

Catherine R. Kinney
Group Executive Vice President
Competitive Position Group

New York Stock Exchange, Inc.
20 Broad Street
New York, NY 10005

tel: 212.656.8330
fax: 212.656.5111
ckinney@nyse.com



December 20, 2000

To: Corporate Secretaries of Listed Companies

Re: Stock Option Plans

In addition to its established reputation as the highest quality trading market, the New York Stock Exchange has long served as a forum for public debate on key corporate governance matters. Issues such as proxy voting standards and shareholder voting rights were initially developed and debated at the Exchange. The Exchange was also a pioneer in requiring that companies have independent audit committees and independent directors. Another important issue, the role of shareholders in the authorization of stock option plans, is now at the forefront of the corporate governance agenda. Speaking favorably of work the Exchange has done in this area, SEC Chairman Arthur Levitt is encouraging a new, coordinated approach to marketplace requirements for stockholder approval of listed company stock option plans.

In 1999, the Exchange sponsored a special Task Force that developed a proposal on this issue. Last Fall, the Board of the Exchange endorsed one of the Task Force's recommendations – that there be more complete disclosure in the proxy statement regarding potential equity dilution from stock options – and forwarded that recommendation to the SEC. Based on that recommendation, the SEC is actively working on appropriate changes to their disclosure rules.

Significant changes to the marketplace stockholder approval requirements have also been and continue to be studied and discussed, but I want to emphasize that no such proposal has yet been adopted by the Exchange's Board of Directors. In fact, the Board has specifically determined that significant changes in this area should be proposed only on a uniform basis with the other U.S. listing markets, and only after all our listed companies have had a chance to study and comment on those proposals.

The Exchange's rules requiring stockholder approval of option plans covering officers and directors, and the exception in those rules for plans that are "broadly based", have been under study for several years. Following a rule filing in 1997 to clarify the meaning of the term "broadly based", questions were raised by the institutional investor community about that definition. To thoroughly explore the issue, the Exchange circulated a "White Paper" in 1998 to some 4500 interested persons, including, of course, all our listed companies. We received 166 comments in response. We then created a Task Force of experts to address the comments and study the issue. The Task Force was drawn from our listed companies, investor representatives, and the law firms that represent them.

The Task Force made some interim recommendations regarding fine tuning of the definition of "broadly based". These changes were adopted by the Exchange and approved on a "pilot" or temporary basis by the SEC in mid-1999, pending further work by the Task Force. The final recommendation from the Task Force was made in a report delivered in October 1999. The Task Force recommended that we move away from the "broadly based" plan exception, and instead require stockholder approval of all stock option plans covering officers and directors, with a dilution based standard for all other stock option plans. This was a response to concerns among the institutional investor community over dilution from option plans that were not subject to shareholder approval. The Task Force cautioned, however, that the Exchange should not adopt a new standard unless a similar change is made by all listing markets.

We realize that this is an important issue for both issuers and investors. Given the SEC's interest, we want to be sure that our listed companies are focused on the issue, and that we have the benefit of your views. Accordingly we have put the Task Force report on our websites, both our listed company website at nysenet.com, and on our public website at nyse.com. We welcome any input you may have with respect to the subject generally, or with respect to the discussion and recommendations found in the Task Force report. You may direct any questions or comments to me, or to Steve Walsh, Managing Director (swalsh@nyse.com), who has been coordinating this project since its inception.

Regardless of whether you choose to comment at this point, be assured that you will have a full chance to consider and comment upon any uniform rule proposal that does result from this deliberative process.

Sincerely,

Catherine R. Kinney

Report of the New York Stock Exchange Special Task Force on Stockholder Approval Policy

I. Introduction

As part of its corporate responsibility provisions, the New York Stock Exchange, Inc. (the "Exchange") has long required, as a prerequisite to listing, shareholder approval of stock option or purchase plans or any other arrangements pursuant to which officers or directors may acquire stock, subject to certain exceptions including a long-standing exception for "broadly-based plans." The other major securities markets have similar standards. The tremendous growth in equity compensation arrangements coupled with increased institutional investor interest in such arrangements has focused attention on the Exchange's shareholder approval requirements. In 1997, in response to requests, the Exchange proposed amendments to its standards which codified previous staff interpretations of the term "broadly-based." The proposed change was published for public comment in 1997. No comments were received, and the Securities and Exchange Commission (the "SEC") approved the amendments in 1998. These amendments proved to be controversial after adoption, however, as investor groups focused on the issues of option grants and shareholder approval standards. As a result, the Exchange issued a white paper, which was broadly disseminated, requesting public comment on the amended "broadly-based plan" standard and appointed a Stockholder Approval Policy Task Force (the "Task Force"), composed of members of all the Exchange's relevant constituencies, to make recommendations concerning possible changes in these requirements. After reviewing more than 160 comments and holding a number of meetings, the Task Force recommended changes in the requirements, which the NYSE proposed in October 1998, and the SEC approved, on a pilot basis, in June 1999. The changes

tightened the "broadly-based plan" definition and made the test exclusive. The Task Force also recommended consideration of an overall dilution maximum for non-tax qualified plans.

After extensive deliberations, including consultation with academics, compensation and tax experts and others, the Task Force now unanimously recommends a strict shareholder approval policy for all plans in which officers and directors may participate, except for tax-qualified plans, grants made as material inducements of new employees, options issued to new employees to effect a merger or acquisition transaction, and warrants or rights issued to shareholders generally. In addition, the Task Force proposes a new standard that, in effect, will permit issuers, without obtaining shareholder approval, to adopt plans, or increase available equity grants under plans, by no more than 10% the level of potential dilution authorized under shareholder approved stock option or purchase plans, subject only to exceptions relating to tax-qualified plans and generally granted rights and warrants. The Task Force believes that this approach is superior, in terms of both good corporate governance and investor protection, to any of the several different dilution standards it considered.

II. History of the Issue

The Exchange's listing requirements have long exempted "broadly-based" plans from its shareholder approval requirements. This exemption was originally adopted because the Exchange believed that any potential concerns regarding preferential treatment of officers or directors would be mitigated if the plan was broadly available to the company's employees. In light of changes to legal requirements governing shareholder approval of plans and at the urging of listed companies, in 1996, the Exchange began a review of its policy requiring shareholder approval of certain plans. In December 1997, the Exchange filed a proposed rule change with the SEC to amend its shareholder approval policy with respect to stock option and similar plans, which was approved by the SEC on April 8, 1998

(the "1998 Rule").¹ The 1998 Rule codified, among other things, existing Exchange interpretations regarding "broadly-based" plans. While no comments were received on the proposal, after its adoption members of the institutional investor community began to raise concerns about the definition of "broadly-based." In response, in June 1998, the Exchange issued a Request for Comment and "White Paper" regarding the definition of "broadly-based plan" and received 166 comments.

