



RULE  
ADOPTION  
NOTICE

RAN-03-35  
December 10, 2003

**TO: All PCX Members and Member Organizations  
ETP Holders and Sponsored Participants**

**FROM: Department of Regulatory Policy**

**SUBJECT: Corporate Governance for Listed Companies  
(File No. SR-PCX-2003-35)**

On July 14, 2003, the Exchange filed with the Securities and Exchange Commission a proposed rule change to modify its corporate governance requirements for its listed companies. On October 14, 2003 the Exchange filed Amendment No. 1 to the proposed rule. On November 18, 2003 the Exchange filed Amendment No. 2 to the proposed rule. On October 24, 2003 the Commission noticed PCX's proposed rule change. On December 1, 2003 the Commission partially approved the proposed rule change.

The following is the text of the approved portions of the rule change. Questions regarding this bulletin may be directed to Steven Matlin at (415) 393-4084.

#### **EXHIBIT A**

#### **Text of the Proposed Rule Change:<sup>1</sup>**

### **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 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,

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<sup>1</sup> New text is underscored; deleted text is in brackets.

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).

Rules 5.3(a) – (i)(4) – No change.

Rule 5.3 (j) - (k)(4) – Reserved.

Rule 5.3(k)(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 Rule 10A-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.

Rule 5.3(k)(5)(B) – (D) – Reserved.

Rule 5.3(k)(6) – Reserved.

Rule 5.3(l) – No Change.

Rule 5.3(m) – Reserved.

### **Listed Foreign Private Issuers**

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

Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5).

Rule 5.3(o) – Reserved.

Rule 5.4 – 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.

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### **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.

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