

### 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-CHX-2004-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex. 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-CHX-2004-02 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49810; File No. SR-PCX-2003-35]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Corporate Governance of Listed Issuers

June 4, 2004.

#### I. Introduction

On July 14, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Corporate Governance and Disclosure Policies. On October 14, 2003, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> On October 31, 2003, the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register**.<sup>4</sup> On November 18, 2003, the Exchange filed Amendment No. 2 to the proposal.<sup>5</sup> On December 1, 2003, the Commission partially approved the proposal as modified by Amendment No. 1, granted accelerated approval to Amendment No. 2, and solicited comments from interested persons on Amendment No. 2.<sup>6</sup> Specifically, the Commission approved the portions of the proposed rule change that implemented the requirements of Rule 10A-3 under the Act relating to audit committees of listed issuers.<sup>7</sup> The Commission received no comments on the proposal and Amendment No. 2.

On May 4, 2004, the Exchange filed Amendment No. 3 to the proposed rule

change.<sup>8</sup> In Amendment No. 3, PCX proposed additional enhancements to the proposal and revisions to a number of its provisions that were not approved in the Partial Approval Order.<sup>9</sup> The substantive changes to the proposal made by Amendment No. 3 are summarized in Section II below. On June 3, 2004, the Exchange filed Amendment No. 4 to the proposed rule change, making additional, minor clarifications.<sup>10</sup> On June 4, 2004, the Exchange filed Amendment No. 5 to the proposed rule change.<sup>11</sup> This Order approves the proposed rule change in its entirety, as amended; grants accelerated approval to Amendment Nos. 3 and 4; and solicits comments from interested persons on Amendment Nos. 3 and 4.

#### II. Description of the Proposal

In addition to the provisions of the proposed rule change implementing the requirements of Rule 10A-3 under the Act, which were approved in the Partial Approval Order, PCX proposes further amendments to its rules, set forth in PCXE Rule 5.3, relating to the governance of issuers that list securities on the Exchange. The proposed rule change further includes related changes to PCXE Rule 5.4, regarding suspension of securities from trading privileges, and PCXE Rule 5.5, regarding maintenance requirements and delisting procedures.<sup>12</sup> The new corporate governance standards would apply to all listed companies, including Tier I and Tier II companies,<sup>13</sup> with certain exceptions for registered management investment companies, preferred and debt listings, passive business organizations (such as royalty trusts),

<sup>8</sup> See letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 3, 2004 ("Amendment No. 3").

<sup>9</sup> The proposed revisions include some modifications to the text as approved in the Partial Approval Order.

<sup>10</sup> See letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 2, 2004 ("Amendment No. 4"). The revisions made in Amendment No. 4 are discussed *infra*, at notes 17 and 29.

<sup>11</sup> See letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 4, 2004 ("Amendment No. 5"). Amendment No. 5 was a technical amendment and is not subject to notice and comment.

<sup>12</sup> The changes to PCXE Rule 5.5, which were approved in the Partial Approval Order, referenced PCXE Rule 5.3 in its entirety and Rule 5.3(k)(5) in particular. Approval of the remaining proposed changes to PCXE Rule 5.3 that are the subject of this Order will thus affect the application of Rule 5.5.

<sup>13</sup> See Amendment No. 3, which eliminated the distinction between Tier I and Tier II companies with respect to the enhanced corporate governance standards that are the subject of this Order.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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").

<sup>4</sup> See Securities Exchange Act Release No. 48700 (October 24, 2003), 68 FR 62146 (October 31, 2003) ("Notice").

<sup>5</sup> See letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 ("Amendment No. 2").

<sup>6</sup> Securities Exchange Act Release No. 48861 (December 1, 2003), 68 FR 68440 (December 8, 2003) ("Partial Approval Order").

<sup>7</sup> 17 CFR 240.10A-3.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

and derivative or special purpose securities.<sup>14</sup> Subject to these exceptions, the proposed rule change would incorporate the following requirements in addition to those approved in the Partial Approval Order:

#### *Majority of Independent Directors*

The proposed amendments generally would require each domestic issuer 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 ("controlled company"), a limited partnership and a company in bankruptcy would not be subject to this requirement.<sup>15</sup> However, all such controlled companies, limited partnerships, and companies in bankruptcy would be required to maintain at least a minimum three-person audit committee and otherwise comply with the audit committee requirements set forth separately in the rules as described below.