The Exchange established the Task Force to review the comments and make recommendations. The Task Force was composed of representatives of the Exchange's Legal Advisory Committee, Individual Investors Committee, Pension Managers Advisory Committee, Listed Company Advisory Committee, and members of other Exchange constituencies, including the Council of Institutional Investors. (The names of the original Task Force members and their affiliations are set forth in Attachment A.) The Task Force recommended a two stage approach. First, it recommended that certain changes be made in the definition of a "broadly-based" plan. This "Interim Rule" is discussed in further detail below in Section III. Second, the Task Force recommended that the Exchange commence a study and determine whether it was feasible to set an overall dilution maximum for all non-tax qualified plans that would otherwise be exempt from shareholder approval and recommended that the study be completed in time for the year 2000 proxy season. The Exchange responded to this recommendation by expanding the Task Force and asking it to consider a possible listing standard that would include a

¹ Release No. 34 - 39839 (April 15, 1998). The proposing release was Release No. 34-39659 (February 12, 1998).

dilution test. (The names of the current Task Force members and their affiliations are set forth in Attachment B.) This report is the result of that further study.

III. The Interim Rule

As discussed above, the focus of the Interim Rule is the exemption from the requirement of shareholder approval for "broadly-based" plans. The 1998 Rule had defined "broadly-based" in the exemption itself, which exempted "a broadly-based plan that includes other employees (e.g., ESOPs)", and in subparagraph (g) in Para. 312.04. This new subparagraph provided that whether a plan would qualify as broadly-based would depend on a variety of factors, "including, but not limited to the number of officers, directors and other employees covered by the plan and whether there are separate compensation arrangements for salaried employees." The new subparagraph also provided a "non-exclusive safe harbor" for a plan "if at least 20 percent of the company's employees are eligible to receive stock or options under the plan and at least half of those eligible are neither officers nor directors (the '20 percent test')".

As recommended by the Task Force, the tighter Interim Rule deleted the references to other employees and ESOPs in the exemption itself and substituted a new subparagraph (h) for subparagraph (g) of Para. 312.04. Subparagraph (h) redefined "broadly-based" by eliminating the "variety of factors" aspect of the definition, the 20 percent test, and the definitional structure of a non-exclusive safe harbor. Instead, the subparagraph provides a definite and exclusive standard for a "broadly-based" plan. The standard has two conjunctive requirements:

- (1) at least a majority of the company's full-time employees in the United States, who are "exempt employees," as defined under Fair Labor Standards Act of 1938, must be "eligible to receive stock or options under the plan" and
- (2) at least a majority of the shares of stock or shares of stock underlying options awarded under the plan, during the shorter of the three-year period commencing on the date the plan is adopted by the company or the term of the plan, must be awarded to employees who are not officers or directors of the company.

The first requirement of the definition prescribes a numerical test against which the qualification of a plan as "broadly-based" is to be measured. The employee base against which the numerical test is to be applied excludes part-time employees, employees located outside the United States and employees subject to the Fair Labor Standards Act of 1938. These exclusions were based on the view that the test should be applied to the employee base in which stock options and similar grants are more normally a part of employee compensation. Part-time employees and employees located outside the United States often have different compensation regimens, and employees subject to the Fair Labor Standards Act are often subject to compensation determined by collective bargaining arrangements and not involving stock options or similar grants. The second requirement of the definition seeks to ensure that stock options and similar grants will be broadly dispersed within the broadly-based plan, as measured during the first three years of the plan or, if shorter, the life of the plan. The employee base against which this requirement is to be measured includes employees subject to the Fair Labor Standards Act, as such inclusion was thought to be not inconsistent with the notion of "broadly-based". In addition to these amendments, as also recommended by the Task Force, the Interim Rule provides a definition of the term "officer" that incorporates the definition of that term under Section 16 of the Securities Exchange Act of 1934.

The Interim Rule amendments to the Listed Company Manual were filed by the Exchange with the SEC on October 13, 1998. The SEC published its notice of the filing for comment on November 13, 1998,² and, on December 26, 1998, extended the period for comments until January 25, 1999. The Exchange submitted amendments to the filing on November 27, 1998 and March 12, 1999. The SEC issued an order on June 4, 1999 approving the Interim Rule on a pilot basis until September 30, 2000,³ after having received 19 comment letters.⁴ The SEC's order approving the Interim Rule stated that the rule was an improvement to the previous formulation. Moreover, the order referred to the study of a dilution standard by the Task Force and the Exchange being conducted on a definite time schedule, and included a request that any proposal to adopt a dilution standard (or a status report on the matter) be submitted to the SEC by October 15, 1999. In addition, the order stated that any filing seeking to change the Interim Rule or to extend its effectiveness beyond the initial pilot period must be submitted no later than May 18, 2000.⁵

² Release No. 34-40679 (November 13, 1998).

³ Release No. 34-41479 (June 4, 1999).

⁴ The comment letters are available in the SEC Public Reference Room. File No. SR-NYSE-98-32.

⁵ Any such request would have to be accompanied by a monitoring report including information on the types and number of employees who are eligible to participate under plans, as well as information concerning actual awards being made under plans.

IV. The Deliberative Process of the Task Force

The Task Force met in person to consider the possible development of a dilution standard and to work out the terms of the Proposed Rule six times between July 1998 and July 1999, and held several teleconferences. Members of the Task Force participated actively in the discussions and in the development and drafting of the terms of the Proposed Rule. In the earlier meetings, there was extensive discussion of the varying views of Task Force members concerning the principles of equity dilution measurement in general and how those principles, once agreed upon, should be applied to form a shareholder approval policy. In order to assist the Task Force in identifying and applying such principles, the Exchange retained Jennifer N. Carpenter and David L. Yermack, professors at the Leonard N. Stern School of Business of New York University, as academic consultants to the Task Force. Ms. Carpenter and Mr. Stern prepared a paper for the Task Force, dated January 26, 1999, entitled "Measuring Dilution from Stock-Based Compensation" (the "Academic Study"), and met with the Task Force on several occasions.⁶

The Academic Study noted that there has been almost no scholarly research on how to measure dilution or identify appropriate levels or "flow rates" of potential dilution caused by stock option and similar equity compensation plans. The Study focused on the measurement of dilution to the holdings of existing shareholders and not on the measurement of the value to existing shareholders of the services that might be received in exchange for such dilution.

⁶ The study is available from Stephen G. Walsh, Managing Director, New York Stock Exchange, at 212-656-6240.

