PARA. 313.00 INTERPRETATION No. 2010-01

Proposed Transaction: A Company has a grandfathered triple-class voting structure with Class A, Class B and Common Shares outstanding. The Common Shares and Class B Shares are both listed on the Exchange and have one and 0.1 votes per share, respectively. The Class A Shares have three votes per share and are all held by the controlling shareholder (“Controlling Shareholder”). The Controlling Shareholder also owns Common Shares and controls 76% of the voting power of the outstanding capital stock. None of the classes are by their terms convertible into any of the other classes. There are significantly more Class B Shares outstanding than Common Shares. Consequently, the trading market for the Class B Shares is significantly more liquid and they trade at a higher price than the Common Shares. Holders of the Common Shares have expressed an interest in exchanging their Common Shares for the more liquid Class B Shares. The Company proposes to make an exchange offer (the “Exchange Offer”) in which all Common Shares would be exchangeable for Class B shares at the option of their holders on a one-for-one basis.

The Controlling Shareholder has agreed that the percentage of the total voting power of the Company’s capital stock that he controls following the completion of the Exchange Offer will be limited to the percentage he controlled immediately prior to its completion. This limitation will be accomplished by a combination of (i) participation in the Exchange Offer by the Controlling Shareholder (i.e., reducing his voting power by exchanging Common Shares into Class B Shares) and (ii) an exchange of Class A Common Shares by the Controlling Shareholder for either Common Shares or Class B Shares with a corresponding reduction in voting power. The Company understands that consummation of the Exchange Offer may lead to the Common Shares falling below the Exchange’s continued listing standards for distribution and shares outstanding and lead to that class being delisted.

313.00 Issue: Would the Exchange Offer of the lower-vote Class B Shares for Common Shares cause a disparate reduction in voting prohibited by Para. 313?

Determination: The Exchange Offer is permissible under Para. 313.

Rationale: Para. 313(A) provides that the voting rights of existing holders of stock of a listed company “cannot be disparately reduced or restricted through any corporate action or issuance of stock.” It specifically provides that an example of such action is the “issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.” The Exchange Offer provides for the exchange of Common Shares with one vote for Class B Shares that have 0.1 votes per share, and thus would appear inconsistent with the quoted language of Para. 313.

Companies seeking to alleviate valuation problems associated with a dual-class structure in the past have proposed to the Exchange that they would make the high vote/lower priced stock convertible into the lower vote stock so that the arbitrage would bring the prices of the two classes into line. The Exchange has not found this type of proposal acceptable, since, like the exchange offer described in Para. 313 itself, it appears to create an incentive for the public holders of the less liquid high-vote stock to convert into the low-vote stock, while a controlling shareholder or other company insiders might have different incentives to retain their high-vote stock and therefore increase their voting power (see, for example, Interpretation No. 98-01). However, in the proposal under discussion here, the Controlling Shareholder has committed to limit his voting power to the percentage of the total voting power he held before the Exchange

Offer (76%), by exchanging Class A Shares for Common Shares or Class B Shares to the extent necessary to achieve that result. Therefore, the Exchange Offer does not have the intention or effect of disenfranchising the holders of the Common Shares or the Class B Shares by further entrenching the control of the Controlling Shareholder. While participants in the Exchange Offer other than the Controlling Shareholder will reduce their individual voting power, the actual effect of doing so is de minimis, as the Controlling Shareholder retains a significant majority of the votes of the outstanding capital stock and the voting rights of the minority shareholders are therefore of limited effect in any event.

PARA. 313.00 INTERPRETATION No. 99-01

Proposed Transaction: A company has listed on the Exchange both a 30-vote common stock and a one-vote preferred stock. A controlling shareholder has holdings of the two which combine to give him approximately 56% of the total vote. The company would like to issue more of the one-vote preferred in acquisitions, but the controlling shareholder objects to any plan that would reduce his total vote to below 50%. Accordingly, the company proposes to issue additional shares of the common stock (30 votes/share) to the controlling shareholder in exchange for its market value equivalent in preferred stock (one vote/share). In this way his percentage of the vote would be increased to the point where subsequent dilution from planned future issuances would still leave him with over 50% of the vote.

313.00 Issues: Would the proposed issuance of additional high vote common stock to the controlling shareholder in exchange for its market value equivalent in lower voting preferred stock be in compliance with Para. 313?

Determination: The issuance of the additional high vote stock will have the effect of reducing the relative voting rights of all the other existing stockholders, both low vote (preferred) and high vote (common). While Para. 313 does contemplate that dual class companies can issue additional shares of high vote stock in appropriate circumstances, this action is being taken primarily for the purpose of entrenching control of the current controlling stockholder. Accordingly this issuance of additional high vote stock would violate Para. 313.

