SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51601; File No. SR-PCX-2005-38)

April 22, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Corporate Governance Standards for Listed Companies

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 April 18, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and II below, which Items have been prepared by PCX. PCX submitted Amendment No. 1 to the proposal on April 21, 2005.[3] The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b-4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to amend PCXE Rules 5.3(k) and 5.3(m) to adopt new corporate governance standards for PCX listed companies. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

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

2 17 CFR 240.19b-4.

3 Amendment No. 1 made a minor clarifying change to the proposal.

4 15 U.S.C. 78s(b)(3)(A).

5 17 CFR 240.19b-4(f)(6).

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Rules of the

PCX Equities, Inc.

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Rule 5

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Listings

Corporate Governance and Disclosure Policies

Rule 5.3 – 5.3(j) – No Change.

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 listed domestic issuer of which more than 50% of the voting power is held by an individual, a group or another company, a limited partnership and any company in bankruptcy 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, limited partnerships and any company in bankruptcy 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 identify

which directors are independent and disclose the basis for that [these] determination[s]. The identity of the independent directors and t[T]he basis for a board determination that a relationship is not material must be disclosed in the company's annual proxy statement (or, if the issuer does not file a proxy, in its Form 10-K, 20-F or N-CSR). 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 or has been within the last three years, an employee of the listed company [or former employee], or whose immediate family member is or has been within the last three years an executive officer of the listed company [whose employment ended within the past three years]. Employment as an interim Chairman or CEO or other executive officer shall not disqualify a director from being considered independent following that employment. For purposes of this rule the term executive officer shall have the same meaning as "officer" as set forth in Rule 16a-1(f) under the Securities and Exchange Act of 1934.

(B)(i) A director or a director who has an immediate family member who is a current partner of a firm that is the company's internal or external auditor;[,]

(ii) A director who is a current employee of such a firm;

(iii) A director who has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or

(iv) A director or a director who has an immediate family member who was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the listed company's audit within that time [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 or a director who has an immediate family member who is, or in the past three years has been, part of an interlocking directorate in which an executive officer of the listed company serves or served on the compensation committee of another company that concurrently employs or employed the director.

(D) Reserved. [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, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home.]

(E) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of $200,000 or 5% of such other company's consolidated gross revenues, is not "independent" until three years after falling below such threshold. For purposes of this rule, [charitable] contributions to

tax exempt organizations shall not be considered "[companies] payments", provided however that a listed company shall disclose in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC, any [charitable] such contributions made by the listed company to any [charitable] tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of $200,000 or 5% of such [charitable] tax exempt organization's consolidated gross revenues. At any time, however, when an issuer has a class of securities that is listed on and meets the requirements of a similar rule of [a national securities exchange or national securities association other than the Corporation and is subject to requirements substantially similar to those set forth in this Section 5.3(k)(1)(E)] the New York Stock Exchange or the National Association of Securities Dealers (for the Nasdaq National Market or Small Cap Market), the issuer shall not be required to separately meet the requirements set forth in this Section 5.3(k)(1)(E). [above. Governance requirements of other markets will be considered to be substantially similar to the requirements above if they are adopted by the New York Stock Exchange or the National Association of Securities Dealers (for the Nasdaq National Market or Small Cap Market).]

(F) A director who receive[s]d, or whose immediate family member is an executive [employee] officer who receive[s]d, during any twelve-month period within the last three years, more than $100,000 [per year] in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior

service (provided such compensation is not contingent in any way on continued service). [Such director shall not be independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.] Compensation received by a director for former service as an interim Chairman or CEO or other executive officer need not be considered in determining independence under this test. For purposes of this rule the term executive officer shall have the same meaning as "officer" as set forth in Rule 16a-1(f) under the Securities and Exchange Act of 1934.

(G) In the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the company as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

(H) As used throughout this rule, the term "immediate family member" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home.

Transition Rule: Each of the above standards contains a three-year "look back" provision. In order to facilitate a smooth transition to the new independence standards, the Corporation will phase in the "look back" provision by applying only a one-year look back for the first year after adoption of these new standards. The three year look back will begin to apply only from and after June 4, 2005.

Due to this proposed tightening of the independence test and to avoid a sudden change to the status of a current director, companies will have until their first annual meeting after June 30, 2005 to replace a director who was independent under the prior test but who is not independent

under the current test.

(2) Regularly Scheduled Non-Management Directors Executive Sessions. The non-management directors of each listed company must meet at regularly scheduled executive sessions without management. Non-management directors are all those who are not [company] executive 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] A non-management director must preside over each executive session of the non-management directors, although the same director is not required to preside at all executive sessions of the non-management directors. If one director is chosen to preside at all of these meetings, his or her name must be disclosed in the listed company's annual proxy statement, or if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC. Alternatively, if the same individual is not the presiding director at every meeting, a listed company [may] must 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 listed company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group. Such disclosure must be made in the listed company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC. If the non-management directors include directors who are not independent, then the company should at least once a year schedule an executive session including only independent directors.