The Task Force spent several meetings considering various of the issues presented in the Academic Study, including:

- (1) by what units should dilution be measured: voting rights, rights to distributions of dividends and assets, or the portion of the value of the enterprise being transferred to plan beneficiaries;
- (2) whether dilution should be measured on (a) an historical basis to the present, based on actual share issuances under plans, or (b) on a future basis, either by measuring "overhang" (for example, by measuring options issued and not exercised or expired plus options available for future grants under existing and currently proposed plans) or by measuring "run-rate" (for example, by measuring the annual rate at which options are authorized to be granted in future years);
- (3) whether plans that do not involve the issuance of shares, such as phantom stock and stock appreciation rights plans, should be included in dilution measurements;
- (4) how the repricing of options should be treated;
- (5) whether dilution measurements should include repurchases of shares by companies as an offset to dilution as a general matter and, more specifically, whether the shareholder approval policy should apply to plans funded by treasury shares held by companies;⁷
- (6) whether adjustments should be made for dilution measurement purposes to the total number of outstanding shares when that number increases as a result of issuances of shares for cash or to make acquisitions of other companies, or changes as a result of mergers or consolidations; and
- (7) whether a dilution standard should include all plans of a company or only those plans that have not been approved by shareholders.

⁷ The shareholder approval requirements of the Exchange by their terms have been applied only as a "prerequisite to listing" the shares available for issuance under Plans. Since treasury shares are already listed shares, the requirements have not applied to Plans funded by treasury shares. For further discussion of this issue, see page 12.

The Task Force concluded that it was not possible to come up with a simple dilution standard that would work for all companies and that did not create incentives in favor of short-term grants or premature option exercises contrary to good compensation policy.

In addition to the dilution standard approach, the Task Force considered a so-called "private ordering" approach. Under this approach, companies could submit to shareholders proposals for equity compensation under plans that would cover the ensuing three to five years. The proposals would not have to include the actual plans to be adopted but rather an outline of their provisions sufficient to enable shareholders to make estimates of maximum dilution. The subsequent adoption of plans would not require shareholder approval if consistent with the shareholder-approved "private ordering" proposals.

After extended discussion and debate, both in its formal meetings and in informal discussions among Task Force members and support staff, the Task Force unanimously agreed upon a strict approach to shareholder approval in which every plan, with very limited exceptions, in which directors and officers participate ("Officer Plans") would require shareholder approval. This decision was based, in part, on the consensus of the Task Force that issuers, as a matter of good corporate governance, should seek shareholder approval of Officer Plans and that a requirement that issuers do so would not impose undue costs or burdens on them. The decision was strengthened by the observation of many Task Force members, including company representatives, that public companies, as a matter of good corporate governance or for tax-related reasons, increasingly obtain shareholder approval of Officer Plans even if not required by listing standards. Further, the Exchange has no reliable or comprehensive information on the extent to which issuers actually rely on the exemption for "broadly-based" plans. Thus, the Task Force decided that this exemption no longer rested on sound public policy

or corporate practice. Even as to plans in which directors and officers do not participate ("Employee Plans"), the Task Force concluded that shareholder approval of most plans should be required, subject to a ten percent of Potential Dilution "basket" within which companies would have the flexibility to adopt plans and make grants to persons who are not officers (as defined) and directors. The policy behind this approach is that most potential plan dilution -- 90 percent -- should be subject to stockholder approval and that officer and director grants should generally be subject to such approval. The specifics of the Proposed Rule recommended by the Task Force ("Proposed Rule") are described in the next section.

V. The Proposed Rule and How It Works

The Task Force recommends to the Board of Directors of the Exchange the Proposed Rule, which is based on a different premise and somewhat different structure than the Interim Rule.⁸ The main part of the Proposed Rule provides that shareholder approval is required for the adoption of all "plans under which officers and directors may receive grants" --Officer Plans. The term "Plan" is defined to include all arrangements pursuant to which employees or others may acquire stock, subject to the limited exclusions described below. The Proposed Rule further requires shareholder approval for the adoption of all Plans (subject to the exceptions in the definition of the term Plan), except Plans that fall within a ten percent "basket" for grants not subject to shareholder approval. A Plan that falls within the ten percent basket is

⁸ The Proposed Rule revises Para. 312.03(a) of the Listed Company Manual, deletes Para. 312.04(h) of the Interim Rule with respect to the definition of "broadly-based" Plans, and replaces it with an interpretation regarding treasury shares. See Attachment C.

one pursuant to which "the maximum aggregate number of shares of stock that could be issued would not exceed, together with the then Potential Dilution of all other Plans that have not been approved by shareholders and outstanding Inducement Options and Acquisition Options, ten percent of the Potential Dilution of all Plans." The Proposed Rule defines the term "Potential Dilution" as "the maximum aggregate number of shares of stock currently authorized for issuance including both the number of shares available for grants and the number of shares underlying outstanding grants (i.e., unexercised and unexpired)". Illustrations of how the Proposed Rule would work in practice are set forth in Attachment C.

Under the Proposed Rule, the following types of Plans would be excluded from the definition of "Plan" and thus not require shareholder approval prior to issuance:

- (1) any Plan intended to meet the requirements of Section 401(a) or 423 of the Internal Revenue Code (such as Employee Stock Ownership Plans);
- (2) any arrangement whereby 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 employment with the company; ("Inducement Options");
- (3) any arrangement for the issuance of warrants or rights issued generally to security holders of the company; and
- (4) options issued to new employees (or assumed) to effect an acquisition or merger transaction ("Acquisition Options").

The first three of these exclusions from the definition of "Plan" continue historical exceptions from the Exchange's shareholder approval requirements. The fourth exception for Acquisition Options is closely related to the second exception for Inducement Options. In the case of the first and third exclusion, there is no opportunity for officers and directors to be disproportionately benefited, due to legal and structural restrictions. In the case of Inducement Options and Acquisition

Options, the benefits provided by these options are the result of arm's-length transactions involving persons who are not officers, directors or employees of the issuing company at that time. In addition, Inducement Options and Acquisition Options are likely to involve time-sensitive situations, and their exclusion from the definition of "Plan" gives listed companies critically needed flexibility in terms of timing, as acquisitions are made or new executives recruited. However, importantly, after their grant, Inducement Options and Acquisition Options are both included in the numerator of the computation of Potential Dilution for purposes of the ten percent basket, and thus reduce the size of the basket, unless they have been or subsequently are approved by shareholders of either the acquiring or acquired company.

Finally, the Proposed Rule modifies the historical exclusions for Plans funded by treasury shares instead of newly issued shares. Historically, such Plans were completely excluded from the Exchange's shareholder approval requirements because the requirements were stated as "a prerequisite to listing", and the Exchange traditionally viewed shares reacquired by issuers and held as treasury shares as still listed as long as fees continued to be paid on the shares. The Task Force does not believe that such a distinction continues to make sense for a shareholder approval policy relating to Plans. Accordingly, the Proposed Rule modifies the historical approach by specifying that repurchased shares are subject to the shareholder approval standard, for purposes of the Proposed Rule. The rule contains an exception, however, for shares that have been repurchased by a company and, within two years after repurchase, are treated as outstanding for purposes of receiving dividends and entitlement to vote (if voting shares). In cases in which repurchased shares are to be used, (1) a majority of independent directors (or a majority of a committee consisting only of independent directors) must approve all Plans, prior to awarding any grants pursuant to such Plans, under which grants will be

satisfied, in whole or in part, by repurchased shares and (2) the company must obtain shareholder, during the first two years of each Plan⁹ or, if earlier, prior to the termination of such Plan, approval of the terms and conditions of such Plan and the fact that repurchased shares may be used. With respect to the latter, once the approval is obtained, it is valid for the life of the Plan up to a maximum of five years. For Plans with a term greater than five years, the company must obtain reapproval during the first two years of each succeeding five-year period the Plan remains in effect. Finally, disapproval of a Plan by shareholders will have no effect upon the stock options or stock awards duly granted, or upon the use of the shares repurchased under the Plan, prior to such vote by shareholders.

