Corporate Governance Rule Proposal

Shareholder Approval of Equity Compensation Plans and the Voting of Proxies

The following is the principal text of the rule filing submitted by the Exchange to the Securities and Exchange Commission on October 7, 2002. It includes the proposal relating to shareholder approval of equity-compensation plans and the elimination of related broker voting. It also includes the summary of the written comments received by the Exchange on this issue. The text of the proposed rule change is also included as Exhibit A.

The new filing is an excerpt from the Corporate Governance Proposal, which was filed with the SEC on August 16, 2002. Subsequent to the filing of the Corporate Governance Proposal, the SEC requested that the NYSE file proposed Section 303A(8) (relating to shareholder approval equity compensation plans) and proposed NYSE rule 452 (precluding member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder) separately from the remainder of the Proposal to facilitate SEC handling. The current proposal amends proposed section 303A(8) as originally filed to clarify its meaning in several respects.

The SEC published the Notice of Filing of the Proposed Rule Change in the Federal Register on October 11, 2002. The deadline for public comment on this proposal is November 1, 2002.

The New York Stock Exchange has long pioneered advances in corporate governance. The NYSE has required companies to comply with listing standards for nearly 150 years, and has periodically amended and supplemented those standards when the evolution of our capital markets has demanded enhanced governance standards or disclosure. On February 13, 2002, SEC Chairman Harvey Pitt asked the Exchange to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed a Corporate Accountability and Listing Standards Committee (the "Committee") to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the Exchange's listed companies. On August 16, 2002, the NYSE filed the Corporate Governance Proposals with the SEC, proposing rule changes to its corporate governance standards which reflect the findings of the Committee and which are designed to further the ability of honest and well-intentioned directors, officers and employees to perform their functions effectively. The proposals for new corporate governance listing standards for companies listed on the Exchange will be codified in a new section 303A of the Exchange's Listed Company Manual.[1]

Subsequent to the filing of the Corporate Governance Proposals, the SEC requested that the NYSE file proposed Section 303A(8) (relating to shareholder approval of equity-compensation plans) and proposed NYSE Rule 452 (which prohibits member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder) separately from its remaining proposals to facilitate SEC handling. The proposed rule filed herewith amends proposed Section 303A(8) as originally filed to clarify its meaning in several respects.[2]

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[1] In its Report to the NYSE Board the Committee set forth basic principles followed in many cases by explanation and clarification. We are adopting the recommendations as standards in substantially the form they were made by the Committee and adopted by the NYSE Board. Accordingly, the format used will state a basic principle, with the additional explanation and clarifications included as "commentary."

While many of the requirements set forth in this new rule are relatively specific, the Exchange is articulating a philosophy and approach to corporate governance that companies are expected to carry out as they apply the requirements to the specific facts and circumstances that they confront from time to time. Companies and their boards are expected to apply the requirements carefully and in good faith, making reasonable interpretations as necessary, and disclosing the interpretations that they make.

[2] Section 303A(11) of the Corporate Governance Proposals clarifies that the NYSE will continue its practice of accommodating the home country practices of our listed foreign private issuers with respect to the proposed corporate governance standards. In light thereof, the NYSE will not require foreign private issuers to comply with Section 303A(8) as proposed herein, assuming the company complies with current Section 303.00 of the Listed Company Manual.

As amended, Section 303A (8) of the Exchange's Listed Company Manual is as follows:

8. To increase shareholder control over equity-compensation plans, shareholders must be given the opportunity to vote on all equity-compensation plans, except inducement awards, plans relating to mergers or acquisitions, and tax qualified and parallel nonqualified plans.

