

a plan is, nonetheless, an equity compensation plan.

(A) Exceptions. The following are not equity compensation plans even if the brokerage and other costs of the plan are paid for by the listed company:

(i) Plans that are made available to shareholders generally, such as a typical dividend reinvestment plan.

(ii) Plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether:

(a) The shares are delivered immediately or on a deferred basis; or

(b) The payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

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

(A) 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 shares available (sometimes called 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.

This type of plan (regardless of its term) is referred to as a formula plan. Examples of automatic grants pursuant to a formula plan 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 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 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 preestablished formula so as to prevent a plan from being considered a discretionary plan.

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

(C) A material expansion of the class of employees, directors or other service

providers eligible to participate in the plan.

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

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

(F) 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.

(4) Repricings. Repricing means any of the following or any other action that has the same effect:

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

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

(C) 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 occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

A plan that does not contain a provision that specifically permits repricing of options will be considered for purposes of this rule as prohibiting repricing. Therefore, 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 rule became effective.

(5) Exemptions. This rule 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, as described below. These exempt grants, plans and amendments may be made only with the approval of the listed company's independent compensation committee or the approval of a majority of the company's independent directors. Listed companies must notify the Exchange in writing when they use these exemptions.

(A) 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 of 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.

(B) Mergers and Acquisitions. In the context of corporate acquisitions and mergers, the following exemptions apply:

(i) Shareholder approval is not required to convert, replace or adjust outstanding options or other equity compensations awards to reflect the transaction.

(ii) 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 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 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:

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

(b) 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

(c) 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 requires shareholder approval pursuant to Rule 5.3(d)(9)(B).

(D) Qualified Plans, Parallel Excess Plans and Section 423 Plans. The following types of plans, and material revisions thereto, are exempt from the shareholder approval requirement:

(i) Plans intended to meet the requirement of Section 401(a) of the Internal Revenue Code (e.g. ESOP);