#### *Definition of "Independent Director"*

Under the proposal, no director would qualify as independent unless the board of directors of the listed company affirmatively determines that the director has no material relationship with the company, either directly or as a partner, shareholder, or officer of an organization that has a relationship with the company. Companies would be required to disclose these determinations. The basis for a board determination that a relationship is not material would be required to 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).<sup>16</sup>

<sup>14</sup> See Amendment No. 3. Registered management investment companies would be required to comply with the new requirements described below relating to audit committees and certification and notification procedures, among others, but would be exempted from other provisions, such as those requiring a majority of independent directors, nominating/corporate governance and compensation committees, and corporate guidelines and codes of conduct.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that act, would be required to comply with all of the requirements of Rule 5.3 applicable to domestic issuers. Preferred and debt listings, passive business organizations (such as royalty trusts), derivative or special purpose securities would only be required to comply with the new requirements to the extent required by Rule 10A-3 under the Act.

<sup>15</sup> See Amendment No. 3, which added the exception for limited partnerships and companies in bankruptcy. See also *supra* note 14.

<sup>16</sup> See Notice for a more complete description of the disclosure requirements. See also Amendment

In addition, the proposed rule change would specifically identify six categories of persons who could not be considered independent. Persons who would not qualify as independent directors would include: (i) A director who is a present or former employee of the listed company whose employment ended within the past three years;<sup>17</sup> (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); (iii) a director who is, or in the past three years<sup>18</sup> 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, with immediate family member defined to include a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law,<sup>19</sup> and anyone other than employees who shares such person's home; (v) a director who is, or in the past three years has been, an executive officer or an employee—or whose immediate family member is or has been 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;<sup>20</sup> (vi) a director who receives, or whose immediate family member receives, 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).<sup>21</sup> Such director would not be independent until three years after he or she ceases to

No. 3, which, in several places in the proposed rules, added alternative forms on which a listed company would be required to make the requisite disclosures if the company does not file a proxy.

<sup>17</sup> See Amendment No. 3, which changed the proposed look-back period from five years to three years. Amendment No. 4 clarified that current employees are not independent.

<sup>18</sup> See Amendment No. 3, which changed the proposed look-back period from five years to three years.

<sup>19</sup> See Amendment No. 3, which added brothers-in-law and sisters-in-law to the proposed definition of "immediate family member" for the purposes of determining independence.

<sup>20</sup> See Amendment No. 3, which added this proposed provision with a qualified exemption for charitable organizations.

<sup>21</sup> See Amendment No. 3, which added this proposed provision.

receive more than \$100,000 in such compensation. In the case of an investment company, in lieu of the above criteria, the proposal would provide that a director is not independent if the director 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.<sup>22</sup> Under the proposal, PCX would phase in the three-year "look-back" provisions described above by applying only a one-year look-back period for the first year after adoption of the new standards.<sup>23</sup>

#### *Executive Sessions of Non-Management Directors*

The proposal would also require non-management directors of each listed company to meet at regularly scheduled executive sessions without management. A listed company also would be required to disclose a method for interested parties to communicate directly with the presiding director of such sessions or with the non-management directors as a group.<sup>24</sup> Nominating/Corporate Governance and Compensation CommitteesThe proposal would further require generally that each listed company have a Nominating Committee/Corporate Governance Committee and a Compensation Committee. Each such committee would be required to be composed entirely of independent directors.<sup>25</sup> However, the proposal would provide that if the committee is made up of three or more individuals, then one member of the committee would not be required to be an independent director when certain conditions apply.<sup>26</sup> Specifically, the director who is not independent could not be a current officer or employee or immediate family member of an officer or employee and could be appointed to the Nominating/Corporate Governance Committee or Compensation Committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best

<sup>22</sup> See Amendment No. 3, which added this provision.

<sup>23</sup> See Amendment No. 3.

<sup>24</sup> See Notice for a more complete description of these requirements. See also Amendment No. 3, which added a proposed provision stating that 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.

