

Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Corporate Governance and Disclosure Policies. The proposed rule change, among other things, would require each issuer listed on the PCX to establish an independent audit committee and to comply with the standards for audit committees mandated by section 10A(m) of the Act³ and Rule 10A-3 thereunder.⁴ The proposed rule change also includes provisions relating to board independence and independent committees, codes of conduct, and other corporate governance issues. On October 14, 2003, the Exchange filed Amendment No. 1 to the proposal.⁵ On October 31, 2003, the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register**.⁶ The Commission received no comments on the proposal. On November 18, 2003, the Exchange filed Amendment No. 2 to the proposal.⁷

Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003.⁸ This Order approves the proposed rule change in part as further discussed below, so that the PCX can comply with this deadline. This Order also provides notice of Amendment No. 2 and approves Amendment No. 2 on an accelerated basis. The Commission notes that the PCX is considering revisions to the portions of the proposed rule change that pertain to corporate governance listing standards other than the revisions to comply with Rule 10A-3, particularly in light of rule changes by the New York Stock Exchange, Inc. and

the National Association of Securities Dealers, Inc. that were recently approved by the Commission.⁹ This Order does not relate to those other proposed provisions.

II. Description of Approved Changes

The Commission is approving in this Order the following provisions of the proposed rule change, which implement the requirements of Rule 10A-3:

(1) The third proposed additional sentence to PCX Rule 5.3, "Corporate Governance and Disclosure Policies," which, as approved states: "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).";

(2) Proposed PCX Rule 5.3(k)(5)(A) in its entirety, as well as the heading, "Audit Committee," for proposed PCX Rule 5.3(k)(5);

(3) The heading and second sentence of proposed PCX Rule 5.3(n), "Listed Foreign Private Issuers." The rule, as approved, states: "Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5).";

(4) The proposed change to existing PCX Rule 5.5(a), "Maintenance Requirements and Delisting Procedures," which would add language to conform the rule to Rule 10A-3; and

(5) All the proposed changes to existing PCX Rule 5.5(m), "Delisting Procedures," which consist of adding a cross-reference to Rule 5.3 and referring to violations of Rule 5.3(k)(5), in which case the corporation shall initiate delisting procedures.

In addition, the Commission is approving Amendment No. 2 to the proposed rule change on an accelerated basis. In Amendment No. 2, the PCX proposes to expand, with respect to investment companies, the scope of its proposed provision regarding complaint procedures. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."¹⁰ The amended PCX proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such

concerns 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.

III. Discussion

After careful review, the Commission finds that the provisions of the proposed rule change specified above that implement the requirements of Rule 10A-3 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹

Specifically, the Commission finds that these changes are consistent with section 6(b)(5) of the Act,¹² which requires, among other things, that the PCX's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with section 10A(m) of the Act and Rule 10A-3 thereunder relating to audit committee standards for listed issuers.

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹³ to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This expansion of complaint procedures of audit committees at investment companies proposed in Amendment No. 2 responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting their rules, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.¹⁴ The Commission believes that it is appropriate to accelerate approval of this amendment because it conforms to similar provisions approved by the Commission for other self-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78j-1(m).

⁴ 17 CFR 240.10A-3.

⁵ 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"). In Amendment No. 1, the Exchange made changes to proposed rule text in PCX Rule 5.3(k)(5)(B)(ii)(a).

⁶ See Securities Exchange Act Release No. 48700 (October 24, 2003), 68 FR 62146 (October 31, 2003).

⁷ 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"). In Amendment No. 2, the Exchange proposed an additional section of rule text, PCX Rule 5.3(k)(5)(A)(v), to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

⁸ 17 CFR 240.10A-3.

⁹ See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141) ("NYSE/NASD Corporate Governance Release"). Telephone conference call between Steven Matlin, Senior Counsel, PCX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 17, 2003.

¹⁰ 17 CFR 240.10A-3(b)(3)(ii).

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 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) (release adopting Rule 10A-3).