

of the effects of alternative GAAP methods on the financial statements.

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

(xiv) 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.

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

- An annual performance evaluation of the audit committee.

The composition of the Audit Committee would be required to be as follows:

(i) Each audit committee would be required to consist of at least three independent directors.

(ii) Each member of the audit committee would be required to be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or 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 would be required to have accounting or related financial management expertise, as the board of directors interprets such qualification in its business judgment.

- 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.

(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.

(9) Internal Audit Function.

Each listed company would be required to have an internal audit function. This does not necessarily mean that a company would be required

to establish a separate internal audit department or dedicate employees to the task on a full-time basis. The Exchange states that it would be sufficient for the company to have in place an appropriate control process for reviewing and approving its internal transactions and accounting. A company could outsource this function to a firm other than its independent auditors.

(10) CEO Certification.

Each listed company CEO would have 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/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure, would have to be disclosed in the listed company's annual report to shareholders.

(11) Listed Foreign Private Issuers.

Listed foreign private issuers would have to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Exchange's listing standards. Listed foreign private issuers would be required to comply with the provisions of Rule 5.3(k)(5). Listed foreign private issuers could 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 (in the English language). If the disclosure is only made available on the web site, the annual report would be required to so state and provide the web address at which the information may be obtained.

(12) Deadline for Compliance.

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 Act¹³), would have to be in compliance with all applicable sections of Rule 5.3 by the earlier of their first annual shareholders meeting after January 15, 2004 or 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.

(13) Suspension/Public Reprimand.

Under the proposed rule change, the Exchange could suspend dealings in or institute proceedings to remove any security from listed or unlisted trading privileges. The Exchange could issue a public reprimand letter to any listed company that violates an Exchange

listing standard. The Corporation would be required to remove any security from listed or unlisted trading privileges if the listed company violates any provisions of Rule 5.3(k)(5).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular, because it is designed 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, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 240.12b-2.