required to be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or become financially literate within a reasonable period of time after his or her appointment to the audit committee.

(iii) At least one member of the audit committee would be required to have accounting or related financial management expertise, as the board of directors interprets such qualification in its business judgment.

• As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(i) Any determination that the company's board of directors has made regarding the independence of directors.

(ii) The financial literacy of the audit committee member.

(iii) The determination that at least one of the audit committee members has accounting or related financial management expertise.

(iv) The annual review and reassessment of the adequacy of the audit committee charter.

(9) Internal Audit Function.

Each listed company would be required to have an internal audit function. This does not necessarily mean that a company would be required to establish a separate internal audit department or dedicate employees to the task on a full-time basis. The Exchange states that it would be sufficient for the company to have in place an appropriate control process for reviewing and approving its internal transactions and accounting. A company could outsource this function to a firm other than its independent auditors.

(10) CEO Certification.

Each listed company CEO would have to certify to the Exchange each year that he or she is not aware of any violation by the company of the Exchange's corporate governance listing standards. The certification filed with the Exchange, as well as the CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure, would have to be disclosed in the listed company's annual report to shareholders.

(11) Listed Foreign Private Issuers.

Listed foreign private issuers would have to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Exchange's listing standards. Listed foreign private issuers would be required to comply with the provisions of Rule 5.3(k)(5). Listed foreign private issuers could provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (in the English language). If the disclosure is only made available on the web site, the annual report would be required to so state and provide the web address at which the information may be obtained.

(12) Deadline for Compliance.

Tier I listed issuers, other than Tier I foreign private issuers and Tier I small business issuers (as defined in Rule 12b–2 of the Act[13]), would have to be in compliance with all applicable sections of Rule 5.3 by the earlier of their first annual shareholders meeting after January 15, 2004 or October 31, 2004. Tier I foreign private issuers and Tier I small business issuers would have to be in compliance with all applicable sections of Rule 5.3 by July 31, 2005.

(13) Suspension/Public Reprimand.

Under the proposed rule change, the Exchange could suspend dealings in or institute proceedings to remove any security from listed or unlisted trading privileges. The Exchange could issue a public reprimand letter to any listed company that violates an Exchange listing standard. The Corporation would be required to remove any security from listed or unlisted trading privileges if the listed company violates any provisions of Rule 5.3(k)(5).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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

[13] 17 CFR 240.12b–2.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2003–35 and should be submitted by November 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–27409 Filed 10–30–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3550]**

### Commonwealth of Pennsylvania (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 23, 2003, the above numbered declaration is hereby amended to include Blair, Crawford, Lawrence, McKean, Mercer, Potter, Tioga, Venango, Warren, and Wayne Counties as disaster areas due to damages caused by severe storms, tornadoes, and flooding that occurred on July 21, 2003, and continuing through September 12, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bradford, Beaver, Bedford, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Elk, Erie, Forest, Huntingdon, Lycoming, and Pike in Pennsylvania; Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Delaware, Steuben, and Sullivan in New York; and Ashtabula, Columbiana, Mahoning, and Trumbull in Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to the State of New York is 9X4400 and for the State of Ohio is 9X4500.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 24, 2003.

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 03–27417 Filed 10–30–03; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Region 3—Washington Metropolitan Area District Office Advisory Council; Public Meeting

The Washington Metropolitan Area District Office Advisory Council of the U.S. Small Business Administration (SBA) will be conducting a meeting on Thursday, November 13, 2003, from 9 a.m. until 11:30 a.m. at the Washington Metropolitan Area District Office located at 1110 Vermont Avenue, NW., 9th Floor, Washington, DC 20005. The meeting is open to the public. Seating is limited and is available on a first come, first serve basis. The focus of the meeting includes a review of FY 2003 District Office accomplishments, FY 2004 District Office goals, update on new initiatives, and the operations and goals of the District Advisory Council in the coming year.

Anyone wishing further information concerning the meeting or who wishes to submit oral or written comments should contact, Joseph P. Loddo or Sheila D. Thomas, Designated Federal Officials for the SBA's Washington Metropolitan Area District Advisory Council, by phone at (202) 606–4000, ext. 200 or 276, respectively or via e-mail to: *joseph.loddo@sba.gov* or *sheila.thomas@sba.gov*. Requests for oral comments must be in writing to: Sheila D. Thomas 1110 Vermont Ave., NW., 9th Fl, Washington, DC 20005 and received no later than November 7, 2003.

**Scott R. Morris,**

*Deputy Chief of Staff.*

[FR Doc. 03–27419 Filed 10–30–03; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Region 1—Maine District Advisory Council; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, Maine will hold a public meeting at 1:30 p.m. November 18th, 2003 at the University of Southern Maine, 68 High Street, Room 118, Portland, Maine to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S. Small Business Administration, 68 Sewall Street, Room 512, Augusta, Maine 04330, (207)–622–8386 phone, (207)–622–8277 fax.

**Scott R. Morris,**

*Deputy Chief of Staff.*

[FR Doc. 03–27420 Filed 10–30–03; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

| If your leverageable capital is: | Then your maximum leverage is: |
|---|---|
| (1) Not over $19,300,000. | 300 percent of Leverageable Capital |
| (2) Over $19,300,000 but not over $38,700,000. | $57,900,000 + [2 × (Leverageable Capital − $19,300,000)] |
| (3) Over $38,700,000 but not over $58,000,000. | $96,700,000 + (Leverageable Capital − $38,700,000) |
| (4) Over $58,000,000 | $116,000,000 |

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

[16] 17 CFR 200.30–3(a)(12).