

persons not required to report their stock holdings under Section 16(a) of the Act to be options eligible. Under the most typical restructuring transaction, a spin-off to existing shareholders of the issuer of the Original Equity Security, the Exchange should be able to determine from publicly available information or otherwise reasonably deduce whether the Restructure Security will satisfy the 2,000 shareholder requirement and the 7 million share requirement. As an example, if Issuer A, having 10 million outstanding shares of common stock owned by persons not required to report their stock holdings under section 16(a) of the Act, and 5,000 shareholders, intends to effect a spin-off of a subsidiary, whereby one share of the subsidiary is issued to existing shareholders of Issuer A for each currently held outstanding share of Issuer A, immediately following the spin-off the former subsidiary will have 10 million shares held by persons not required to report their stock holdings under section 16(a) of the Act, and 5,000 shareholders. As a result, the former subsidiary will satisfy both the Share and Number of Shareholder Requirements.

As an alternative to the above, the proposal provides that the Exchange may make certain limited assumptions based on facts and circumstances that the Exchange expects to exist on the intended date for listing the options in order to determine the Share and Number of Shareholder Requirements. First, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement that the issuer have no less 2,000 shareholders, the Commission believes that it is reasonable for the Exchange to assume that its comparable option listing requirement will be satisfied. Second, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement of no less than 7 million shares owned by persons not required to report their stockholdings under section 16(a) of the Act, the Commission believes that it is reasonable for the Exchange to assume that its comparable option listing requirement will be satisfied.

The Commission notes that currently no exchange or automatic quotation system has a share requirement for initial stock listing purposes that is as stringent as those required under the options eligibility requirements. Moreover, a stock exchange may now be

able to list stocks pursuant to alternate listing standards. For example, the Commission has recently approved alternate listing standards for companies listed on the NYSE, including, among other things, the distribution of shares.¹⁶ Under these alternate listing standards, the NYSE is currently allowed to list certain companies with 500 shareholders that meet heightened requirements in other areas in lieu of its 2,200 total shareholder requirement. Therefore, the Exchange should be careful to precisely determine which listing standards are being applied to the listing of the Restructure Security prior to making a determination as to whether the Restructure Security meets the corresponding options listing criteria.

Additionally, the proposal provides that if at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, the Exchange may assume that the Restructure Security will satisfy both the Share and Number of Shareholder Requirements. The Commission believes this is appropriate because it appears unlikely that a Restructure Security with at least 40 million issued and outstanding shares, will have fewer than 2,000 holders or less than 7 million shares owned by persons not required to report their stock holdings under section 16(a) of the Act.

The Commission believes that concerns associated with the ability of the Exchange to make important listing decisions based on assumptions rather than confirmed facts are alleviated by the crucial provision contained in the proposal that the Exchange may not rely on the above assumptions if, after a reasonable investigation, it determines that either the Share or Number of Shareholder Requirements, in fact, will not be satisfied on the intended date for listing the option. At the very least, the Exchange should investigate the basis for its assumptions regarding the ownership of shares and number of shareholders just prior to selecting the option and just prior to trading the option, utilizing a worst case analysis in making its assumptions that the Restructure Security will meet these listing standards upon completion of the restructuring transaction.¹⁷

¹⁶ See Paragraph 102.01 of the NYSE's Listed Company Manual. See also Securities Exchange Act Release No. 35571 (April 5, 1995), 60 FR 18649 (April 12, 1995) (order approving proposed rule change relating to domestic listing standards).

¹⁷ See e.g., Letter from Michael Meyer, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, dated January 25, 1995 (File No. SR-CBOE-95-11).

In addition, other exchanges will continue to have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to the Share and Number of Shareholder Requirements. The Commission believes that this provision provides an important check and should help to ensure that no unqualified securities are listed for options trading.

The Commission also believes that it is appropriate for the Exchange to apply the "lookback" provision, to determine if a Restructure Security will satisfy the Maintenance Volume and Price Tests. The Commission believes that it is appropriate to use the trading volume and market price history of the Original Equity Security, as well as any "when issued" trading in the Restructure Security 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 commission notes that because the Maintenance Volume and Price Tests are calculated on a rolling forward basis, "when issued" trading history for the Restructure Security or trading history for the Original Equity Security prior to the ex-date may be used for maintenance calculations for no more than twelve months after the ex-date for the Restructure Security with respect to the Maintenance Volume Test, and for no more than six months after the ex-date for the Restructure Security with respect to the Maintenance Price Test. For example, if in order to satisfy the Maintenance Volume Test for a Restructure Security on November 1, 1995, for which the ex-date is September 1, 1995, an exchange may elect to base its determination on the trading volume of the Original Equity Security from November 1, 1994 through August 1, 1995, the trading volume in the when-issued market for the Restructure Security from August 2, 1995 through August 31, 1995, but must use the trading volume in the Restructure Security from September 1, 1995 through November 1, 1995. Similarly, in order to satisfy the Maintenance Price Test for the same Restructure Security on November 1, 1995, an exchange may elect to base its determination on the trading price of the Original Equity Security from August 1, 1995 through August 15, 1995, the trading price in the when-issued market for the Restructure Security from August 16, 1995 through August 31, 1995, but must use the trading price in the Restructure Security