<sup>25</sup> See Notice for further nominating and compensation committee requirements. See also *supra* note 14.

<sup>26</sup> See Amendment No. 3, which added these conditions.

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 could not serve for longer than two years. Controlled companies, limited partnerships, and companies in bankruptcy would not be subject to the nominating and compensation committee requirements.<sup>27</sup>

#### *Audit Committee and Internal Audit Function*

The proposed amendments would expand existing PCX requirements relating to audit committee composition and would include new requirements relating to that committee's role and authority.<sup>28</sup> The Partial Approval Order approved portions of the proposed rule change that require each listed issuer to establish and maintain an audit committee that complies with the requirements of Rule 10A-3 under the Act and is composed entirely of independent directors as defined in current PCXE rules and who meet the criteria of Rule 10A-3. The proposal would further require that the audit committee consist of at least three members, each of whom meets the enhanced definition of independent director described above.<sup>29</sup> Each member of the audit committee would be required to be financially literate, or become financially literate within a reasonable period of time after his or her appointment to the audit committee, and at least one member of the audit committee would be required to have accounting or related financial management expertise. In addition, the audit committee would be required to have a written charter that addresses the committee's purpose, duties and responsibilities, and an annual performance review of the audit committee.<sup>30</sup>

Moreover, 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 would be required to provide

the Exchange written confirmation regarding any determination that the company's board of directors had made regarding the independence of directors; the financial literacy of the audit committee member; the determination that at least one of the audit committee members has accounting or related financial management expertise; and the annual review and reassessment of the adequacy of the audit committee charter.<sup>31</sup>

As set forth in the audit committee provisions approved in the Partial Approval Order, audit committees for investment companies additionally are required to establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. The PCX further proposes that this responsibility must be addressed in the audit committee's charter.<sup>32</sup>

In addition, the proposal generally would require each listed company to have an internal audit function.<sup>33</sup>

#### *Corporate Governance Guidelines and Code of Conduct*

The proposal generally would require each listed company to adopt corporate governance guidelines, and disclose on its Web site these guidelines and the charters of the company's most important committees (including at least the audit, compensation and nominating committees). The proposal generally would further require each listed company 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.<sup>34</sup>

#### *CEO Certification and Disclosure*

The proposal would require the Chief Executive Officer ("CEO") of each listed company 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 and Chief Financial Officer certifications required to be filed with the Commission regarding the quality of the company's public disclosure, would be required to be disclosed in the listed company's annual report to shareholders. Each listed company's CEO would be required to promptly notify the PCXE after any executive officer of the listed company becomes aware of any material noncompliance with any applicable provision of PCXE Rule 5.3 covering Corporate Governance and Disclosure Policies.<sup>35</sup>

#### *Listed Foreign Private Issuers*

Listed foreign private issuers would be required to comply with the provisions of Rule 5.3(k)(5) relating to audit committees. Such issuers would be required to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Exchange's other listing standards.

#### *Public Reprimand*

The proposed rule change would amend PCXE Rule 5.4 to provide that the Exchange may issue a public reprimand letter to any listed company that violates an Exchange listing standard and that PCXE will remove any security from listed or unlisted trading privileges if the listed company violates any provisions of PCXE Rule 5.3(k)(5) relating to audit committees.

The proposal also includes changes, approved in the Partial Approval Order, that amend PCXE Rule 5.5, regarding the Exchange's listing maintenance and delisting procedures, to refer to the corporate governance standards of Rule 5.3. These changes provide, in particular, that the Exchange will initiate a delisting of a company's securities for a violation of the audit committee requirements of Rule 5.3(k)(5), and that all classes of a security will be delisted for such violation.

#### *Deadline for Compliance*

The provisions of the proposed rule change that were approved in the Partial Approval Order, implementing the audit committee requirements of Rule 10A-3 under the Act, require compliance by listed issuers, other than foreign private issuers and small business issuers, by the earlier of (1) their first annual shareholders meeting after January 15,

<sup>27</sup> See Amendment No. 3, which added the exception for limited partnerships and companies in bankruptcy.

<sup>28</sup> See proposed PCXE Rule 5.3(k)(5).