Rationale: The company maintains that Para. 313 should not be an issue because an exchange of common stock for preferred stock is not among the transactions specifically prohibited by Para. 313. The company also notes that Para. 313 specifically permits a company to issue more of an existing class of high vote stock. Further, since the common trades at a (slight) premium, the company notes that the controlling shareholder will have to exchange a greater amount of preferred than he would if the issues traded at par, so the company will actually reduce overall stock outstanding. Thus the transaction actually benefits existing stockholders while allowing the company to accomplish its business goals in a manner that permits the controlling shareholder to retain control. Finally, the company argues that the controlling stockholder could go into the market and sell preferred stock and buy common in order to accomplish the same result.

The company's first point is based on the fact that the transaction is structured as an exchange of preferred stock for common stock. In fact, this is not relevant to the 313 analysis. The issuance of additional high vote common stock will affect the other existing holders of high vote common stock, whose proportional voting power will be reduced, so the literal language of the rule will apply. ("Voting rights of existing shareholders of publicly traded common stock… cannot be disparately reduced….") The proposed transaction will also adversely affect the voting power of existing preferred holders. In this regard, it is relevant that this preferred stock is in certain ways like a second class of common stock. Indeed, the company's stated desire is to be able to use this class of preferred stock as currency for acquisitions, a function usually served by common stock. The name the company gave to the class of stock is also instructive – it is called "Common Preference Stock".

The company's second point is that Para. 313 explicitly contemplates a dual class company issuing additional shares of a class of high vote stock. However, the Release issued by the SEC when the rule was approved makes clear that not *all* issuances of additional high vote stock are permitted. The SEC states that "Companies with existing dual class capital structures *generally* will be permitted to issue additional shares of a class of existing super voting stock *consistent* *with the Policy*." (Emphasis added.) The SEC elaborates as follows: "Under the Policy, there will be no restrictions on the ability of a dual class company to issue additional shares of an existing class of higher voting stock *in a capital-raising transaction, via a stock dividend, through the issuance of stock options, or in a stock split*." (Emphasis added.)

This company is not issuing additional high vote stock in order to raise capital. It is true that by acquiring the outstanding preferred stock that will be exchanged for the new common, the company will eliminate a potential obligation (the preferred stock's dividend preference) to the extent it should wish to pay common stock dividends in the future. The company's shareholders generally will also realize some benefit from the reduction in outstanding stock that will occur when the control person uses a lower priced stock to acquire a higher priced stock. The economic benefits to the shareholders are quite modest, however, and appear to be incidental to the real purpose of the transaction. The admitted purpose of the transaction is to entrench the control of the shareholder that currently has voting control, so that additional shares may be issued without his losing that control. This is in the Exchange's view among the kinds of actions that the voting rights rule was intended to prevent.

The company argues that the controlling stockholder could accomplish the same purpose by selling preferred and buying common in the open market, and that the company should be able to do directly with the stockholder what he could otherwise do in the open market. It is not at all clear, however, that the stockholder could achieve his desired result in the open market at the same price. Neither class of stock is very actively traded, so that significant sales of one class and purchases of the other would likely have an effect on the price of each class. In addition, it seems likely that open market purchases and sales could have different tax results than the exchange transaction with the company. However, to the extent the stockholder can achieve his purpose through transactions in the secondary market, he is certainly not precluded from doing so by Para. 313. This does not bear on the analysis that otherwise must be done on the transaction which does involve an issuance of stock by the company and thus implicates Para. 313.

Lastly, the company argues that there is a perfectly appropriate business purpose (funding acquisitions) for what they propose. There is no reason to doubt the company's motives. Unfortunately, the voting rights rule at times prevents financial engineering that companies believe is appropriate, and this business plan runs directly afoul of what the rule is intended to prevent.

December 1999

PARA. 313.00 INTERPRETATION No. 98-01

Proposed Transaction: A listed company (the "Company") has a "grandfathered" dual-class structure. That is, the Company adopted the structure prior to the Exchange's adoption of Para. 313 and that rule's predecessor, Securities and Exchange Commission Rule 19c-4 (July 7, 1988). The Class A Common Stock ("Class A Stock") and Class B Common Stock ("Class B Stock") are identical except that the Class A Stock has 20 votes per share and the Class B Stock has one vote per share. Both classes trade on the Exchange and neither class is convertible into the other.

There is significantly more Class B Stock outstanding, and the Class A Stock trades at approximately a seven percent discount to the Class B Stock. A control person owns approximately 41 percent of the Class A Stock, representing just under 33 percent of the overall voting power of the Company.

The Company's strategic plans contemplates an aggressive acquisition policy. However, the Company represented that "purchase acquisition accounting" entails an accounting burden on earnings. The Company further represented that it would benefit by the ability to consummate transactions on a "pooling of interests" basis. However, accounting rules would require the Company to use its high-vote Class A Stock in an acquisition to receive pooling of interests accounting treatment.

With the current discount in the price of the Class A Stock, the Company believes it is uneconomical to issue such stock in an acquisition. Based on consultations with its investment bankers, the Company believes that if it makes its Class A Stock convertible into the Class B stock, the discount would disappear and the market price of the Class A Stock would approach or even exceed the market price of the Class B Stock. Thus, the Company is proposing to ask shareholders of the Class A and Class B Stock, voting both as a single class and separately, to approve a charter amendment permitting such convertibility.