Throughout its deliberations, the Task Force considered the appropriateness of an exclusion from the shareholder approval requirements for any arrangement pursuant to which de minimus numbers of options or shares were issued to employees on the basis of universally applicable occurrences such as years of service, corporate anniversaries, overall corporate performance, or other standards which do not discriminate in favor of officers or directors. The Task Force ultimately decided not to include such an exclusion from the Proposed Rule, because it believed that the permissible ten percent non-approval "basket" would accommodate this type of arrangement, to the extent such grants are not made to officers (as defined) and directors.

⁹ Another proposal advocated by some members of the Task Force is that the shareholders be entitled to vote at the first shareholder meeting following the adoption of the Plan.

VI. Other Matters

A. Disclosure Enhancements

In connection with its consideration of a possible dilution standard for determining when shareholder approval of a plan is necessary, the Task Force learned, from the academic studies conducted for it and from consultants with investor advisory organizations, that it currently is quite difficult to make accurate calculations. The requisite information is not consistently available in any one place or format in corporate disclosure documents and is not all currently mandated by SEC disclosure requirements. To address this concern, the Task Force designated a special drafting group, which developed proposed changes in SEC disclosure standards to remedy the dilution information gap. The Task Force now recommends that the Exchange formally propose to the SEC that the disclosure requirements relating to equity compensation contained in SEC Regulation S-K be amended as described below. The Task Force believes that the recommended changes will not substantially increase disclosure costs or burdens on issuers. The changes the Task Force is recommending will, for the first time, give shareholders and analysts, in one place, all of the information necessary to make their own dilution calculations with a high degree of accuracy. These changes will facilitate both analysis and application of institutional dilution guidelines in voting decisions. The Task Force believes that these disclosure changes may well have a beneficial impact on shareholder education and effective corporate governance as important as the proposed changes in listing standards. In addition to providing needed information to evaluate dilution calculations, the proposed changes will permit investors to determine which plans have previously been approved by shareholders and enable them to review most equity

compensation plans, in order to determine the precise nature of the awards that may be granted under such plans. Illustrations of the disclosure, which would be provided under the recommended changes, are set forth in Attachment D.

First, the Task Force is recommending that the existing table in Item 402(c)(1) of Regulation S-K be amended to require the inclusion of:

- (1) the total number of options and stock appreciation rights ("SARs") granted to employees and all other persons during the last completed fiscal year and the weighted-average exercise price¹⁰ of such options;
- (2) the total number of outstanding options and SARS that were granted but unexercised that are held by employees and all other persons as of the end of the last completed fiscal year and the weighted-average exercise price for such options;
- (3) the total number of options and SARS available for grant to employees and all other persons at the end of the last completed fiscal year; and
- (4) the total number of shares of the issuer issued and outstanding as of the end of the last completed fiscal year.¹¹

Second, the Task Force is recommending that the existing table in Item 402(e)(1) be amended to require the inclusion of:

- (1) the total number of restricted stock, unrestricted stock and other similar awards granted to employees and all other persons during the last completed fiscal year;

¹⁰ The weighted-average exercise price will be different than that required by FAS 123 and contained in Form 10-K because of the inclusion of awards to persons other than employees in the tables.

¹¹ The total number of options and SARS available for grant at the end of the last fiscal year need not be included to the extent shares are reserved that may also be awarded as restricted stock or unrestricted stock and included in Item 402(e)(1).

- (2) the total number of shares of outstanding restricted stock, unrestricted stock and other similar awards available for grant to employees and all other persons at the end of the last completed fiscal year; and
- (3) the total number of shares of the issuer issued and outstanding at the end of the last completed fiscal year.¹²

Third, the Task Force is recommending that Item 10 of Schedule 14A be amended to require that information be provided with respect to all plans maintained by an issuer with respect to grants of options, restricted stock or similar equity awards. This information would include the name of each plan and whether securities available for award under such plan were approved by security holders, the aggregate amount of awards issued or outstanding under each plan and whether the plan permits repricing of awards and the circumstances regarding such repricing.

Finally, the Task Force is recommending that Item 601 of Regulation S-K be amended to provide that any compensatory plan providing for compensation to any officer or director or that is reasonably expected to exceed \$100,000 to any employee to whom options, restricted stock or similar equity awards may be awarded, be filed with the SEC. This will ensure that the terms of the plan will be available for review by investors and analysts. Members of the Task Force have discussed these proposals with the SEC staff informally in connection with the staff's current review of the SEC's existing executive compensation disclosure requirements.

¹² Information is not required to the extent it is provided pursuant to Item 402(c)(2).

B. Broker Votes

During the deliberations of the Task Force, some members suggested that the Exchange should also review Para. 402.08 of the Listed Company Manual as it relates to the shareholder approval listing standard. That Paragraph provides essentially that Exchange member organizations may vote shares they hold for customers, if the customers do not vote the shares within a stated period after having been solicited to do so and if the items to be voted on do not include certain specified significant, contested or controversial matters. Subparagraph (B)(12) provides that brokers may not vote, without customer instructions, on any matter that would authorize "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."

Changes to the broker voting rules are not within the Task Force's mandate from the Board of the Exchange or the direction from the SEC to the Exchange. They should not be considered without broader consultation with the Exchange's member firms and consideration of timing and other practical concerns in the shareholder voting process. Thus, the Task Force notes but takes no position on this issue.

VII. Conclusion

The Task Force has carefully considered the appropriate requirements for shareholder approval of stock option and related plans and submits recommendations which it believes advance the principles of good corporate governance and serve the interests of issuers and investors alike.

The Task Force recommends that the Board of the Exchange advise the SEC of the recommendations of the Task Force, and also advise the NASDAQ/Amex Stock Markets of such recommendations. The Task Force recommends that the proposed rule changes should take effect in coordination with, and at the same time as, a substantially similar rule, or another standard which similarly protects investor interests, is approved for the NASDAQ/Amex Stock Markets. The Task Force believes that this coordination of standards is important because, with regard to corporate governance, the leading securities markets should seek to harmonize their rules in the best interests of investors, not to compete on the basis of disparities in their rules which may tend to compromise those interests or undermine the public's confidence and trust in those markets.

The Task Force also recommends that the Board of the Exchange authorize the Exchange staff to forward to the SEC the Task Force's recommendations for enhancement of SEC disclosure requirements.

* * * *

This Report is hereby respectfully submitted, on the 28th day of October 1999, for consideration by the Board of the Exchange.