(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 director who is not independent may not be a current officer or employee or immediate family member of an officer or employee. Such individual may be appointed to the Nominating/Corporate Governance Committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. The member appointed under this exception may not serve for longer than two years. 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] guidelines 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, limited partnerships and any company in bankruptcy 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 director who is not independent may not be a current officer or employee or immediate family member of an officer or employee. Such individual may be appointed to the Compensation Committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-

F), the nature of the relationship and the reasons for the determination. The member appointed under this exception may not serve for longer than two years. 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 officer compensation for inclusion in the listed company's proxy statement (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), 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, either as a committee or together with the other independent directors (as directed by the board), determine and approve [set] the CEO's compensation level based on this evaluation.

(ii) Make recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation [plans] and equity-based plans that are subject to board approval.

(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, limited partnerships and any company in bankruptcy 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)(A) 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 a 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.

(v) Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or audit matters by employees of the investment advisor, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This responsibility must be addressed in the audit committee charter.

(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 listed company's financial statements, (2) the listed company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the listed company's internal audit function and independent auditors.

(b) Prepare the report that SEC rules require be included in the listed company's annual proxy statement (or, if the issuer does not file a proxy, in its Form 10-K, 20-F or N-CSR).

(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 listed company.

(c) Meet to review and d[D]iscuss the listed company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including reviewing the company's specific 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 shall 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.

Beginning June 30, 2005 the company must submit the written affirmation no later than 30 calendar days after the company's annual meeting. If the company's 2005 annual meeting occurs prior to June 30, 2005, the company must submit a written affirmation for the year 2005 no later than December 31, 2005.

5.3(k)(5)(E) – 5.3(l) – No Change.

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, qualifying the certification to the extent necessary. The certification filed with the Corporation, including any qualifications to that certification, 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. Beginning June 30, 2005 the company must submit the certification to the Corporation no later than 30 calendar days after the company's annual meeting. If the company's 2005 annual meeting occurs prior to June 30, 2005, the company must submit the certification for the year 2005 no later than December 31, 2005.

Each listed company's CEO must promptly notify the Corporation after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provision of Section 5.3.

Each listed company must submit an executed written affirmation annually to the Corporation. Beginning June 30, 2005 the company must submit the written affirmation no later than 30 calendar days after the company's annual meeting. If the company's 2005 annual meeting occurs prior to June 30, 2005, the company must submit a written affirmation for the year 2005 no later than December 31, 2005. In addition, each listed company must submit an interim Written Affirmation each time a change in the membership occurs of the board or any of the committees subject to Rule 5.3(k).

Rule 5.3(n) – (o) – No Change.

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

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, 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

PCXE Rules 5.3(k) – 5.3(o) set forth the Exchange's corporate governance requirements applicable to listed companies. Exchange staff has received numerous phone call and email requests for clarification and interpretations of these standards. Based on PCX experience in working with listed companies and their legal counsel on issues and questions related to Rules 5.3(k) – 5.3(o), the Exchange has noted several Rules that need clarification. The following outlines the amendments proposed to be made to the PCXE Corporate Governance Requirements.

Independence Definition

The Exchange proposes to amend Rule 5.3(k)(1) to clarify that companies are required to identify which of their directors are deemed independent. The Exchange has been of the opinion that the existing language strongly implied that obligation, but believes it is appropriate to make the language explicit to remove any ambiguity.

The Exchange proposes to amend Rule 5.3(k)(1)(A) to add a definition of the term executive officer. The Exchange also proposes to make minor cleanup changes throughout Rule 5.3(k) to provide consistency when utilizing this term. The Exchange also proposes to add

clarifying language to indicate that service as an interim Chairman, CEO or other executive officer will not trigger the look-back provision.

The Exchange proposes to amend Rule 5.3(k)(1)(B), which currently precludes independence where a director or family member of such director is employed by or affiliated with a present or former auditor. The proposed rule revises the standard so that it will cover any director or immediate family member of such director who is a current partner of the audit firm, any director who is a current employee of the audit firm, any immediate family member who is a current employee of the audit firm participating in the firm's audit, assurance or tax compliance (but not tax planning) practice, and any former partner or employee of the audit firm or an immediate family member who personally worked on the listed company's audit during the past three years.[6]

The Exchange proposes to revise Rule 5.3(k)(1)(C) to clarify that independence is not satisfied when a director or a director who has an immediate family member who is, or in the past three years has been, part of an interlocking directorate in which an executive officer of the listed company serves or served on the compensation committee of another company that concurrently employs or employed the director.