<sup>29</sup> See *supra* notes—and accompanying text. See also Amendment No. 4, which clarified that upon the effective date of this provision, each listed company would be required to have at least three independent directors.

<sup>30</sup> See Notice for a more complete description.

<sup>31</sup> See Amendment No. 3, which clarified that such written confirmations would be a requirement.

<sup>32</sup> This proposed requirement was added in Amendment No. 3.

<sup>33</sup> See Notice for a more complete description.

<sup>34</sup> See Notice for a more complete description of the corporate governance guidelines and code of conduct requirements. See also *supra* note regarding entities excepted from these requirements.

<sup>35</sup> This notification requirement, which would apply to the entire Rule 5.3, was proposed in Amendment No. 3. The notification provision relating specifically to audit committee requirements, required by Rule 10A-3 under the Act, was approved in the Partial Approval Order.

2004, or (2) October 31, 2004. Foreign private issuers and small business issuers must be in compliance with these provisions by July 31, 2005.

With respect to the applicable sections of Rule 5.3 that are the subject of this Order, the proposal would require listed issuers, other than foreign private issuers and small business issuers, to be in compliance by the earlier of (1) their first annual shareholders meeting after July 31, 2004, or (2) December 31, 2004.<sup>36</sup> If a company with a classified board is required (other than by virtue of a requirement under Rule 5.3(k)(5)) to change a director who would not normally stand for election in such annual meeting, the company could continue such director in office until the second annual meeting after such date, but in no event later than December 31, 2005.<sup>37</sup> Foreign private issuers and small business issuers would be required to be in compliance with all applicable sections of Rule 5.3 by July 31, 2005.

Under the proposed amendments, companies listing in conjunction with their initial public offering would be permitted to phase in their independent nomination and compensation committees generally on the same schedule as is permitted pursuant to Rule 10A-3 under the Exchange Act for audit committees, that is, one independent member at the time of listing, a majority of independent members within 90 days of listing, and fully independent committees within one year. It should be noted, however, that investment companies are not afforded these exemptions under Rule 10A-3. Such companies would be required to meet the majority of independent board requirement within 12 months of listing. For purposes of Rule 5.3 other than Rule 5.3(k)(5), regarding audit committees, and Rule 5.3(m), regarding CEO certification and notification, a company would be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act. PCX would also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 5.3 to phase in independent nomination and

compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Rule 5.3(k)(5) and Rule 5.3(m), a company would be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

Companies listing upon transfer from another market would have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company would have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market would not apply to the requirements of Rule 5.3(k)(5) unless a transition period is available pursuant to Rule 10A-3 under the Act.

Proposed PCXE Rule 5.3(k)(5)(E) ("Ongoing Compliance"), added in Amendment No. 3, would set forth the standards regarding audit committee requirements that are applicable to certain listed companies in the interim period before the proposed rule change takes effect.

#### *Summary of Revisions Made by Amendment No. 3*

The discussion above reflects amendments to the proposed rule change made by Amendment No. 3, the most significant of which are summarized below.<sup>38</sup> Amendment No. 3 revised the proposal to:

- Eliminate the distinction between Tier I and Tier II companies for the purposes of corporate governance.<sup>39</sup>
- Provide that registered management investment companies, preferred and debt listings, passive business organizations, and derivative or special purpose securities are required to comply with some, but not all of the new corporate governance provisions.<sup>40</sup>

- Provide that limited partnerships and companies in bankruptcy do not need to have a majority of independent directors on their board or have nominating/corporate governance and compensation committees composed of independent directors.<sup>41</sup>

- Allow an issuer that does not file a proxy to disclose any required information in its Form 10-K, 20-F or N-CSR.<sup>42</sup>

- Reduce the look-back periods in the proposed tests of director independence from five years to three years.<sup>43</sup>

- Expand the definition of immediate family member to include brothers and sisters-in-laws.<sup>44</sup>

- Provide that a director who is, or in the past three years has been, an executive officer or an employee, or whose immediate family member is or has been 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.<sup>45</sup>

- Provide that a director who receives, or whose immediate family member receives, 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) is not considered independent until three years after he or she ceases to receive more than \$100,000 per year in such compensation.<sup>46</sup>

- Phase in the three-year look-back provisions by applying only a one-year look back for the first year after adoption of the new standards.<sup>47</sup>

- Provide that, in the case of an investment company, in lieu of the criteria for independence set forth in proposed PCXE Rule 5.3(k)(i)(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, shall not be considered independent.<sup>48</sup>

- State that if the non-management directors of a listed company include

<sup>36</sup> The revised timetable for compliance was proposed in Amendment No. 3.

