



FENWICK & WEST LLP

CORPORATE & SECURITIES LAW UPDATE

NYSE to Implement Shareholder Approval Rules for Equity Compensation Plans

June 25, 2003

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The NYSE has notified its listed companies that its new expanded rules for shareholder approval of equity compensation plans are expected to become effective June 30, 2003. Under the new rules (not yet approved by the SEC), all equity compensation plans and non-plan equity arrangements, and any material revisions to such plans, must be approved by a company's shareholders.

Exceptions contained in the proposed rules have been maintained for inducement awards to new hires, adjustment to options in corporate acquisitions and mergers, and certain tax qualified plans such as ESOPs and Section 423 ESPPs. Where a company relies on such an exemption, it must notify the NYSE that shareholder approval was not obtained in reliance on the exemption and the company's compensation committee or a majority of the company's independent directors must approve the plan or amendment.

The new NYSE rules preclude brokers from voting their customers' shares on equity compensation plans unless the beneficial owner of the shares has provided voting instructions to the broker. This change is expected to be effective for meetings occurring on or after September 30, 2003. Elimination of the "broker vote rule" will significantly increase the hurdles for obtaining shareholder approval of equity plans or plan amendments.

The new stricter NYSE listing standards have not yet been approved by the SEC. The rules will not become final until adoption by the SEC, which is expected to occur by June 30, 2003. Any delay in SEC approval would cause a delay in effectiveness of the rules.

Nasdaq has not similarly notified its listed companies. However, we understand that the SEC is likely to approve similar rules promulgated by Nasdaq with a similar effective date. Nasdaq listed companies will be governed by the NYSE broker-vote rule.

We will follow up this memorandum with a more specific discussion of the final rules when the SEC adopts the final rules. Please contact Scott Spector at (650) 335-7251; sspector@fenwick.com or Horace Nash at (650) 335-7934; hnash@fenwick.com with any questions.

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