313.00 Issue: Would a charter amendment permitting the convertibility of the Company's Class A Stock into Class B Stock violate Para. 313?

Determination: Permitting such convertibility is potentially disenfranchising and would violate Para. 313.

Rationale: In reviewing transactions or other corporate actions under Para. 313, the Exchange considers whether one action potentially could be part of a series of actions that could disparately reduce or restrict the voting rights of existing holders of stock registered under Section 12 of the Securities Exchange Act of 1934. In this regard, the Exchange is particularly concerned with share structures in which high-vote stock is convertible into low-vote stock.[1]

The Exchange is concerned with convertibility because there could be incentives for public holders of the high-vote stock to convert into the low-vote stock. If the public holders do so, the voting power of the insiders, who may not have the same incentives to convert, would increase. This is especially true with issuers such as the Company, where a control shareholder has a significant position in the high-vote stock.

There are many possible incentives for public holders of high-vote stock to convert to low vote stock. In the instant case, the low-vote stock has greater liquidity. Thus, Class A shareholders

[1] See Exchange Act Release 25891 at footnote 91. See also Para. 313.00 Interpretation 96-02.

may convert into low-vote stock to reap a higher price on resale. Similarly, arbitrageurs may buy the high-vote stock, convert it into low-vote stock, and sell it into the market place. While this would tend to eliminate the pricing discrepancy, this very arbitrage process would reduce the number of publicly-held high-vote shares, thus increasing the vote of the control shareholder.

The Exchange recognizes that the Company is seeking to establish the convertibility feature to make the issuance of additional Class A Stock more attractive and thus achieve pooling of interests accounting treatment. It is not the Company's current intent to disenfranchise holders of Class A or Class B Stock. However, the Exchange cannot predict what future transactions the Company may undertake, and it is possible that future transactions in this form of a dual-class company could have a disenfranchising effect on exiting shareholders. Thus, absent extraordinary circumstances, the Exchange will deem Corporate action to make listed high-vote stock convertible into low-vote stock to be a violation of Para. 313, and thus prohibited.

March 19, 1998

PARA. 313.00 INTERPRETATION No. 96-05

Proposed Transaction: A listed company (the "Company"), while currently solvent, represents that it is in financial distress, and its long-term viability is in doubt unless it receives a significant cash infusion. The Company has sustained recent operating losses and, but for waivers, would be in violation of loan agreement covenants. The Company represents that it is facing increasing cash flow requirements in the near future, and that without a significant cash infusion, it faces severe credit and liquidity constraints, which could result in its bonding availability being substantially reduced. In turn, this could limit its ability to bid on and perform new contract work. The Company's financial adviser has conducted a lengthy exploration of strategic alternatives, including the possible acquisition or merger of the Company. Such exploration has been publicly disclosed in Securities and Exchange Commission ("SEC") filings.

During the course of such exploration, over 95 companies and financial investors were contacted concerning their possible interest in the Company. Only one entity made a proposal to the Company. That entity (the "Investor"), is a merchant banking firm that makes investments in, among other things, the Company's line of business. It has proposed to make a cash investment of $45 million in the Company in exchange for shares of newly issued Convertible Participating Preferred Stock (the "Preferred Stock") and warrants to purchase five million additional shares of common stock. Initially, the Investor will own approximately 38% of the voting power of the Company (42% assuming exercise of the warrants) on an as converted basis. The investment will represent approximately 36% of the Company's ongoing capital attributable to common stock (42% assuming exercise of the warrants).

The Preferred Stock would be entitled to cumulative annual dividends, and holders of the Preferred Stock would have the right, at their option, to convert such shares into shares of common stock at a conversion price equal to the approximate trading price of the common prior to announcement of the transaction. No dividends are payable in the first year, and thereafter dividends are payable quarterly in kind for one year at the rate of 3% and in cash thereafter at the rate of 6%. The Company represents that these rates of return are below market; the Investor represents that the return on its investment will be significant only if the Company does well and the common stock appreciates in value. Thus, both parties represent that the interests of the Investor are closely aligned with the interests of the Company's common shareholders.

For five years, the holders of the Preferred Stock will be entitled to elect a majority of the Company's Board of Directors, provided that the Investor continues to own at least 20% of the voting power of the Company. In addition, holders of the Preferred Stock will have the right to vote with the common stock as a single class on an as-converted basis except that, during the time period that the Preferred Stock is entitled to elect a majority of the directors, it will not participate in elections of the remaining directors.

Additionally, those directors elected by the preferred holders will not have the right to vote on the election of any director to fill a vacancy among the non-Preferred Stock directors. At the end of the five-year period, provided that the Investor continues to own at least 20% of the voting power of the Company, holders of the preferred will be entitled to elect a minority of the directors of the Company and to vote with the common stock as a single class on the election of the remaining directors and on other matters.