Respectfully submitted,

The Task Force on
Stockholder Approval Policy

John F. Olson, Esq.
Chairman

ATTACHMENTS

- A Original Task Force Members
- B Current Task Force Members
- C Proposed Rule and Illustrations
- D Illustrations of Proposed Disclosure Enhancements

Attachment A

SHAREHOLDER APPROVAL POLICY TASK FORCE

Chair

John F. Olson, Esq.
Gibson Dunn & Crutcher LLP

Members

Peter C. Clapman, Sr. Vice President & Chief Counsel, Investments
Teachers Insurance & Annuity Association
College Retirement Equities Fund

Myra Drucker, Assistant Treasurer
Xerox Corporation

Peter Galloway, Associate General Counsel & Secretary
Johnson & Johnson

Kayla Gillan, General Counsel
California Public Employees Retirement System

Tom Herndon, Executive Director
Florida State Board of Administration

Martin E. Kaplan, President
K.R. Capital Advisors, Inc.

Peter N. Larson, Chairman, CEO & President
Brunswick Corporation

Lawrence K. Menter, Sr. Corporate Counsel & Asst. Secretary
The Home Depot, Inc.

D. Craig Nordlund, Associate General Counsel & Secretary
Hewlett-Packard Company

Stephen Patrick, Chief Financial Officer
Colgate-Palmolive Company

Eric Roiter, Vice President & General Counsel
Fidelity Management & Research Company

Stockholder Approval Policy Task Force (Cont'd)

Page 2

Linda Scott, Director of Investment Affairs
New York State Common Retirement Fund

David W. Smith, President
American Society of Corporate Secretaries

Kurt P. Stocker, Associate Professor
Northwestern University

Affiliations reflect positions held at the time of service on the Task Force.

Attachment B

SHAREHOLDER APPROVAL POLICY TASK FORCE

Chair

John F. Olson, Esq.
Gibson, Dunn & Crutcher LLP

Members

Peter C. Clapman, Sr. Vice President & Chief Counsel, Investments
Teachers Insurance & Annuity Association
College Retirement Equities Fund

Derek Dewan, Chairman, President & Chief Executive Officer
Modis Professional Services, Inc.

Myra Drucker, Assistant Treasurer
Xerox Corporation

Margaret M. Foran, Senior Corporate Counsel & Asst. Secretary
Pfizer Inc.

Kayla Gillan, General Counsel
California Public Employees Retirement System

Tom Herndon, Executive Director
Florida State Board of Administration

Peter N. Larson, Chairman, CEO & President
Brunswick Corporation

Nell Minow, President
LENS

D. Craig Nordlund, Associate General Counsel & Secretary
Hewlett-Packard Company

Stephen Patrick, Chief Financial Officer
Colgate-Palmolive Company

Eric D. Roiter, Senior Vice President & General Counsel
Fidelity Management & Research Company

Stockholder Approval Policy Task Force (Cont'd)

Page 2

Thomas Russo, Managing Director
Lehman Brothers Inc.

Kurt Schacht, Chief Legal Counsel
State of Wisconsin Investment Board

Linda Selbach, Principal
Barclays Global Investors

David W. Smith, President
American Society of Corporate Secretaries

Kurt P. Stocker, Associate Professor
Northwestern University

Affiliations reflect positions held at the time of service on the Task Force.

Proposed Changes to Listed Company Manual

Listed Company Manual

SECTION 3

Corporate Responsibility

* * *

[Remove current 312.03(a) in its entirety]

312.03 Shareholder approval is required as a prerequisite to listing in four situations:

(a)(1) For purposes of this sub-section (a), the following terms shall be defined as indicated below:

(i) Plan: a stock option or purchase plan, or any other arrangement pursuant to which officers, directors, employees or consultants may acquire stock, excluding (A) any plan intended to meet the requirements of Section 401(a) or 423 of the Internal Revenue Code, as amended (e.g., ESOPs), (B) any arrangement whereby 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 employment with the company ("Inducement Options"), (C) any arrangement for the issuance of warrants or rights issued generally to security holders of the company, and (D) options issued to new employees (or assumed) pursuant to one or more agreements entered into to effect an acquisition or merger transaction ("Acquisition Options").

(ii) Authorized Dilution: the maximum aggregate number of shares of stock presently authorized for issuance under Plans, Inducement Options and Acquisition Options, approved in each case by shareholders, including both the number of shares available for grants and the number of shares underlying outstanding grants (i.e., unexercised and unexpired).

(iii) Unapproved Shares: shares presently authorized for issuance under any Plan that has not been approved by shareholders and shares underlying outstanding Inducement Options or Acquisition Options not approved by shareholders.

(a)(2) Shareholder approval is required as a prerequisite to listing (and, in the circumstances specified in Para. 312.04 if repurchased shares are to be used) with respect to the adoption of any Plan (or an amendment thereto which would increase the

number of shares authorized for issuance thereunder) pursuant to which:

- (i) officers or directors may acquire stock; or
- (ii) the number of shares of stock to be listed under the Plan, together with all other Unapproved Shares, would exceed ten percent of the Authorized Dilution. In applying this provision, a company's maximum ratio of Unapproved Shares to total Authorized Dilution may not exceed 1 to 10.

(a)(3) Companies that adopt Plans, Inducement Options or Acquisition Options without shareholder approval as permitted under sub-paragraph (a)(2)(ii) may subsequently obtain shareholder approval and thereby decrease the total Unapproved Shares. With respect to Acquisition Options, if a pre-existing Plan of the acquired company has been approved by such company's shareholders prior to the acquisition, approval by shareholders of the acquired company prior to the acquisition shall constitute the requisite shareholder approval and shall not be considered in making the calculation pursuant to sub-paragraph (a)(2)(ii).

* * *

312.04 For the purpose

of Para. 312.03:

(a) Treasury shares: In determining the applicability of subparagraph (a) to a particular transaction, provided the two conditions listed below are satisfied, repurchased shares that, within two years of repurchase, are outstanding shares for the purposes of receiving the same dividend and voting rights as all other shares in the class, are excluded. All other repurchased shares are treated as though they are being newly listed.

The exclusion of repurchased shares pursuant to the preceding paragraph is subject to the following conditions: First, the company must obtain approval of each Plan under which grants will be satisfied in whole or in part by repurchased shares, as well as the maximum number of repurchased shares that may be used to satisfy grants made thereunder, from a majority of its independent directors (or a majority of a committee consisting only of independent directors). This approval must be received prior to awarding any grants pursuant to such Plan. Second, the company must obtain from shareholders during the first two years of each Plan or, if earlier, prior to the termination of such Plan, approval of the terms and conditions of such Plan and the fact that repurchased shares may be used. Once such shareholder approval is obtained, it is then valid for the life of the Plan up to a maximum of five years. For Plans with a term greater than five years, the Company must obtain the requisite shareholder approval [within the first two years]* of each succeeding five-year period the Plan remains in effect. Disapproval of a Plan by shareholders has no effect upon the use of shares repurchased or stock options or stock awards duly granted under the Plan prior to such vote by shareholders.

