

paragraphs (a) through (d) of Rule 31.79.

\* \* \* \* \*

#### Rule 31.80 Acquisitions

\* \* \* \* \*

#### \* \* \* Interpretations and Policies

.01 Any additional shares available for issuance under a stock option or purchase plan or other equity compensation arrangement acquired in connection with a merger or acquisition are counted in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock as provided in Rule 31.80(b).

\* \* \* \* \*

#### Rule 31.85 Giving Proxies by Member Organizations

(a) No change.

(b) When a member organization may not vote without customer instructions—A member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1)–(8) No change.

(9) involves a waiver or modification of preemptive rights[, except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock options or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares];

(10)–(11) No change.

(12) [authorizes the issuance of stock, or options to purchase stock to directors, officers or employees in an amount which exceeds 5% of the total amount of the class outstanding] *authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not shareholder approval of such plan is required by Rule 31.79);*

(13)–(18) No change.

(c)–(h) No change.

\* \* \* \* \*

#### Rule 31.96 Notices to Exchange

(A)–(G) No change.

(H) *Reliance on Shareholder Approval Exceptions*

*A listed company is required to notify the Exchange in writing prior to the use of any of the exceptions set forth in paragraphs (a) through (d) of Rule 31.79.*

\* \* \* \* \*

#### Forms for Listing

\* \* \* \* \*

#### Form 1

\* \* \* \* \*

#### Listing Agreement

\_\_\_\_\_ (the "Company"), in consideration of the listing of its securities, hereby agrees with the Chicago Board Options Exchange, Incorporated (the "Exchange"), that it will:

1. Promptly notify the Exchange of the following:

(a)–(i) No change.

(j) Any diminution in the supply of the security available for trading caused by deposit of the security under voting trust, tender offer or other agreements; [and]

(k) The existence of any technical default or default in interest or principal payment, cumulative dividends, sinking funds, or redemption fund requirements of the Company or any controlled corporation, whether consolidated or unconsolidated; and[.]

*(l) the use of any of the exceptions set forth in paragraphs (a) through (d) of Rule 31.79, which notice must be sent to the Exchange in writing prior to such use.*

(2)–(28) No change.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its non-option rules (*i.e.*, equity rules) that apply to listing standards for stocks that may be listed on the Exchange. CBOE Rule 31.79 currently requires listed companies to obtain shareholder approval for stock option plans and other arrangements in which officers, directors, and key employees participate. However, the current Rule contains two exceptions, one for "broadly based plans," which, under

CBOE Rule 31.79, is a plan in which all or substantially all of the company's employees participate in a fair and equitable manner, even if officers, directors and key employees receive options grants under the plan, and one for *de minimis* grants. To enhance investor confidence in the national securities markets, the Exchange now proposes to require shareholder approval of all stock option and equity compensation plans, including "broad based plans." The proposed rule change would also provide four exceptions to the shareholder approval requirement based on the proposals set forth in a recent approval order of the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD")/The Nasdaq Stock Market, Inc. ("Nasdaq") proposals related to equity compensation plans.<sup>5</sup> In addition, the Exchange proposes to eliminate the *de minimis* exception currently reflected in CBOE Rule 31.79(b)(ii), which generally allows for the grant of the lesser of 1% of the number of outstanding shares of common stock, 1% of the voting power outstanding or 25,000 shares without shareholder approval, as this exception is not in accord with the concept of restricting the use of unapproved options.

Proposed CBOE Rule 31.79(a) amends the current exception set forth in CBOE Rule 31.79(a) to provide for inducement grants to new employees or to previous employees following a bonafide period of non-employment with the listed company. The proposed rule change would delete the reference that limits the grant to five percent of the company's outstanding common stock, which would align proposed CBOE Rule 31.79(a) with the Nasdaq/NYSE Proposals. The Exchange does not believe that shareholder approval is necessary for these types of inducement grants since in these cases a company has an arm's length relationship with

<sup>5</sup> See Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR-NYSE-2002-46 and SR-NASD-2002-140) (the "Nasdaq/NYSE Proposals"). See also Securities Exchange Act Release No. 48627 (October 14, 2003), 68 FR 60426 (October 22, 2003) (notice of filing and order granting accelerated approval to File No. SR-NASD-2003-130, incorporating amendments to the NASD's recently approved shareholder approval rules for equity compensation plans applicable to Nasdaq quoted securities). The Commission also published a correction to the notice of File No. SR-NASD-2003-130. See Securities Exchange Act Release No. 48627A (October 22, 2003), 68 FR 61532 (October 28, 2003). The Commission notes that these additional amendments by Nasdaq make the NYSE and Nasdaq proposals more consistent and uniform. See also *infra* note 11 (regarding the Commission's recent approval of a similar proposal by the American Stock Exchange LLC ("Amex")).