The Investor has had no previous relationship with the Company, and the Company represents that the proposal was negotiated on an arm's length basis. The proposal will be subject to prior approval by the Company's shareholders pursuant to a proxy statement subject to the SEC's proxy rules. The Company will receive a fairness opinion for the transaction.

313.00 Issue: Is the proposal to grant the Investor the right to elect the majority of the members of the Company's Board of Directors for a five-year period in violation of Para. 313?

Determination: The Transaction is consistent with Para. 313.

Rationale: Under Para. 313, an investor generally may receive representation on a Company's board of directors that is relatively proportionate to the Investor's equity interest.[2] While Para. 313 provides that voting rights of existing holders of stock of a listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock," it also provides that, in evaluating a transaction, the Exchange "will consider, among other things, the economics of [the issuer's] actions." Para. 313 further provides that the Exchange's interpretations "will be flexible, recognizing that both the capital markets and the circumstances and needs of the listed companies change over time." In approving Para. 313, the SEC further noted that:

> There may be valid business or economic reasons for corporations to issue disparate voting rights stock. [Para. 313] provides the [Exchange] with a voting rights standard which will provide issuers with a certain degree of flexibility in adopting corporate structures, so long as there is a reasonable business justification to so doing, and such transaction is not taken or proposed primarily with the intent to disenfranchise.

In this Transaction, the Company is in financial distress and needs an immediate cash infusion. In approving Para. 313, the SEC also noted that "if a company is in financial distress, the company might issue preferred stock with heightened voting protection necessary to protect the interests of the preferred stock purchasers." The Investor has made its right to elect a majority of the Board for at least five years a condition to the investment. The five-year period directly relates to the minimum time required by the Company to successfully manage and implement certain critical and high risk elements of its recovery plan, which are unique to the type of business the Company is in. These include completion of complex and regulatory-sensitive matters, which are expected to require significant expenditures over the five-year period.

The Company's Board has unanimously approved the Transaction as being in the best interests of the stockholders. This is especially significant since two-thirds of the present directors will be compelled to resign from the Board as a result of the Transaction, eliminating the motivation of self-entrenchment.

Based on these facts, the Exchange believes that there is a strong economic and business justification for the Transaction, and that the Transaction is not intended to disenfranchise stockholders.

September 17, 1996

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[2] This policy derives from the policy in effect under former Rule 19c-4 under the Securities Exchange Act of 1934. See Securities Exchange Act Release No. 25891 at 68.

PARA. 313.00 INTERPRETATION No. 96-04

Proposed Transaction: The only voting security of a listed company (the "Company") is its common stock (the "Common Stock"), which has one vote per share. The Company proposes an exchange offer (the "Exchange Offer) pursuant to which holders could tender up to 2.75 million of the approximately 17 million shares of Common Stock for the same number of shares of Series A Preferred Stock (the "Preferred Stock").

The Preferred Stock would pay a dividend that is expected to be higher than the dividend on the Common Stock. The Preferred Stock also is convertible back into the Common Stock at a rate of approximately .8 shares of Common Stock for each share of Preferred Stock (subject to normal adjustments). The Preferred Stock will be entitled to a number of votes equal to the number of shares of Common Stock into which the Preferred Stock is convertible.

The Company currently has a widely-dispersed shareholder base. The largest shareholder controls approximately 14.5 percent of the vote, and there are five other shareholders with more than five percent of the vote (ranging from just over five percent to nine and a half percent). As a group, management owns stock representing approximately six percent of the vote.

313.00 Issue: Would the Exchange Offer of the lower-vote Preferred Stock for Common Stock cause a disparate reduction in voting prohibited by Para. 313?

Determination: The Exchange Offer would have a de minimis effect on voting rights and is not prohibited.

Rationale: Para. 313(A) provides that the voting rights of existing holders of stock of a listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock." It specifically provides that an example of such action is the "issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer." The Exchange Offer provides for the exchange of one-vote Common Stock for Preferred Stock that has .8 vote, and thus is presumed to violate Para. 313.

However, an analysis of the effect of the Exchange Offer shows that it will have a de minimis effect on voting rights. Assuming that the offer is fully subscribed, the voting power of the largest shareholder will increase from approximately 14.5 percent to approximately 15.1 percent. This also assumes that such stockholder does not tender any of its Common Stock in the Exchange Offer; if the stockholder does exchange some of its Common Stock for Preferred Stock, its voting power would increase even less. The voting power of the other significant shareholders also would increase in a similarly de minimis manner; management's cumulative vote would rise from approximately 6 percent to no more than 6.2 percent. Based on this analysis, the Exchange Offer does not violate Para. 313.