* an alternative proposal advocated by some members of the Task Force is that the shareholder vote be required at the first shareholder meeting following the adoption of the Plan

(b) For guidance in analyzing transactions pursuant to subparagraph 312.03 (a), the following examples are illustrative of those provisions:

Ex. 1

1,000 shares issuable pursuant to all Plans, Inducement Options, and Acquisition Options, each of which has previously been approved by shareholders (“Authorized Dilution”)

Adopt new Plan A – 60 shares

no shareholder approval required (additional shares = 6%)

Company seeks to adopt new Plan B – 60 shares

shareholder approval required because the ratio of Unapproved Shares to total Authorized Dilution would exceed 1 to 10

$$\frac{120 \text{ (current Plan + other non-shareholder approved Plan A)}}{1,000 \text{ (Authorized Dilution)}} = 12.00 \%$$

Ex. 2

Authorized Dilution – 1,000 shares

Adopt new Plan A – 50 shares

no shareholder approval required (additional shares = 5%)

Company makes all 50 grants authorized under Plan A, of which 30 are exercised

Adopt new Plan B – 70 shares

no shareholder approval required because total Unapproved Shares is 90(70 Plan B + 20 Plan A), and thus the dilution factor = 9%

Company seeks to adopt new Plan C – 50 shares

shareholder approval required because ratio of Unapproved Shares to total Authorized Dilution exceeds 1 to 10

$$\frac{140 \text{ (current Plan + non-approved Plan B + 20 shares from Plan A)}}{1,000 \text{ (Authorized Dilution)}} = 14.00 \%$$

Ex.3

Authorized Dilution – 1,000 shares

Adopt new Plan A – 70 shares

no shareholder approval required (additional shares = 7%)

Adopt new Plan B – 20 shares

no shareholder approval required (additional shares of Plans A +B = 9.00%)

Company obtains approval for Plan B

Company seeks to adopt new Plan C – 60 shares

shareholder approval required because ratio of Unapproved Shares to total Authorized Dilution would exceed 1 to 10

$$\frac{130 \text{ (current Plan + other non-shareholder approved Plan A)}}{1,020 \text{ (Authorized Dilution -- includes Plan B)}} = 12.75\%$$

Company seeks to adopt new Plan D – 30 shares

no shareholder approval required because Plan C, which has been approved by shareholders, is not included in the numerator, is included in the denominator, and thus the ratio of Unapproved Shares to total Authorized Dilution will not exceed 1 to 10

$$\frac{100 \text{ (current Plan + other non-shareholder approved Plan A)}}{1,180 \text{ (Authorized Dilution of all other Plans includes Plans B and C)}} = 9.26 \%$$

Ex. 4 – Acquisition Options

Authorized Dilution – 1,000 shares

Issue Acquisition Options in connection with a merger – 300 shares

No shareholder approval required because issuance is not within the scope of the definition of “Plan” under 312.03(a)(1)(I)

Company seeks to adopt new Plan A – 50 shares

shareholder approval required

a. Assume no shareholders approved the Acquisition Options, then shareholder approval required because the because ratio of Unapproved Shares to total Authorized Dilution would exceed 1 to 10:

$$\frac{350 \text{ (current Plan + Acquisition Options issued in merger)}}{1,000 \text{ (Authorized Dilution – does not include Acquisition Options)}} = 35\%$$

b. Assume prior to the acquisition, the shareholders of the acquired company approved the Acquisition Options, then no shareholder approval required because the because ratio of Unapproved Shares to total Authorized Dilution would not exceed 1 to 10:

$$\frac{50 \text{ (current Plan + Acquisition Options issued in merger)}}{1,000 \text{ (Authorized Dilution -- does not include Acquisition Options)}} = 5.00\%$$

Acquisition Options)

c. Assume shareholders of the Company approved the entire transaction, then no shareholder approval required because the because the Acquisition Options would be considered approved and the ratio of Unapproved Shares to total Authorized Dilution would not exceed 1 to 10:

$$\frac{50 \text{ (current Plan + Acquisition Options issued in merger)}}{1,300 \text{ (Authorized Dilution)}} = 3.85\%$$

Ex. 5 – Inducement Options

Authorized Dilution – 1,000 shares

Company seeks to offer an Inducement Option of 200 shares

No shareholder approval required because issuance is not within the scope of the definition of “Plan” under 312.03(a)(1)(I)

Adopt new Plan A – 100 shares

shareholder approval required because ratio of Unapproved Shares to Authorized Dilution would exceed 1 to 10

$$\frac{300 \text{ (current Plan + Inducement Options)}}{1,000 \text{ (Authorized Dilution -- does not include the Inducement Options)}} = 30\%$$

the Inducement Options)

Company seeks and obtains approval for Inducement Options

Company seeks to adopt new Plan B – 100 shares

No shareholder approval required because Inducement Options, which have been approved by shareholders, are not included in the numerator, are included in the denominator, and thus the ratio of Unapproved Shares to total Authorized Dilution will not exceed 1 to 10

$$\frac{100 \text{ (current Plan)}}{1,300 \text{ (Authorized Dilution -- includes the initial 1,000 shares, Plan A and the Inducement Options)}} = 7.69\%$$

Ex. 6 – Repurchased Shares

- Authorized Dilution -- 10,000 shares
- Company's buy back program is as follows:

Year	1	2	3	4	5
Repurchased Shares	1,000	1,000	0	0	0
Shares receive dividends and voting attributes	500	500	500		

- At the end of year 5, Company seeks to adopt a new Plan through the use of repurchased shares
- Maximum number shares available to Company is 1,500 because the remaining balance of 500 repurchased shares did not receive dividend and voting attributes within 2 years of repurchase.
- Company obtains approval from Independent Directors to proceed with this Plan under the terms and conditions proposed and to use repurchased shares for the shares underlying the Plan
- Company begins to issue grants under the Plan in year 6, for a total of 1000 shares.
- In year 7 (no grants have been exercised) the Company seeks shareholder approval as required for the Plan's use of repurchased shares and is denied approval.
- Remainder of Plan cannot be satisfied through repurchased shares.
- Since there was no shareholder approval, the Company's "10% basket" is decreased by 500 shares (if the shareholders had approved the Plan, the 10% basket will not be decreased).

The total available to the company without shareholder approval for the next Plan is 600:

$$11,000 \text{ (Authorized Dilution + repurchased shares already granted)} \times 10\% = 1,100$$
$$1,100 - 500 \text{ (non-approved use for the current Plan)} = 600$$

Attachment D

MEMORANDUM

To: Members and Advisors of the Options Listing Standard Task Force
From: Scott P. Spector
Date: August 15, 1999
Re: NYSE Stockholder Approval Policy Task Force--Suggested Changes Relating to Equity Compensation Disclosure

Over the past several months, we have been asked to review and examine the disclosure rules relating to equity compensation presently contained in Regulation S-K promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934. These provisions were adopted by the SEC pursuant to SEC Release Nos. 33-6962; 34-31327; and IC-9032; on October 16, 1992.