<u>Commentary:</u> Equity-compensation plans[3] can help align shareholder and management interests, and equity-based awards have become very important components of employee compensation. In order to provide checks and balances on the process of earmarking shares to be used for equity-based awards, and to provide shareholders a voice regarding the resulting dilution, the Exchange requires that all equity-compensation plans, and any material revisions to the terms of such plans, be subject to stockholder approval.[4]

For these purposes, a "material revision" would include, but not be limited to, a revision that: materially increases the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction);[5] changes the types of awards available under the plan; materially expands the class of persons eligible to receive awards under or otherwise participate in the plan; materially extends the term of the plan; or materially changes the method of determining the strike price of options under the plan.[6] In addition, if a plan contains a provision that prohibits repricing of options, any revision that deletes or limits the scope of such a provision will be considered a material revision for purposes of this rule. If a plan does not contain a provision that specifically permits repricing of options,

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[3] For these purposes, an "equity compensation plan" would not include any plan that is made available to shareholders generally (such as a typical dividend reinvestment plan). In addition, an "equity compensation plan" would not include a plan that merely provides a convenient way (for example, through payroll deductions) for employees, directors or other service providers to buy shares on the open market or from the issuer, even if the brokerage and other costs of the plan are subsidized. However, if employees, directors or service providers pay less than fair market value for shares under the plan, and the plan is not made available to shareholders generally, the plan would be considered to be an "equity compensation plan" for these purposes.

[4] For the sake of clarity, the Exchange notes that its traditional "treasury stock exception" will no longer be available with respect to this requirement.

[5] For these purposes, an automatic increase in the shares available under a plan pursuant to a formula set forth in the plan (sometimes referred to as an "evergreen" formula) will not be considered a revision if the term of the plan is limited to a specified period of time not in excess of ten years. See also footnote 12 below with respect to plans with evergreen formulas that were adopted before the effective date of this rule.

[6] A change in the method of determining "fair market value" from the closing price on the date of grant to the average of the high and low price on the date of grant is an example of a formula change that the Exchange would not view as material.

the plan will be considered for this purpose as prohibiting repricing, and any actual repricing of options will be considered a material revision of the plan, even if the plan itself is not revised.[7]

There are certain types of plans and awards, however, which are appropriately exempt from this shareholder approval requirement. Employment inducement awards – that is, grants of options or shares as a material inducement to such person's first becoming an employee of the issuer or any of its subsidiaries – will not be subject to shareholder approval under this rule. The Exchange recognizes the urgency that may attach to the granting of options and other equity-based compensation in the context of inducing a candidate to accept employment and the resulting impracticality of obtaining a shareholder vote in these situations.

In the case of corporate acquisitions and mergers, two exceptions are appropriate. 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 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. 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 another plan, without further shareholder approval, so long as (1) 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 (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. The Exchange would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise.[8]

Because inducement awards and mergers or acquisitions are not routine occurrences, and are not likely to be abused, the Exchange considers these exceptions to be consistent with the fundamental policy involved in this standard.

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[7] For these purposes, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (1) amending the terms of an option after it is granted to lower its strike price; (2) any other action that is treated as a repricing under generally accepted accounting principles; and (3) canceling an option at a time when its strike price is equal to or greater than 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. A cancellation and exchange described in clause (3) of the preceding sentence will be considered a repricing regardless of whether the option, restricted stock or other equity is delivered simultaneously with the cancellation, regardless of whether it is treated as a repricing under generally accepted accounting principles, and regardless of whether it is voluntary on the part of the option holder.

[8] Note that any such shares reserved for listing in connection with the transaction 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 required stockholder approval under Listed Company Manual Section 312.03(c).

Similarly, any plan intended to meet the requirements of Section 401(a)[9] of the Internal Revenue Code (e.g., ESOPs), any parallel nonqualified plan[10], and any plan intended to meet the requirements of Section 423[11] of the Internal Revenue Code is exempt from the shareholder approval requirement. Plans such as Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15%, are also required under the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and their parallel nonqualified plans are not required to be approved by shareholders, the shares issued under these plans must be "expensed" (i.e., treated as a compensation expense on the income statement) by the company issuing the shares. Equity compensation plans that would qualify for the exception described in this paragraph but for features necessary to comply with foreign tax law in the non-U.S. jurisdiction in which the employees covered by the plan reside, are also exempt from shareholder approval under this section.