August 20, 1996

Proposed Transaction: A listed company (the "Company"), while currently solvent, is in financial distress and its continued viability is in doubt unless it receives a significant cash infusion. After reviewing a variety of financing alternatives, the Company proposes the following two-step transaction (the "Transaction"), which will result in a significant infusion of capital (each step raising approximately half the total amount of capital):

- An investor (the "Investor") will purchase all the shares of new Series B Preferred Stock ("Step 1"); and
- The Company will make a rights offering to current shareholders, enabling them to purchase new Series A Preferred Stock on the same terms and conditions as to which the Investor is purchasing the Series B Preferred Stock; to the extent that the rights offering is not fully subscribed, the Investor will enter into a standby commitment to purchase an additional amount of Series B Preferred Stock equal to the unsubscribed portion of the rights offering ("Step 2").

If the Investor purchases only the Series B Preferred Stock being sold in Step 1 of Transaction, the Investor will contribute approximately 32 percent of the Company's on-going equity capital. However, if the Investor purchases additional shares of Series B Preferred Stock pursuant to the standby commitment in Step 2 of the Transaction, the Investor could contribute as much as 64 percent of such capital.

The terms of the Series A and Series B Preferred Stock will be the same, with two exceptions. Both series: will be convertible share for share into common stock; will pay the same dividends; will have a 12 year life; and will vote on a share-for-share basis with the common stock. One difference between the two series is that the Series B Preferred Stock, voting as a class, will have the right to elect four of the seven members of the Company's board of directors. The other difference is that, upon any transfer of the Series B Preferred Stock by the Investor, that stock will convert into Series A Preferred Stock. The Investor will retain control of the board of directors as long as the Investor owns Series B Preferred Stock and other stock of the Company representing at least 20 percent of the equity of the company.

The Investor has had no previous relationship with the Company, and the Company represents that the proposal was negotiated on an arm's length basis. The proposal will be subject to approval by the Company's shareholders and the Company will be able to terminate the proposed agreement with the Investor if it receives a more attractive alternative proposal. In addition, the Company represents that it was able to negotiate what it believes to be necessary credit commitments from a number of banks only on the condition that the Investor have the right to elect a majority of the Company's board of directors.

313.00 Issue: Is the proposal to grant the Investor the right to elect four of the seven members of the Company's board of directors in violation of Para. 313?

Determination: The Transaction is consistent with Para. 313.

Rationale: Under Para. 313, an investor generally may receive representation on a company's board of directors that is relatively proportionate to the investor's equity interest.[3] Thus, for an

[3] This policy derived from the policy in effect under former Rule 19c-4 under the Securities Exchange Act of 1934. See Securities Exchange Act Release No. 25891 at 68. The Exchange continues to permit a listed company to engage in transactions previously permitted under Rule 19c-4. See Para. 313, Supplementary Material .20.

investor contributing more than half the equity capital to a company, control of the board of directors would not be disproportionate to the person's investment.

In the Transaction, it is uncertain exactly how much capital the Investor will be contributing to the Company. It will range from 32 percent to 64 percent, depending on the extent to which current shareholders exercise their rights to purchase Series A Preferred Stock. However, the Investor has entered into a binding contract committing it to invest the full 64 percent in the event shareholders do not exercise their rights. In this situation, the Investor will be contributing less than half the capital of the Company only due to circumstances beyond its control, i.e. if the shareholders, after voting to authorize the Transaction, choose to exercise their rights and purchase an additional equity interest in the Company. Such purchases would be with full knowledge of the Investor's controlling interest.

While Para. 313 provides that voting rights of existing holders of stock of listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock," it also provides that, in evaluating a transaction, the Exchange "will consider, among other things, the economics of [the issuer's] actions." Para. 313 further provides that the Exchange's interpretations "will be flexible, recognizing that both the capital markets and the circumstances and needs of listed companies change over time." In approving Para. 313, the Securities and Exchange Commission (the "SEC") further noted that:

> There may be valid business or economic reasons for corporations to issue disparate voting rights stock. [Para. 313] provides the [Exchange] with a voting rights standard which will provide issuers with a certain degree of flexibility in adopting corporate structures, so long as there is a reasonable business justification to so doing, and such transaction is not taken or proposed primarily with the intent to disenfranchise.

In this Transaction, the Company is in financial distress and needs an immediate cash infusion; this cash infusion is also a condition to the Company receiving additional cash loans. The Investor has agreed to contribute nearly two-thirds of the Company's on-going capital and has required, as a condition to the investment, the right to elect a majority of the Board. The Transaction will result in the Investor contributing less than a majority of the equity only if the current shareholders agree to purchase additional equity themselves. In addition, the special control provisions apply only to this investor (because the Series B Preferred Stock converts to Series A Preferred Stock if the Investor sells its Series B stock) and is limited to the 12 year life of the Series B Preferred Stock.

Based on these facts, the Exchange believes that there is a strong economic and business justification for the Transaction, and that the transaction is not intended to disenfranchise stockholders.

June 7, 1996

Proposed Transaction: A Company has one class of stock with each share having one vote. The Company proposes a recapitalization in which (i) it would provide for two classes of common stock, one with one vote (the "Senior Shares") and one with one-tenth vote (the "Junior Shares") and (ii) each stock holder would receive, for each three shares of the company's current stock, one Senior Share and two Junior Shares. A control shareholder of the Company owns approximately 62 percent of the current single class of stock. The Company would list both classes on the Exchange.

