

Restructure Security satisfies the trading volume and market price criteria by reference to the trading volume and market price history of an outstanding equity security ("Original Equity Security") previously issued by the issuer of the Restructure Security, or affiliate thereof. In addition, the Exchange proposes specific criteria for evaluating the distribution of shares of a Restructure Security for the purposes of meeting the Share and Number of Shareholder Requirements. To the extent the initial options listing requirements are satisfied based upon these "lookback" provisions of the Original Equity Security and the other provisions of the proposal, then the Exchange will permit options trading to begin on the ex-date for the transaction.¹¹

Before the Exchange may invoke this proposed "lookback" provision and utilize the volume and price of the Original Equity Security for purposes of meeting the options eligibility criteria for the Restructure Security, the Restructure Security must first satisfy one of four alternate conditions. The first three alternate conditions are intended to ensure that the trading volume and market price history of the Original Equity Security represent a reasonable surrogate for determining the likely future trading volume and price data of the Restructure Security. Under these conditions either, (a) the aggregate market value of the Restructure Security, (b) the aggregate book value of the assets attributed to the business represented by the Restructure Security (minimum \$50 million) or (c) the revenues attributed to the business represented by the Restructure Security (minimum \$50 million) must exceed one of two stated percentages ("Relevant Percentages") of the same measure for the Original Equity Security.¹² The Relevant Percentages will be 25% if the

applicable measure determined with respect of the Original Equity Security represents an interest in the combined enterprise prior to the restructuring transaction, and 33⅓% if the applicable measure determined with respect of the Original Equity Security represents an interest in the remainder of the enterprise after the restructuring transaction. The fourth alternate condition is that the aggregate market value represented by the Restructure Security be at least \$500 million.

If any of the four alternate conditions set forth above is satisfied, a Restructure Security will qualify for the "lookback" provision. Under the "lookback" provision, a Restructure Security may be eligible for options trading immediately upon its issuance provided the following requirements are satisfied. First, the Restructure Security must satisfy the options Volume and Price Tests. The Exchange may be permitted to determine whether a Restructure Security satisfies the Volume and Price Tests by reference to the trading volume and market price history of the Original Equity Security. Under the proposed rule change, the trading volume and market price history of the Original Equity Security that occurs *prior to the restructuring ex-date* can be used for these calculations (emphasis added). Volume and price data may be derived from "when issued" trading in the Restructure Security. However, once the Exchange first uses "when issued" volume or price for the Restructure Security to satisfy the relevant guidelines, it may not use the Original Equity Security for that purpose on any subsequent trading day. In addition, both the trading volume and market price history of the Original Equity Security must be used, if either is so used.

Additionally, the Exchange must determine whether a Restructure Security will satisfy the Share and Number of Shareholder Requirements. This determination will either be based upon facts and circumstances that the Exchange expects to exist on the intended date for listing the option, or based on assumptions that are permitted under the proposal. Because the shares of the Restructure Security are to be issued or distributed to the shareholders of the issuer of the Original Equity Security, the Exchange proposes that these requirements may be satisfied based upon the Exchange's knowledge of the existing number of outstanding shares and holders of the Original Equity Security.

The Exchange further proposes that if a Restructure Security is to be listed on an exchange or automatic quotation

system that has, and subjects the Restructure Security to, an initial listing requirement of no less than 2,000 holders, then the Exchange may assume that the Number of Shareholders Requirement will be satisfied. Similarly, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and subjects the Restructure Security to, an initial listing requirement of no less than 7 million shares, held by persons not required to report their stock holdings under section 16(a) of the Act, then the Exchange may assume that the Share Requirement will be satisfied. Additionally, if the Exchange determines that at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, then it may assume that the Restructure Security will satisfy both the Share and the Number of Shareholder Requirements.

The Exchange, however, may not rely on the above assumptions if, after reasonable investigation, it determines that either the Share or Number of Shareholder Requirement, in fact, will not be satisfied on the intended date for listing the option. In addition, pursuant to the proposal, other exchanges will have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to shares and number of shareholders.

Finally, the proposal will adopt a similar "lookback" provision for the Maintenance Volume Test and the Maintenance Price Test. Specifically, for purposes of satisfying these requirements, the trading volume and market price history of the Original Equity Security, as well as any "when issued" trading in the Restructure Security, can be used for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

¹¹ The Exchange shall not list for trading option contracts that overlie a Restructure Security until the ex-date. The ex-date occurs at such time when shares of the Restructure Security become issued and outstanding and are not the subject of trading on a "when issued" basis or on another basis that is contingent upon the issuance or distribution of shares.

¹² Aggregate market values will be based on share prices that are either (a) the Restructure Security's closing prices in the primary market on the last business day preceding the selection date or (b) the Restructure Security's opening prices in the primary market on the selection date. The aggregate market value of the Restructure Security may be determined from "when issued" prices, if available.

Asset values and revenues will be derived from the later of (a) the most recent annual financial statements or (b) the most recent interim financial statements of the respective issuers covering a period of not less than three months. Such financial statements may be audited or unaudited and may be pro forma.