

(5) An issuer is not permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

(6) Rule 19(j)(1)(C)(ii) provides that plans or arrangements relating to an acquisition or merger do not require shareholder approval where the issuer is using shares available under certain plans acquired in acquisitions or mergers for certain post-transaction grants. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders that meet the requirements of Rule 19(j). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or under another plan, without further shareholder approval, provided (a) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (b) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. A plan adopted in contemplation of the merger or acquisition is not considered a pre-existing plan for purposes of this exception. Any shares available for issuance under an equity compensation plan acquired in connection with a merger or acquisition would be counted in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder requirements under Rule 19(j)(3)(b).

(7) A "tax qualified, non-discriminatory employee benefit plan" is one that meets the requirements of Section 401(a) or 423 of the Internal Revenue Code and applicable Treasury Department regulations.

(8) A "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002, that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the

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 be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (a) 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 limitation that may be enacted); (b) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and (c) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

(9) The Exchange precludes 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 prohibition is codified in Article XXXIII, Rule 3 and will become effective for any meeting of shareholders that occurs on or after the 90th day following Commission approval of the change.

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Tier II Corporate Governance, Disclosure, and Miscellaneous Requirements

RULE 21. The following Rule 21 applies only to Tier II issuers:

(1)(a) No change to text.

(b) Each issuer shall comply with the shareholder approval requirements relating to equity compensation plans set out in Rule 19(j) of this Article and is subject to Interpretation .06 of that rule.

(2)(c) No change to text.

(3)(d) No change to text.

(4)(e) No change to text.

(a)1 No change to text.

(b)2 No change to text.

(c)3 No change to text.

(d)4 No change to text.

(e)5 No change to text.

(f)6 No change to text.

(g)7 No change to text.

(h)8 No change to text.

(i)9 No change to text.

(j)10 No change to text.

(k)11 No change to text.

(l)12 No change to text.

(m)13 No change to text.

(n)14 No change to text.

(o)15 No change to text.

(p)16 No change to text.

(q)17 No change to text.

(r)18 No change to text.

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ARTICLE XXXIII

Proxies

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Instructions of Beneficial Owner

RULE 3. A member organization shall give a proxy for stock registered in its name, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

A member organization may give a proxy to vote any stock registered in its name if such organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member organization which was transmitted proxy soliciting material to the beneficial owner of stock and solicited voting instructions in accordance with the provisions of Rule 2, and which has not received instructions from the beneficial owner by the date specified in the statement accompanying such material may give a proxy to vote such stock, *except for voting on equity compensation plans as set forth below*, provided the person signing the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action does not include authorization for a merger, consolidation or any other matter which may affect substantially the legal rights or privileges of such stock.

A member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon 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 Article XXVIII, Rules 19 or 21). The provision will become effective for any meeting of shareholders that occurs on or after the 90th day following Commission approval of the change.

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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