Except for the voting rights, the two classes would be substantially identical. Holders of the Junior Shares may receive a higher, but in no event lower, dividend per share than holders of the Senior Shares. The Company would also adopt a "price protection" provision designed to maintain a close relationship in the price of the two classes of stock.

313.00 Issue: Is the proposed recapitalization consistent with the requirements of Para. 313?[4]

Determination: The recapitalization would be permitted under Para. 313.

Rationale: Para. 313(A) provides that the voting rights of existing holders of stock of listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock." It specifically provides that an example of such action is the "issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer." While the current transaction will result in the issuance of lower-voting stock, it is not an exchange offer and is thus not presumptively prohibited. Nevertheless, the Exchange must analyze the transaction to determine whether it disparately reduces or restricts voting rights.[5]

Immediately after the recapitalization, every shareholder would have the same proportionate voting power as before the recapitalization.[6] While there thus would not be an immediate dilution of voting rights, the Exchange also must consider whether the action is part of a multi-step transaction giving rise to shareholder voting concerns. In this regard, there would be significant concerns if the higher-voting stock was convertible into the lower vote stock. In that case, especially with the greater number of shares of low-vote stock outstanding and the potential for greater dividends on the low vote stock, there could be an incentive for holders of that stock to convert to the lower vote stock.[7] However, there is no convertibility feature in this transaction, and thus the Exchange does not see the recapitalization as being part of a multi-step plan that would reduce or restrict shareholder voting rights.

June 7, 1996

[4] The Exchange previously has provided an interpretation indicating that the proposed price protection provision is permitted under Para. 313. See Interpretation 95-02.

[5] Para. 313 further states that in adopting the current version of the voting right policy, “the Exchange will continue to permit corporate actions or issuances by listed companies that would have been permitted under “Rule 19c-4.” This was the former SEC rule that provided the basis for the former version of the voting rights policy. That rule generally permitted the issuance of lower vote stock.

[6] The company also has a class of convertible preferred stock with four-fifth of a vote per share. While the recapitalization will not affect the voting rights of the preferred stock, that stock will be redeemed or converted into a proportional number of Junior Shares and Senior Shares within approximately 18 months of the recapitalization.

[7] See Securities Exchange Act Release No. 25891 (the SEC release adopting former Rule 19c-4), at note 91. The SEC specifically raised concerns regarding the issuance of lower-vote stock if the higher-vote stock was convertible into the new class.

PARA. 313.00 INTERPRETATION No. 96-01

Proposed Transaction: A listed company (the "Company") has a single class of stock outstanding, trading at an extremely high stock price, with a round lot of 10 shares. The Company acts primarily as an investment vehicle, and "Control Persons" currently own 43.5% of the Company's stock. The Company has determined that it is not in its best interests to split its stock. However, the Company has become aware that sponsors of unit investment trusts ("UITs") are planning to offer securities that the Company believes would purport to mimic the Company or otherwise associate the UITs with the Company's reputation.

As a response to concerns raised by the UITs, the Company proposes to recapitalize into a dual class structure. The Company would redesignate its current common stock as "Class A Stock" and would create a second class of "Class B Stock." The Class B Stock generally would have the rights of 1/30th of a share of Class A Stock, but would have 1/200th of the vote of a share of Class A Stock (and would also not participate in a Company-sponsored charitable contributions program). The Class A Stock would be convertible into Class B Stock on a one for 30 basis. The Company would also conduct a public offering of Class B Stock to create an initial supply of those shares in the market.

As part of the proposed transaction, the Control Persons would enter into a voting agreement (the "Agreement"). This agreement would limit the Control Persons' vote if their voting power were to exceed 49.9% of the aggregate voting power of the Company's voting securities (the "Cap"). In that case, the Control Persons would vote all shares in excess of the Cap in the same proportion as those shares voted by all other holders of the Company's voting securities.

313.00 Issue: Is the proposed recapitalization, with the creation of a class of stock that economically is equivalent to 1/30th of a share of the current common stock, but carries 1/200th of the vote, in compliance with Para. 313?

Determination: The proposed transaction would be permissible under Para. 313.

Rationale: Para. 313(A) provides that voting rights of existing holders of stock of listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock." It also provides that, in evaluating a transaction, the Exchange "will consider, among other things, the economics of [the issuer's] actions," and that the Exchange's interpretations "will be flexible, recognizing that both the capital markets and the circumstances and needs of listed companies change over time." In approving Para. 313(A), the Securities and Exchange Commission further noted that:

> There may be valid business or economic reasons for corporations to issue disparate voting rights stock. [Para. 313] provides the [Exchange] with a voting rights standard which will provide issuers with a certain degree of flexibility in adopting corporate structures, so long as there is a reasonable business justification to so doing, and such transaction is not taken or proposed primarily with the intent to disenfranchise.