In circumstances in which equity compensation plans and amendments thereto are not subject to shareholder approval, the plans and amendments still must be subject to the approval of the company's compensation committee or a majority of the company's independent directors.

This rule will be applicable to a plan adopted before the effective date of this rule only upon any subsequent material revision of the plan.[12]

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[9] 26 U.S.C. §401(a) (1988).

[10] The term "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 (1999), 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 hereafter be enacted. However, a plan will not be considered a parallel nonqualified 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 limitations that may hereafter be enacted) and (2) 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.

[11] 26 U.S.C. §423(1988).

[12] A plan adopted before the effective date of this rule that contains an evergreen formula rather than setting forth a specific number of shares available under the plan must be submitted to shareholders for approval before the next increase in shares pursuant to the evergreen formula that occurs on or after the effective date of this rule, unless the plan (including the evergreen formula) was approved by shareholders before the effective date of this rule. See also footnote 5 above.

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.[13]

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Shareholder Vote on Equity Compensation Plans

This recommendation received particular support from the institutional investor community. They urged the NYSE Board not to dilute either the shareholder vote requirement or the broker vote prohibition. However, numerous constituents expressed concerns about both recommendations.

A. Shareholder Approval

More than half of the larger companies, financial institutions and associations that commented on this issue maintained that only plans that offer options to officers and/or directors should be subject to shareholder approval. Many companies argued that subjecting broad-based equity compensation plans to the shareholder approval requirement would lessen their ability to compensate rank-and-file employees with stock options, putting NYSE-listed companies at a competitive disadvantage in the labor market. They urged that the board should be able to adopt stock option plans for non-executive employees without shareholder approval; some suggested instead a requirement that all plans be approved by an independent compensation committee.

Some commentators advocated exceptions for inducement awards or new hire grants (citing competitive employment markets) and tax-qualified plan awards (citing the alternative regulatory framework provided by the tax code), subject perhaps to approval by the independent compensation committee. One company suggested that there should be an exemption for situations where full-value stock is used to deliver an award that would otherwise be paid in cash. Another company noted that some plans are part of collective bargaining arrangements and urged that these be excluded from the shareholder approval requirement. Another comment advocated excepting "inducement awards" made to any employee of a merger or acquisition target.

In addition, there were a number of detailed questions regarding plans approved prior to effectiveness of the new rules, amendments to plans, and plans run by an acquired company.

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[13] 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 immediate effectiveness of the broker-may-not-vote proposal.

The Exchange has clarified that inducement awards acquired in certain mergers or acquisitions, tax qualified plans and parallel nonqualified plans would be exempt, but all other plans would require shareholder approval.

B. Elimination of Broker Voting

The institutional investor community gave strong support to this proposal. Many large companies, however, strongly urged the NYSE to maintain its existing rules, fearing primarily the increased proxy costs and increased uncertainty that the proposed change would entail. Large and small companies alike cited quorum difficulties and solicitation expenses that result when brokers are not allowed to vote uninstructed shares after a 10-day period. One such commentator warned that because of retail investor confusion about voting mechanics, there is a risk that the elimination of the discretionary broker vote will disenfranchise investors if not accompanied by an aggressive and vigorous program to educate them about how to vote their shares. Many commentators also expressed concern that institutional shareholders may simply vote their shares in accordance with strict internal or third-party guidelines or policies, rather than giving each plan individual consideration. One organization suggested proportional or mirror voting by brokers of uninstructed shares.

<u>Exhibit A</u> – Text of the Proposed Rule Change

Exhibit A-1 – New Listed Company Manual Section 303A

Exhibit A-2 – Amendments to Listed Company Manual Sections 303 and 312.03(a)

Exhibit A-3 – Amendment to NYSE Rule 452

Text of the Proposed Rule Change
(All language is new)

Listed Company Manual

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303.00 Corporate Governance Standards

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Section 303A

1. – 7. Reserved.