It is our view that this disclosure can be improved in a manner that does not substantially increase the burden on issuers. To this end, we believe that the recommended increased disclosure would enhance the ability of investors to review the equity compensation arrangements that are maintained by the issuer for purposes of compensating employees. In formulating this proposal, we take account of the stated goals of Regulation S-K to simplify but expand the disclosure in existence prior to 1992 without putting undue burden on issuers. We believe that our suggestions are consistent with these objectives.

1. We propose that the existing table in Item 402(c)(1) should be amended to require the inclusion of (i) the total number of options and SARs granted to employees and all other persons during the last fiscal year and the weighted-average exercise price for such options; (ii) the total number of outstanding options and SARs that were granted but unexercised that are held by employees and all other persons as of the end of the last fiscal year and the weighted-average exercise price for such options; (iii) the total number of options and SARs available for grant to employees and all other persons at the end of the last fiscal year; and (iv) the total number of shares of the issuer issued and outstanding as of the end of the last completed fiscal year.

Proposed revisions to the table have been included.

The total number of options and SARs available for grant at the end of the last fiscal year need not be included to the extent shares are reserved that may also be awarded as restricted stock or unrestricted stock and included in Item 402(e)(2).

Note that the weighted-average exercise price will be different than that required by FAS 123 and contained in Form 10-K because of the inclusion of awards to persons other than employees in the tables.

2. We propose that the existing table in Item 402(e)(1) should be amended to require the inclusion of (i) the total number of shares of restricted stock, unrestricted stock and other similar awards granted to employees and all other persons during the last fiscal year; (ii) the total number of shares of outstanding restricted stock, unrestricted stock and other similar awards available for grant to employees and all other persons at the end of the last fiscal year; and (iii) the total number of shares of the issuer issued and outstanding as of the end of the last completed fiscal year.

Proposed revisions to the table have been included.

Information is not required to the extent such information is provided pursuant to Item 402(c)(2).

3. We propose that Item 10 of Schedule 14A be amended to require that information be provided with respect to all plans maintained by registrant with respect to grants of options, restricted stock or similar equity awards. This information would include the name of each plan and whether securities available for award under such plan were approved by security holders, the aggregate amount of awards issued or outstanding under each plan and whether the plans permit repricing of awards (and the circumstances regarding such repricing).
4. We propose that Item 601 be amended to provide that any compensatory plan providing compensation to any officer or director or that is reasonably expected to exceed \$100,000 to any employee pursuant to which options, restricted stock or similar equity awards may be awarded, whether or not any executive officer of the registrant is a participant, be filed by the issuer.

The proposed changes are designed to provide disclosure to investors which is not readily available or which may be available only in the Form 10-K. The latter two proposed changes are designed to permit investors to determine which plans have been previously approved by shareholders and to enable investors to review all equity compensation plans, in order to determine the precise nature of the awards that may be granted under such plans.

Again, we believe that the foregoing described disclosures may be accomplished easily by issuers and will provide significant additional disclosure to investors without being unduly burdensome to issuers. We believe that these proposals should be considered by the Task Force for possible transmittal to the Securities and Exchange Commission for consideration as part of their continuing review of Regulation S-K.

Scott P. Spector

Members of the Drafting Committee:

Scott P. Spector, Fenwick & West LLP;
Larry K. Cagney, Debevoise & Plimpton
Margaret Foran, Senior Corporate Counsel and Assistant Secretary, Pfizer, Inc.;
Eric Roiter, Vice President & General Counsel, Fidelity Management & Research Company;
Peter C. Clapman, Senior Vice President and Chief Counsel, Investments, Teachers Insurance &
Annuity Association, College Retirement Equities Fund

1. Amended Proposed Item 402(c) [Proposed Changes in Bold]

(c) *Option/SAR Grants Table.*

(1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs), and freestanding SARs made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

**OPTION/SAR GRANTS MADE IN LAST FISCAL YEAR
AND SHARES AVAILABLE FOR GRANT**

Individual Grants					Potential Realizable Value At Assumed Annual Rates Of Stock Price Appreciation For Option Term		Alternative To (f) And (g): Grant Date Value
Name (a)	Number of Securities Underlying Options/ SARs Granted (#) (b)	Percent of Total Options/ SARs Granted To Employees In Fiscal Year (c)	Exercise Of Base Price (\$/Sh) (d)	Expiration Date (e)	5% (\$) (f)	10% (\$) (g)	Grant Date Present Value \$ (h)
CEO							
A							
B							
C							
D							
Total number of securities underlying options and SARs granted to employees and all other persons during the last completed fiscal year and the weighted-average exercise price of such options and SARs.							
Total number of securities underlying options and SARs granted but unexercised that are held by employees and all other persons at the end of the last completed fiscal year and the weighted-average exercise price of such options and SARs.							
Total number of securities underlying options and SARs available for grant to employees and all other persons at the end of the last completed fiscal year (including any shares that are held as repurchased shares and available for grant).					13		
Total number of shares of the Company issued and outstanding as of the end of the last completed fiscal year.							

(2) The table shall include, with respect to each grant:

¹³ These shares also available for grant as restricted stock, unrestricted stock and other similar awards.

- (i) The name of the executive officer (column (a));
- (ii) The number of securities underlying options and SARs granted (column (b));
- (iii) The percent the grant represents of total options and SARs granted to employees during the fiscal year (column (c));
- (iv) The per-share exercise or base price of the options or SARs granted (column (d)). If such exercise or base price is less than the market price of the underlying security on the date of grant, a separate, adjoining column shall be added showing market price on the date of grant;
- (v) The expiration date of the options or SARs (column (e)); and
- (vi) Either: (A) the potential realizable value of each grant of options or freestanding SARs, or (B) the present value of each grant, as follows:
 - (A) The potential realizable value of each grant of options or freestanding SARs, assuming that the market price of the underlying security appreciates in value from the date of grant to the end of the option or SAR term, at the following annualized rates:
 - (1) 5% (column (f));
 - (2) 10% (column (g)); and
 - (3) If the exercise or base price was below the market price of the underlying security at the date of grant, provide an additional column labeled 0%, to show the value at grant-date market price; or
 - (B) The present value of the grant at the date of grant, under any option pricing model (alternative column (f)).
- (vii) **The table shall include:**
 - (A) **the total number of securities underlying options and SARs granted to employees and all other persons during the last completed fiscal year and the weighted-average exercise price for such options and SARs.**
 - (B) **the total number of securities underlying options and SARs granted but unexercised that are held by employees and all other persons at the end of the last completed fiscal year and the weighted-average exercise price for such options and SARs.**
 - (C) **the total number of options and SARs available for grant to employees and all other persons at the end of the last completed fiscal year (including any shares that are held as repurchased shares and available for grant).**
 - (D) **the total number of shares of the issuer issued and outstanding as of the end of the last completed fiscal year.**

The total number of options and SARs available for grant to employees and all others at the end of the last completed fiscal year need not be included to the extent shares are reserved that may also be awarded as restricted stock or unrestricted stock and is included in Item 402(e)(2).