The proposed transaction presents a unique set of facts. The Exchange believes that there is a reasonable business justification for the restructuring, and that the purpose of the transaction is not to disenfranchise stockholders. Specifically, the stock currently trades at an extremely high price, which the Company believes has created an opportunity for the UITs to capitalize on the name and reputation of the Company. The proposed recapitalization will provide what the Company believes is a lower-cost means to invest in the Company that is preferable to the UITs.

The proposed voting arrangements are an integral part of the restructuring, and the Company is not proposing those arrangements with an intent to disenfranchise holders. Rather, because the Company does not believe that a stock split is in the best interests of the shareholders, the Company is providing for the reduced voting power to prevent the restructuring from being economically equivalent to such a split.

The Control Persons already have effective operating control of the Company. Indeed, in these unique facts, the Company is primarily an investment vehicle that greatly relies on the decisions of the largest shareholder, who is one of the Control Persons. Under the terms of the restructuring, while it is possible that the Control Persons' voting power could increase from 43.5% to 49.9%, such a change would have no real practical significance for this particular Company.

May 9, 1996

PARA. 313.00 INTERPRETATION No. 95-3

Proposed Transaction: A Company has a grandfathered dual-class voting structure, with Class A common stock having one vote per share and Class B common stock having 10 votes per share. The Class B common stock generally is not transferable, but can be converted into Class A common stock on a share for share basis. The Company seeks to institute a broad-based plan to allow employees to purchase Class B common stock through the issuance of stock options and by purchases through the Company's 401(k) saving plan. The plans are available to all employees with at least six month's of continuous employment.

313.00 Issue: Are the proposed issuances of the shares of heavy-vote Class B common stock in the stock purchase and 401(k) plans permissible under Para. 313?

Determination: The proposed issuances are permissible.

Rationale: Para. 313 provides that voting rights of existing holders of stock of listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock." However, it also states that the "restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with [Para. 313]."

In reviewing the issuance of additional super voting stock under Para. 313, the Exchange reviews the purposes and economics of the transaction. In the case of stock option and purchase plans such as the plans the Company proposes, the clear intent is to allow broad-based purchases of the Company's stock by its employees; it is not the Company's purpose to disparately reduce or restrict shareholders' voting rights. Indeed, in approving Para. 313, the SEC stated that, under the provision, "there will be no restrictions on the ability of a dual class company to issue additional shares of an existing class of higher voting stock . . . through the issuance of stock options . . . ." Employee stock purchases through 401(k) plans are closely analogous to stock option plans and also generally would be permitted.

June 7, 1995

PARA. 313.00 INTERPRETATION No. 95-02

Proposed Transaction: A listed company currently has one class of common stock outstanding, each share having one vote. The company proposes to issue to its shareholders one share of non-voting common stock for each share of its current common stock. The two classes of stock will be identical except for the voting provisions and the requirement that the company pay dividends on the nonvoting common stock at a rate of 110 percent of any regular cash dividends paid on the voting common stock. Both classes of stock would be listed on the NYSE.

At the time the company effects the stock split (the "Effective Date"), the company will also institute a "price protection" provision with respect to the non-voting common stock. If a person acquires more than 15 percent of the voting common stock after the Effective Date, that person also must own at least the same amount of non-voting stock in order to retain voting rights. Specifically, if the person exceeds the stated ownership threshold of voting common stock without owning the corresponding amount of non-voting stock, the person would lose the right to vote any of the voting common stock acquired after the Effective Date. In order to regain voting rights, the person would have to conduct a cash tender offer for additional non-voting common stock to equal the voting stock acquired after the Effective Date. These provisions would also apply at 10 percent ownership thresholds above the initial 15 percent level.

313.00 Issues: Would the proposed issuance of the non-voting common stock and the institution of the price be in compliance with Para. 313?

Determination: The proposed transaction, if structured in compliance with the Exchange's policy with respect to non-voting common stock, would be permissible under Para. 313. The price protection provision also is consistent with Para. 313.

Rationale: Para. 313(B) of the Listed Company Manual permits the listing of non-voting common stock as long as the issuer provides certain safeguards, such as submitting annual reports to the holders of the non-voting common stock. Assuming that the transaction complies with these provisions, the Exchange would be able to list the non-voting common stock.

With respect to the price protection provision, Para. 313(A) provides that voting rights of existing holders of stock of listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock." It also provides that, in evaluating a transaction, the Exchange "will consider, among other things, the economics of [the issuer's] actions," and that the Exchange's interpretations "will be flexible, recognizing that both the capital markets and the circumstances and needs of listed companies change over time." In approving Para. 313(A), the Securities and Exchange Commission further noted that:

> There may be valid business or economic reasons for corporations to issue disparate voting rights stock. [Para. 313] provides the [Exchange] with a voting rights standard which will provide issuers with a certain degree of flexibility in adopting corporate structures, so long as there is a reasonable business justification to so doing, and such transaction is not taken or proposed primarily with the intent to disenfranchise.

