

transparency of the Exchange's listed companies.

In addition to reviewing the PCXE's corporate governance and disclosure policies, the subcommittee also reviewed the changes mandated by the Sarbanes-Oxley Act of 2002. In a release effective April 25, 2003, the Commission directed all national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by the Sarbanes-Oxley Act of 2002.⁷ These requirements relate to the independence of audit committee members, the audit committee's responsibility to select and oversee the issuer's independent accountant, procedures for handling complaints regarding the issuer's accounting practices, the authority of the audit committee to engage advisors, and funding for the independent auditor and any outside advisors engaged by the audit committee.

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

The proposals for new corporate governance and disclosure policies would be codified in PCXE Rule 5.3. The new standards in PCXE Rule 5.3 would apply to listed companies designated as Tier I issuers except for the new provisions on audit committees that are mandated by the Sarbanes-Oxley Act of 2002.⁸ These provisions, which are contained in Rule 5.3(k)(5), would apply to all PCX listed securities.

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

Tier I listed issuers, other than Tier I foreign private issuers and Tier I small business issuers (as defined in Rule 12b-2 of the Act⁹), would have to be in

compliance with all applicable sections of Rule 5.3 by the earlier of: (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Tier I foreign private issuers and Tier I small business issuers would have to be in compliance with all applicable sections of Rule 5.3 by July 31, 2005.

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

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

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

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

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

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

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

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

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

- *Management succession.* Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in

the event of an emergency or the retirement of the CEO.

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

(2) Code of Business Conduct.

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

All codes should address the following topics:

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

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

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

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

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

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

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

⁸ See PCXE Rule 5.3(k)(5).