8. To increase shareholder control over equity-compensation plans, shareholders must be given the opportunity to vote on all equity-compensation plans, except inducement awards, plans relating to mergers or acquisitions, and tax qualified and parallel nonqualified plans.

Commentary: Equity-compensation plans[1] can help align shareholder and management interests, and equity-based awards have become very important components of employee compensation. In order to provide checks and balances on the process of earmarking shares to be used for equity-based awards, and to provide shareholders a voice regarding the resulting dilution, the Exchange requires that all equity-compensation plans, and any material revisions to the terms of such plans, be subject to stockholder approval.[2]

For these purposes, a "material revision" would include, but not be limited to, a revision that: materially increases the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction);[3] changes the types

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[1] For these purposes, an "equity compensation plan" would not include any plan that is made available to shareholders generally (such as a typical dividend reinvestment plan). In addition, an "equity compensation plan" would not include a plan that merely provides a convenient way (for example, through payroll deductions) for employees, directors or other service providers to buy shares on the open market or from the issuer, even if the brokerage and other costs of the plan are subsidized. However, if employees, directors or service providers pay less than fair market value for shares under the plan, and the plan is not made available to shareholders generally, the plan would be considered to be an "equity compensation plan" for these purposes.

[2] For the sake of clarity, the Exchange notes that its traditional "treasury stock exception" will no longer be available with respect to this requirement.

[3] For these purposes, an automatic increase in the shares available under a plan pursuant to a formula set forth in the plan (sometimes referred to as an "evergreen" formula) will not be considered a revision if the term of the plan is limited to a specified period of time not in excess of ten years. See also footnote 10 below with respect to plans with evergreen formulas that were adopted before the effective date of this rule.

of awards available under the plan; materially expands the class of persons eligible to receive awards under or otherwise participate in the plan; materially extends the term of the plan; or materially changes the method of determining the strike price of options under the plan.[4] In addition, if a plan contains a provision that prohibits repricing of options, any revision that deletes or limits the scope of such a provision will be considered a material revision for purposes of this rule. If a plan does not contain a provision that specifically permits repricing of options, the plan will be considered for this purpose as prohibiting repricing, and any actual repricing of options will be considered a material revision of the plan, even if the plan itself is not revised.[5]

There are certain types of plans and awards, however, which are appropriately exempt from this shareholder approval requirement. Employment inducement awards – that is, grants of options or shares as a material inducement to such person's first becoming an employee of the issuer or any of its subsidiaries – will not be subject to shareholder approval under this rule. The Exchange recognizes the urgency that may attach to the granting of options and other equity-based compensation in the context of inducing a candidate to accept employment and the resulting impracticality of obtaining a shareholder vote in these situations.

In the case of corporate acquisitions and mergers, two exceptions are appropriate. 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 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. 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 another plan, without further shareholder approval, so long as (1) 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 (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. The Exchange would view a

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[4] A change in the method of determining "fair market value" from the closing price on the date of grant to the average of the high and low price on the date of grant is an example of a formula change that the Exchange would not view as material.

[5] For these purposes, a "repricing" means any of the following (or any other action that has the same effect as any of the following): (1) amending the terms of an option after it is granted to lower its strike price; (2) any other action that is treated as a repricing under generally accepted accounting principles; and (3) canceling an option at a time when its strike price is equal to or greater than 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. A cancellation and exchange described in clause (3) of the preceding sentence will be considered a repricing regardless of whether the option, restricted stock or other equity is delivered simultaneously with the cancellation, regardless of whether it is treated as a repricing under generally accepted accounting principles, and regardless of whether it is voluntary on the part of the option holder.

plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise.[6]

Because inducement awards and mergers or acquisitions are not routine occurrences, and are not likely to be abused, the Exchange considers these exceptions to be consistent with the fundamental policy involved in this standard.

