

providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether: (i) The shares are delivered immediately or on a deferred basis; or (ii) the payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

(c) *Material Revisions.* A "material revision" of an equity compensation plan includes, but is not limited to, the following:

(1) A material increase in the number of shares available under the plan, other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction.

(i) If a plan contains a formula for automatic increases in the number of shares available (sometimes referred to as an "evergreen formula") or for automatic grants pursuant to a formula, each such increase or grant will be considered a revision requiring shareholder approval unless the plan has a term of not more than ten years. Regardless of the term, this type of plan is referred to below as a "formula plan." Examples of automatic grants pursuant to a formula are: (A) annual grants to directors of restricted stock having a certain dollar value, and (B) "Matching contributions," whereby stock is credited to a participant's account based upon the amount of compensation the participant elects to defer.

(ii) If a plan contains no limit on the number of shares available and it is not a formula plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years. This type of plan is referred to below as a "discretionary plan." A requirement that grants be made out of treasury shares or repurchased shares will not, in itself, be considered a limit or pre-established formula so as to prevent a plan from being considered a discretionary plan.

(2) An expansion of the types of awards available under the plan.

(3) A material expansion of the class of employees, directors or other service providers eligible to participate in the plan.

(4) A material extension of the term of the plan.

(5) A material change to the method of determining the strike price of options under the plan.

(i) A change in the method of determining "fair market value" from the closing price on the date of the grant to the average of the high and low price on the date of grant is an example of a

change that the Exchange would not review as material.

(6) The deletion or limitation of any provision prohibiting repricing of options. An amendment will not be considered a "material revision" if it curtails rather than expands the scope of the plan in question.

(d) *Repricings.* A plan that does not contain a provision that specifically permits repricing of options will be considered for purposes of this listing standard as prohibiting repricing. Accordingly, any actual repricing of options will be considered a material revision of a plan even if the plan itself is not revised. This consideration will not apply to a repricing through an exchange offer that commenced before the date this listing standard became effective. "Repricing" means any of the following or any other action that has the same effect:

(1) Lowering the strike price of an option after it is granted.

(2) Any other action that is treated as a repricing under generally accepted accounting principles.

(3) Canceling an option at a time when its strike price exceeds the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

(e) *Exemptions.* The listing standard does not require shareholder approval of employment inducement awards; certain grants, plans and amendments in the context of mergers and acquisitions; and certain specific types of plans, all described below. However, these exempt grants, plans and amendments may be made only with the approval of the company's independent compensation committee or the approval of a majority of the company's independent directors. Companies must also notify the Exchange in writing when they use one of these exemptions.

(1) *Employment Inducement Awards.* An employment inducement award is a grant of options or other equity-based compensation as a material inducement to a person or persons being hired by the listed company or any of its subsidiaries, or being rehired following a bona fide period of interruption of employment. Inducement awards include grants to new employees in connection with a merger or acquisition. Promptly following a grant of any inducement award in reliance on this exemption, the listed company must disclose in a press release the material terms of the award, including the

recipient(s) of the award and the number of shares involved.

(2) *Mergers and Acquisitions.* Two exemptions apply in the context of corporate acquisitions and mergers. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exemption applies to situations where a party that is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. A plan adopted in contemplation of the merger or acquisition transaction would not be considered "pre-existing" for purposes of this exemption. Shares available under such a pre-existing plan may be used for post-transaction grants of options and other awards with respect to equity of the entity that is the listed company after the transaction, either under the pre-existing plan or another plan, without further shareholder approval, so long as:

(i) The number of shares available for grants is appropriately adjusted to reflect the transaction;

(ii) The time during which those shares are available is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction; and

(iii) The options and other awards are not granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or entities that were its subsidiaries immediately before the transaction.

Any shares reserved for listing in connection with a transaction pursuant to either of these exemptions would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, and thus require shareholder approval. These merger-related exemptions will not result in any increase in the aggregate potential dilution of the combined enterprise. Further, mergers or acquisitions are not routine occurrences and are not likely to be abused. Therefore, the Exchange considers both of these exemptions to be consistent with the fundamental policy involved in this standard.

(3) *Qualified Plans, Section 423 Plans and Parallel Excess Plans.*