2. Amended Proposed Item 402(e) [**Proposed changes in bold**]

(e) *Long-Term Incentive Plan ("LTIP") Awards Table.*

- (1) The information specified in paragraph (e)(2) of this item, regarding each award made to a named executive officer in the last completed fiscal year under any LTIP, shall be provided in the tabular format specified below:

RESTRICTED STOCK AND LONG-TERM INCENTIVE PLANS—AWARDS IN LAST FISCAL YEAR

Name (a)	Number Of Shares, Units Or Other Rights (#) (b)	Performance Or Other Period Until Maturation Or Payout (c)	Estimated Future Payouts Under Non-Stock Price-Based Plans		
			Threshold (\$ Or #) (d)	Target (\$ Or #) (e)	Maximum (\$ Or #) (f)
CEO					
A					
B					
C					
D					
Total number of shares of restricted stock, unrestricted stock and other similar awards granted to employees and all other persons during the last completed fiscal year whether or not performance - based or included in Item 402(b)(2)(iv).					
Total number of shares of restricted stock, unrestricted stock and other similar awards available for grant to employees and all other persons at the end of the last completed fiscal year (including any shares that are held as repurchased shares and available for grant).					
Total number of shares of the Company issued and outstanding as of the end of the last completed fiscal year.					

(2) The table shall include:

- (i) The name of the executive officer (column (a));
- (ii) The number of shares, units or other rights awarded under any LTIP, and, if applicable, the number of shares underlying any such unit or right (column (bb));
- (iii) The performance or other time period until payout or maturation of the award (column (c));
- (iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f));
- (v) **The total number of shares of restricted stock, unrestricted stock and other similar awards granted to employees and all other persons during the last completed fiscal year whether or not performance - based or included in Item 402(b)(2)(iv);**
- (vi) **The total number of shares of restricted stock, unrestricted stock and other similar awards available for grant to employees and all other persons at the end of the last completed fiscal year (including any shares that are held as repurchased shares and available for grant). Where applicable indicate whether these are included in Item 402(c)(2); and**
- (vii) **The total number of shares of the issuer issued and outstanding as of the end of the last completed fiscal year.**

3. New Proposed Item 10(c) [All new]

- (c) Other Plans Not Subject to Security Holder Acts. Provide the following information for any plans maintained by a registrant other than plans described in subsections (a) or (b) above for which action is being taken by security holders to adopt or amend such plan pursuant to which grants of restricted stock, unrestricted stock, options to purchase stock or similar equity awards may be made under the plan.

- (1) The name of the plan and the type and amount of securities available for such awards under each plan and whether securities available for awards under such plan are approved by security holders;
- (2) The aggregate amount of all awards issued or outstanding under each plan; and
- (3) Whether the plan permits the repricing of awards and whether the registrant has repriced any similar awards during the last 5 years and, if so, the circumstances of such repricing.

4. Amended Proposed Item 601(B)(10)(iii)(A) [**Proposed changes in bold**]

- (iii) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant, as defined by Item 402(a)(3), participates **and any compensatory plan providing compensation to any officer or director or that is reasonably expected to exceed \$100,000 to any employee pursuant to which grants of restricted stock, unrestricted stock, options to purchase stock or similar equity awards may be awarded whether or not any executive officers of the registrant participate**, shall be deemed material and shall be filed;

**OPTION/SAR GRANTS MADE IN LAST FISCAL YEAR
AND SHARES AVAILABLE FOR GRANT**

Individual Grants					Potential Realizable Value At Assumed Annual Rates Of Stock Price Appreciation For Option Term		Alternative To (f) And (g): Grant Date Value
Name (a)	Number of Securities Underlying Options/SARs Granted (#) (b)	Percent of Total Options/SARs Granted To Employees In Fiscal Year (c)	Exercise Of Base Price (\$/Sh) (d)	Expiration Date (e)	5% (\$) (f)	10% (\$) (g)	Grant Date Present Value \$ (h)
CEO	300,000	1.71	105.63	8/26/2008	19,929,041.83	50,504,104.82	-
A	130,000	0.74	105.63	8/26/2008	8,635,918.13	21,885,112.09	-
B	120,000	0.68	105.63	8/26/2008	7,971,616.73	20,201,641.93	-
C	90,000	0.51	105.63	8/26/2008	5,978,712.55	15,151,231.45	-
D	75,000	0.43	105.63	8/26/2008	4,982,260.46	12,626,026.20	-
Total number of securities underlying options and SARs granted to employees and all other persons during the last completed fiscal year and the weighted-average exercise price of such options and SARs.						17,620,000	\$105.63
Total number of securities underlying options and SARs granted but unexercised that are held by employees and all other persons at the end of the last completed fiscal year and the weighted-average exercise price of such options and SARs.						83,204,000	\$45.96
Total number of securities underlying options and SARs available for grant to employees and all other persons at the end of the last completed fiscal year.						4,247,000 ¹⁴	-
Total number of shares of the Company issued and outstanding as of the end of the last completed fiscal year.						?	?

¹⁴ These shares are also available for grant as restricted stock, unrestricted stock and other similar awards.

RESTRICTED STOCK AND LONG-TERM INCENTIVE PLANS—AWARDS IN LAST FISCAL YEAR

Name (a)	Number Of Shares, Units Or Other Rights (1) (#) (b)	Performance Or Other Period Until Maturation Or Payout (c)	Estimated Future Payouts Under Non-Stock Price-Based Plans		
			Threshold (#) (d)	Target (#) (e)	Maximum (#) (f)
CEO	-	1/1/99-12/31/03	10,000	60,000	100,000
A	-	1/1/99-12/31/03	4,700	28,200	47,000
B	-	1/1/99-12/31/03	4,200	25,200	42,000
C	-	1/1/99-12/31/03	3,000	18,000	30,000
D	-	1/1/99-12/31/03	2,500	15,000	25,000
Total number of shares of restricted stock, unrestricted stock and other similar awards granted to employees and all other persons during the last completed fiscal year whether or not performance - based or included in Item 402(b)(2)(iv).					1,400
Total number of shares of restricted stock, unrestricted stock and other similar awards available for grant to employees and all other persons at the end of the last completed fiscal year (2)					4,247,000
Total number of shares of the Company issued and outstanding as of the end of the last completed fiscal year.					—

(1) The actual number of Performance-Contingent Shares that will be paid out at the end of the applicable period, if any, cannot be determined because the shares earned by the Named Executive Officers will be based upon our future performance compared to the future performance of the industry Peer Group.

(2) The same total number of shares of restricted stock, unrestricted stock and other similar awards available for grant to employees and all other persons is also available for grant as options and SARs at the end of the last completed fiscal year.