Similarly, any plan intended to meet the requirements of Section 401(a)[7] of the Internal Revenue Code (e.g., ESOPs), any parallel nonqualified plan[8], and any plan intended to meet the requirements of Section 423[9] of the Internal Revenue Code is exempt from the shareholder approval requirement. Plans such as Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15%, are also required under the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and their parallel nonqualified plans are not required to be approved by shareholders, the shares issued under these plans must be "expensed" (i.e., treated as a compensation expense on the income statement) by the company issuing the shares. Equity compensation plans that would qualify for the exception described in this paragraph but for features necessary to comply with foreign tax law in the non-U.S. jurisdiction in which the employees covered by the plan reside, are also exempt from shareholder approval under this section.

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[6] Note that any such shares reserved for listing in connection with the transaction 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 required stockholder approval under Listed Company Manual Section 312.03(c).

[7] 26 U.S.C. §401(a) (1988).

[8] The term "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 (1999), 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 hereafter be enacted. However, a plan will not be considered a parallel nonqualified 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 limitations that may hereafter be enacted) and (2) 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.

[9] 26 U.S.C. §423(1988).

In circumstances in which equity compensation plans and amendments thereto are not subject to shareholder approval, the plans and amendments still must be subject to the approval of the company's compensation committee or a majority of the company's independent directors.

This rule will be applicable to a plan adopted before the effective date of this rule only upon any subsequent material revision of the plan.[10]

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.[11]

9. – 13. Reserved.

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[10] A plan adopted before the effective date of this rule that contains an evergreen formula rather than setting forth a specific number of shares available under the plan must be submitted to shareholders for approval before the next increase in shares pursuant to the evergreen formula that occurs on or after the effective date of this rule, unless the plan (including the evergreen formula) was approved by shareholders before the effective date of this rule. See also footnote 3 above.

[11] 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 immediate effectiveness of the broker-may-not-vote proposal.

Exhibit A-2

Text of the Proposed Rule Change
(New language is underscored, deletions are [bracketed])

Listed Company Manual

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303.00 Corporate Governance Standards

Pending the implementation of the new corporate governance standards set forth in Section 303A (1)-(7) and (9)-(13) infra, in accordance with the transition provisions adopted by the Exchange, the standards contained in this Section 303.00 will continue to apply.

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312.00 Shareholder Approval Policy

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312.03 Shareholder Approval

Shareholder approval is a prerequisite to listing in [four] the following situations:

(a) This section is reserved. New provisions regarding shareholder approval of equity compensation plans are now contained in subsection 8 of Section 303A. [Shareholder approval is required with respect to a stock option or purchase plan, or any other arrangement, pursuant to which officers or directors may acquire stock (collectively, a "Plan") except:

(1) for warrants or rights issued generally to security holders of the company;
(2) pursuant to a broadly-based Plan;
(3) where options or shares are to be issued to a person not previously employed by the company, as a material inducement to such person's entering into an employment contract with the company; or
(4) pursuant to a Plan that provides that (i) no single officer or director may acquire under the Plan more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted, and (ii) together with all Plans of the issuer (other than Plans for which shareholder approval is not required under subsections (1) to (3) above), does not authorize the issuance of more than five percent of the issuer's common stock outstanding at the time the Plan is adopted.]

(b) – (d) No change.

Exhibit A-3

Text of the Proposed Rule Change
(New language is underscored, deletions are [bracketed])

NYSE Constitution and Rules

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Rule 452
Giving Proxies by Member Organization

A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, 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.

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Supplementary Material:

Giving a Proxy To Vote Stock

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.11 When member organization may not vote without customer instructions. In the list of meetings of stockholders appearing in the Weekly Bulletin, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

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(12) [authorizes 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] <u>authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by subsection 8 of Section 303A of the Exchange's Listed Company Manual)</u>;

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