The Exchange proposes to eliminate Rule 5.3(k)(1)(D) and move the definition of immediate family member to Rule 5.3(k)(1)(H). PCX believes this would help clarify that the definition of immediate family member applies uniformly throughout the rules on corporate governance.

The Exchange proposes to revise Rule 5.3(k)(1)(E) to clarify the treatment of contributions

under this test. The language as originally adopted referred to "charitable organizations." PCX believes that it has become clear through discussions with listed company representatives that a company can have business relationships with a charitable organization and there is no reason why payments related to such business relationships should not be covered by this test. What the Exchange intends to distinguish and to cover with disclosure under this test, are "contributions" made to a charitable or tax exempt organization. In addition, the Exchange is tightening its exemption for compliance from this rule if the issuer has a class of securities listed on another national securities exchange that has a similar standard. The Exchange proposes only to exempt issuers who have a class of securities listed on the New York Stock Exchange or Nasdaq from having to separately meet the requirements of Rule 5.3(k)(1)(E).

The Exchange proposes to amend PCXE Rule 5.3(k)(1)(F) which precludes independence where a director or family member receives more than $100,000 in direct compensation. PCX believes the wording suggested that under certain circumstances the look-back period might be as long as four years. The revised formulation will make clear that the period should not be read to be longer than 36 months.

As a result of the proposed changes to Rule 5.3(k)(1), there is a category of person that would not have been impacted by existing Rule 5.3(k)(1) that will be precluded from independence under the revised standards, namely a director with a family member who is a current partner of the audit firm. Under the existing standards, such a family member did not impact the director's independence if the family member did not act in a "professional capacity" at the audit firm. Under the revised standards, any family member who is a current partner of the audit firm will preclude

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[6] Clarified pursuant to a telephone conversation between Steven Matlin, Senior Counsel, PCX, and A. Michael Pierson, Attorney, Division of Market Regulation, Commission (April 21, 2005).

the director from being considered independent. To avoid suddenly changing the status of a current director, the Exchange will give companies until their first annual meeting after June 30, 2005 to replace a director who was independent under our existing rule but not under the revised rule.

Regularly Schedule Non-Management Directors Executive Sessions

The Exchange is proposing a clarifying change to Rule 5.3(k)(2) to require a non-management director to preside over each executive session of the non-management directors, but to allow for different directors to preside over all such meetings. The Exchange also proposes to add clarifying language to specify that the disclosure must be in the annual proxy statement (or if the company does not file a proxy statement, then in the Form 10-K), in order to be consistent with the other disclosure requirements of the PCXE Rules.

Requirements of the Compensation Committees

The Exchange proposes to amend Rule 5.3(k)(4)(B) to make clear that the board has the ability to delegate its authority to approve non-CEO executive officer compensation to the compensation committee. In addition, the Exchange is proposing clarifying language to indicate that non-CEO compensation on which the compensation committee should focus is that of the executive officers.

Duties of the Audit Committee

The Exchange proposes to amend Rule 5.3(k)(5)(B)(ii)(C) to clarify that the audit committee must meet to review and discuss the company's financial statements and must review the company's specific Management's Discussion and Analysis disclosures. In addition the Exchange is proposing that the written affirmation required by Rule 5.3(k)(5)(D) be submitted to

the Exchange within 30 calendar days after the company's annual meeting.[7]

[7] An exception is provided if the company's annual meeting occurs prior to June 30, 2005, similar to the exception provided for CEO certifications, as described below.

CEO Certification

The Exchange proposes to amend the language of Rule 5.3(m) to clarify that any qualifications to the annual CEO certification must be specified and disclosed. Beginning June 30, 2005 the company must submit the certification to the Corporation no later than 30 calendar days after the company's annual meeting. If the company's 2005 annual meeting occurs prior to June 30, 2005, the company must submit the certification for the year 2005 no later than December 31, 2005.[8] In addition the Exchange is proposing a requirement that companies submit annual and interim written affirmations. The annual affirmation must be submitted to the Exchange no later than 30 calendar days after the company's annual meeting. An interim written affirmation must be submitted each time a change in the membership occurs to the board or any of the committees subject to Rule 5.3(k).

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster competition and 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, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of

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8 See supra note 6.

9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(5).

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

The proposed rule change, as amended, has been designated by PCX as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b-4 thereunder.[12]

The foregoing proposed rule change, as amended: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Furthermore, the PCX gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b-4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b-4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b-4(f)(6).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2005-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

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[15] See 15 U.S.C. 78s(b)(3)(C). For purposes of calculation the 60-day abrogation period, the Commission considers the period to commence on April 22, 2005, the date the PCX filed Amendment No. 1.

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

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[16] 17 CFR 200.30-3(a)(12).