<sup>37</sup> This provision, as well as the provision described below relating to companies listing in conjunction with an initial public offering, emerging from bankruptcy, ceasing to be a controlled company, or transferring from another market, were added by Amendment No. 3.

<sup>38</sup> Amendment No. 4 made only clarifying changes. See *supra* note 10.

<sup>39</sup> See *supra* note 13.

<sup>40</sup> See *supra* note 14.

<sup>41</sup> See *supra* notes 15 and 27.

<sup>42</sup> See *supra* note 16.

<sup>43</sup> See *supra* notes 17 and 18.

<sup>44</sup> See *supra* note 19.

<sup>45</sup> See *supra* note 20.

<sup>46</sup> See *supra* note 21.

<sup>47</sup> See *supra* note 23.

<sup>48</sup> See *supra* note 22.

directors who are not independent, then the company should at least once a year schedule an executive session including only independent directors.<sup>49</sup>

- Allow the Nominating/Corporate Governance Committee and the Compensation Committee to have one member who is not independent, so long as that person is not a current officer or employee or immediate family member of an officer or employee only under specified limited circumstances and conditions.<sup>50</sup>

- Require that each listed company's CEO must promptly notify the Corporation after any executive officer of the listed company becomes aware of any material noncompliance with any applicable provision of the corporate governance and disclosure policies of Rule 5.3.<sup>51</sup>

- Set forth a timetable for listed companies to be in compliance with the new rules, and provide phase-in periods for companies listing in conjunction with and initial public offering, companies emerging from bankruptcy, companies ceasing to be controlled companies, and companies transferring from other markets.<sup>52</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>53</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>54</sup> in that it is designed, among other things, to facilitate transactions in securities, 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 a national market system, and, in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change, as amended, will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of PCX-listed issuers. The

proposal, as amended, also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the PCX has amended its proposal in a way that largely harmonizes it with rule changes recently approved by the Commission for other self-regulatory organizations.<sup>55</sup>

The PCX has requested that the Commission grant accelerated approval to Amendment Nos. 3 and 4 to the proposed rule change. The Commission believes that the revisions proposed in Amendment Nos. 3 and 4 significantly align the corporate governance standards proposed for companies listed on the PCX with the standards approved by the Commission for companies listed on other SROs.<sup>56</sup> The Commission believes it is appropriate to accelerate approval of Amendment Nos. 3 and 4 so that the comprehensive set of strengthened corporate governance standards for companies listed on the PCX may be implemented on generally the same timetable (with some modification of certain deadlines) as that for similar standards adopted for issuers listed on other SROs. The Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,<sup>57</sup> to approve Amendment Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether the Amendment 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](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2003-35 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.

<sup>49</sup> See *supra* note 24.  
<sup>50</sup> See *supra* note 26.  
<sup>51</sup> See *supra* note 35.  
<sup>52</sup> See *supra* notes 36 and 37.  
<sup>53</sup> 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).  
<sup>54</sup> 15 U.S.C. 78f(b)(5).  
<sup>55</sup> See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approving changes to the corporate governance listing standards of the Nasdaq Stock Market, Inc. and the New York Stock Exchange, Inc.).  
<sup>56</sup> See *supra* note 55.  
<sup>57</sup> 15 U.S.C. 78s(b)(2).

All submissions should refer to File Number SR-PCX-2003-35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 PCX. 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-2003-35 and should be submitted on or before July 1, 2004.

### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>58</sup> that the proposed rule change (PCX-2003-35), as amended, be, and hereby is, approved, and that Amendment Nos. 3 and 4 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>59</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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<sup>58</sup> 15 U.S.C. 78s(b)(2).

<sup>59</sup> 17 CFR 200.30-3(a)(12).