

amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. A plan will not be considered a parallel excess plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limits that may hereafter be enacted); (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limits described in the preceding sentence and the limitation described in clause (3); and (3) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

Transition Rules

Except as provided below, a plan that was adopted before the date of the Securities and Exchange Commission order approving this listing standard will not be subject to shareholder approval under this section unless and until it is materially revised.

In the case of a discretionary plan (as defined in "Material Revisions" above), whether or not previously approved by shareholders, additional grants may be made after the effective date of this listing standard without further shareholder approval only for a limited transition period, defined below, and then only in a manner consistent with past practice. See also "Material Revisions" above. In applying this rule, if a plan can be separated into a discretionary plan portion and a portion that is not discretionary, the non-discretionary portion of the plan can continue to be used separately, under the appropriate transition rule. For example, if a shareholder-approved plan permits both grants pursuant to a provision that makes available a specific number of shares, and grants pursuant to a provision authorizing the use of treasury shares without regard to the specific share limit, the former provision (but not the latter) may continue to be used after the transition period, under the general rule above.

Similarly, in the case of a formula plan (as defined in "Material Revisions" above) that either (1) has not previously been approved by shareholders or (2) does not have a term of ten years or less, additional grants may be made after the effective date of this listing standard without further shareholder approval

only for a limited transition period, defined below.

The limited transition period described in the preceding two paragraphs will end upon the first to occur of:

- the listed company's next annual meeting at which directors are elected that occurs more than 180 days after the effective date of this listing standard;
- the first anniversary of the effective date of this listing standard; and
- the expiration of the plan.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the effective date of this listing standard, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the effective date of this listing standard are made only from the shares available immediately before the effective date, in other words, based on formulaic increases that occurred prior to such effective date.

Broker Voting

In addition, the Exchange will preclude its member organizations from giving a proxy to vote on equity-compensation plans unless the beneficial owner of the shares has given voting instructions. This is codified in NYSE Rule 452. Amended Rule 452 will be effective for any meeting of shareholders that occurs on or after the 90th day following the date of the Securities and Exchange Commission order approving the rule change.

The NYSE will establish a working group to advise with respect to the need for, and design of, mechanisms to facilitate implementation of the proposal that brokers may not vote on equity-compensation plans presented to shareholders without instructions from the beneficial owners. This will not delay the effectiveness of the broker-may-not-vote proposal.

B. Nasdaq Proposal

Nasdaq proposes to amend NASD Rule 4350(i) to require shareholder approval for stock option plans or other equity compensation arrangements (subject to exceptions specified in the rule), adopt "Interpretative Material" pertaining to shareholder approval for stock option plans or other equity compensation arrangements, and to

make related conforming changes to NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A).

Nasdaq Amendments No. 2 and 3 to the Nasdaq filing proposes a number of changes to the rules as they were published in the Notice of the Nasdaq Proposal. According to Nasdaq, these changes were made in response to the comment letters and discussions with Commission staff. The Nasdaq proposal, as amended by Nasdaq Amendments No. 2 and 3, is described below.

1. Nasdaq Proposal Amended by Nasdaq Amendments No. 2 and 3

Specifically, Nasdaq proposes to eliminate the exception for broadly-based plans, and also proposes to eliminate the *de minimis* exception to NASD Rule 4350(i)(1)(A), which allows for the grant of the lesser of 1% of the number of shares of common stock or 25,000 shares, without shareholder approval. Nasdaq believes that this exception is not in accord with the concept of restricting the use of unapproved options.

Nasdaq proposes to retain its current exception for warrants or rights offered generally to all shareholders. In Nasdaq Amendment No. 3, Nasdaq proposed an amendment to this exception to exclude stock purchase plans available on equal terms to all security holders of the company (such as a dividend reinvestment plan) from shareholder approval. In addition, the Nasdaq proposal would not require shareholder approval for tax qualified, non-discriminatory benefit plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. Along with tax qualified, non-discriminatory employee benefit plans, the Nasdaq proposal also provides an exception for parallel nonqualified plans. Nasdaq represents that the proposed amendments to NASD Rule 4350(i) would not have any effect on any shareholder approval or other requirements under the Internal Revenue Code or other applicable laws or requirements for such plans.

Furthermore, Nasdaq proposes to retain its current exception for inducement grants to new employees because Nasdaq believes that, in these cases, a company has an arm's length relationship with the new employees, and its interests are directly aligned with the shareholders. In Nasdaq Amendment No. 3, Nasdaq amended its proposal to apply this exception to persons previously employed by the issuer following a bona fide period of non-employment. In addition, Nasdaq states that, for these purposes, inducement grants would include grants