The proposed transaction furthers the issuer's economic interests and business purposes, which is to provide a more flexible capital structure that includes a class of non-voting common stock. The price protection provision is reasonably necessary to the creation of the non-voting common stock since it is intended to keep the prices of the voting and non-voting shares in line with each other. To the extent that this provision could result in the holder of voting common stock losing the vote on such stock, a person acquiring voting stock is in a position to monitor his or her stock acquisitions. Thus, that person can ensure that, at each threshold level, he or she owns sufficient non-voting common stock to avoid the loss of the vote on the voting common stock.

The purpose of the price protection provision is to maintain a close relationship between the two classes of stock. The provision will be equally applicable to all purchasers and is not intended to disenfranchise stockholders, to entrench management or to entrench the current ownership. Furthermore, the recapitalization plan, including the price protection provision, must be approved by current shareholders before it becomes effective.

June 7, 1995

PARA. 313.00 INTERPRETATION No. 95-01

Proposed Transaction: A listed company ("Parent") owns a majority interest in the voting stock of a second listed company ("Subsidiary"). After a lengthy study, and upon the advice of two independent financial advisors, Parent determined to spin-off its stock ownership in Subsidiary to Parent's stockholders. The spin-off was viewed as benefiting Parent, Subsidiary and the stockholders of both companies on the basis that Subsidiary had outgrown its status as a controlled subsidiary. As an independent company, it was expected that Subsidiary would have improved access to, and a lower cost of, capital. Parent also expected the share price of both companies to improve.

Parent determined that the spin-off needed to be effected on a tax-free basis. If the transaction failed to qualify for tax-free treatment, the resulting taxes to parent would exceed $1 billion and parent's shareholders would also face a tax liability of approximately that amount. To obtain a ruling from the Internal Revenue Service confirming the tax-free status of the transaction, it was necessary for Parent to own (i) at least 80 percent of the combined voting power of all classes of Subsidiary's stock and (ii) at least 80 percent of each class of non-voting stock. Parent owned a majority, but not an 80 percent interest, of such classes of stock.

To achieve a tax-free status for the transaction, Parent proposed to recapitalize Subsidiary. The central focus of the recapitalization would be for the stock currently held by Parent and to be distributed to its shareholders, the Class B stock, to vote as a class for the election of 80 percent of the Subsidiary's directors. The publicly-held Subsidiary stock, the Class A stock, would vote as a class to elect 20 percent of the Subsidiary's directors. Except as required by law, the two classes would vote together as a single class on all other matters. The proposal would not be adopted without the approval of Subsidiary's current public stockholders.

Parent would effect the spin-off by distributing the Class B stock to Parent's shareholders; after the transaction Parent would not have any voting or other equity interest in Subsidiary. As a condition to receiving its tax ruling, Parent would be required to represent that the new voting structure was permanent, that it had no plans to eliminate the new structure and that the structure could be eliminated only on the vote of Subsidiary's stockholders, which, in any event, could not occur prior to the fifth anniversary of the spin-off.

313.00 Issue: Will the proposed transaction disenfranchise current public holders of Subsidiary's common stock in violation of Para. 313?

Determination: The Proposed transaction is consistent with Para. 313

Rationale: Para. 313 provides that voting rights of existing holders of stock of listed company "cannot be disparately reduced or restricted through any corporate action or issuance of stock." It also provides that, in evaluating a transaction, the Exchange "will consider, among other things, the economics of [the issuer's] actions," and that the Exchange's interpretations "will be flexible, recognizing that both the capital markets and the circumstances and needs of listed companies change over time." In approving Para. 313, the Securities and Exchange Commission further noted that:

> There may be valid business or economic reasons for corporations to issue disparate voting rights stock. [Para. 313] provides the [Exchange] with a voting rights standard which will provide issuers with a certain degree of flexibility in adopting corporate structures, so long as there is a reasonable business justification to so doing, and such transaction is not taken or proposed primarily with the intent to disenfranchise.

The proposed transaction is driven by compelling economic concerns, and not the intent to disenfranchise shareholders. There are strong economic incentives for Parent to spin-off Subsidiary to Parent's shareholders, and, based on the advice of independent financial advisors, both companies will benefit economically from the spin-off. Thus, there is a strong business justification for the transaction. However, the transaction is feasible only if effected on a tax-free basis, which requires Parent to have 80 percent voting control of Subsidiary. The recapitalization is being proposed to permit the spin-off to be effected, and not to disenfranchise shareholders.

In addition, currently Parent effectively elects Subsidiary's entire Board through its majority stock ownership. Under the new capital structure, the current Subsidiary public shareholders will elect 20 percent of the Board. Moreover, the other 80 percent of the Board will be controlled by public holders and will not be concentrated with the Parent, which will have no ownership of Subsidiary. Subsidiary also could adopt a single class, one-share, one-vote capital structure upon a majority vote of both the Class A and Class B stockholders after five years.

January 10, 1995