



RULE
ADOPTION
NOTICE

RAN-04-18
June 15, 2004

**TO: All PCX OTP Holders and OTP Firms
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. On May 4, 2004 the Exchange filed Amendment No. 3 to the proposed rule. On June 3, 2004 the Exchange filed Amendment No. 4 to the proposed rule. On June 4, 2004 the Exchange filed Amendment No. 5 to the proposed rule. On June 4, 2004 the Commission approved the proposed rule change in its entirety.

The following is the text 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:¹

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

¹ New text is underscored and deleted text is in brackets.

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 all of the provisions of Rule 5.3 except for registered management investment companies, preferred and debt listings, passive business organizations (such as royalty trusts), and derivative or special purpose securities (securities listed pursuant to Rules 5.2(h), 5.2(j)(1)-(3) and Rule 8.) Registered management investment companies shall only be required to comply with the provisions of Rules 5.3(a), 5.3(c) – 5.3(i)(4), 5.3(k)(1), 5.3(k)(5), 5.3(m) and 5.3(o). Preferred and debt listings, passive business organizations (such as royalty trusts), derivative or special purpose securities shall only be required to comply with the provisions of Rules 5.3(a), 5.3(c) – 5.3(i)(4), 5.3(k)(1), 5.3(o) and all applicable provisions of Rule 10A-3 of the Securities and Exchange Act of 1934. 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 the Act, are required to comply with all provisions of Rule 5.3 applicable to domestic issuers. [The Corporation, however, will not require an issuer of such security under the Tier II designations to comply with the provisions for an audit committee as set forth in this Rule 5.3(b).]

Rule 5.3(a) – No change.

Independent Directors [/Audit Committee]

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

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Upon the applicability of Rule 5.3(k)(5)(A)(ii) each listed domestic issuer shall have at least three independent directors on its board of directors. [Such issuer shall maintain an audit committee. All audit committee members shall be independent directors that satisfy the audit committee requirement set forth below.

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

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

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

(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating

all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

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

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

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

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

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

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

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

"Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

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

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

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

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

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

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

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

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

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

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

Rules 5.3(c) – (i)(4) – No change.

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

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

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

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

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

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

(E) Director orientation and continuing education.

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

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

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

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

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

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

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

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

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

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

Independent Directors/Board Committees

Rule 5.3(k) Independent Directors/Board Committees

The Corporation shall require that each listed domestic issuer have a majority of independent directors on its board of directors, except that a domestic issuer of which more than 50% of the voting power is held by an individual, a group or another company, 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 disclose these determinations. The basis for a board determination that a relationship is not material must be disclosed in the company's annual proxy statement (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 an employee or former employee of the listed company whose employment ended within the past three years.

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

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

(D) A director with an immediate family member in any the foregoing categories. Immediate family includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, 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 organizations shall not be considered "companies", 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 contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of \$200,000 or 5% of such charitable organization's consolidated gross revenues.

(F) 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). 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.

(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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Report regularly to the board of directors.

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

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

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

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

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

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

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

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

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

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

(D) Written Affirmation.

As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company 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.

(E) Ongoing Compliance

Until such time as a Tier I listed issuer is required to comply with the provisions of Rule 5.3(k)(5) (as determined by Rule 5.3(k)(5)(A)(ii) and Rule 5.3(o)), all Tier I listed issuers shall comply with the following provisions related to Audit Committees:

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

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

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

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

(c) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is

responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

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

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

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

(c) 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.

(iii) *Independence Requirement of Audit Committee Members.* In addition to the definition of Independent provided in 5.3(k)(5)(E)(ii)(a), the following restrictions shall apply to every audit committee member:

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

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

"Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly

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

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

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

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

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

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

(b) the financial literacy of the audit committee member;

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

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

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

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

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

Rule 5.3(l). No Change.

CEO Certification

Rule 5.3(m). CEO Certification

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

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.

Listed Foreign Private Issuers

Rule 5.3(n). Listed Foreign Private Issuers

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

Deadline for Compliance

Rule 5.3(o) Deadline for Compliance

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 all applicable sections of Rule 5.3 by the earlier of (1) their first annual shareholders meeting after July 31, 2004, or (2) December 31, 2004, except that the deadline for compliance with Rule 5.3(k)(5)(A) shall be as set forth therein. Foreign private issuers and small business issuers must be in compliance with all applicable sections of Rule 5.3 by July 31, 2005. If a company with a classified board would be 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 may continue such director in office until the second annual meeting after such date, but in no event later than December 31, 2005.

Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees 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 will 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) and Rule 5.3(m), a company will 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. The Corporation will 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 will 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 Exchange Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act.

Companies listing upon transfer from another market 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 will 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 will not apply to the requirements of Rule 5.3(k)(5) unless a transition period is available pursuant to Rule 10A-3 under the Exchange Act.

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

¶7957E Suspension/Public Reprimand

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

Rule 5.4(b) – No change.

Section 5. Maintenance Requirements and Delisting Procedures

¶7957G Maintenance Requirements and Delisting Procedures

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

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

Commentary:

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

.02 Securities listed under the Tier I designation will not be granted waivers from the Corporation's maintenance requirements. Any security that no longer meets the Tier I maintenance requirements, but meets the Tier II maintenance requirements, will be reclassified as a Tier II security. The Corporation, however, may grant a waiver for the continued listing of any security in cases where the security remains listed on either the NYSE, Amex, or Nasdaq National Market; provided, however, that the Corporation determines that there is a reasonable basis for a waiver. In such cases, the security will be included under the Tier II designation.

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

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

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

Rule 5.5(b) – (l) – No change.

¶7957T

Delisting Procedures

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

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

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

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

(4) If the issuer requests an appeal hearing, it must file its request along with (i) a \$2,500 delisting appeal fee and (ii) an answer to the causes specified by the Corporation

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

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

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

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

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

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

* * *