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PROPOSED SEC AMENDMENTS TO PROXY
AND FORM 10-K RULES REGARDING
EQUITY COMPENSATION PLANS

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On January 29, 2001, the SEC published for comment amendments to the proxy and Form 10-K rules that would require disclosure in a registrant's proxy statement or annual report on Form 10-K (or Form 10-KSB) of certain information regarding securities authorized for issuance and issued under each equity compensation plan of the registrant in effect as of the end of the most recently completed fiscal year.

Comments on the proposed amendments (Release Nos. 33-7944 and 34-43482) must be submitted to the SEC prior to April 3, 2001.

A. Background of Proposals

As the use of equity compensation, particularly in the form of stock options, has grown, so too have concerns about their impact. These concerns involve

- the absence of full disclosure to security holders about equity compensation plans;
- the potential dilutive effect, from the standpoint of both economic and voting power, of equity compensation plans; and
- the adoption of many plans without the approval of security holders.

Current SEC rules do not require disclosure of the total number of securities that a registrant has authorized under its equity compensation programs. Although the rules require disclosure in a registrant's proxy statement of the material features of a compensation plan when submitting the plan for security holder action, including, in the case of a plan containing options, warrants or rights, the title and amount of securities underlying such options, warrants or rights, that disclosure must address only the plan upon which action is being taken.

Disclosure of the overall number of securities of a registrant authorized for issuance under employee stock option plans then in effect is sometimes available indirectly through the registrant's financial statements included in its annual report to security holders. The SEC has become concerned, however, that this disclosure is not necessarily effective since it is not consistently available in any one location or format, may not include non-derivative securities awarded to employees and may not include stock options granted to non-employees.

B. Proposed Disclosure

The proposed amendments would require a registrant to provide a table identifying each equity compensation plan in effect as of the end of the last completed fiscal year and containing the following information with respect to each plan:

- the number of securities that have been authorized for issuance by the registrant's board of directors;
- the number of securities issued pursuant to equity awards made during the last completed fiscal year, plus the number of securities to be issued upon the exercise of options, warrants or rights granted during the last completed fiscal year;
- the number of securities to be issued upon the exercise of outstanding options, warrants or rights; and

- other than securities to be issued upon the exercise of outstanding options, warrants or rights, the number of securities remaining available for future issuance under each plan.

The information would be provided with respect to any equity compensation plan that provides for the award of a registrant's securities or the grant of options, warrants or rights to purchase the registrant's securities to officers, directors and employees of the registrant or its parent or subsidiary corporations, or to any other person. Individual arrangements that contemplate the award of a registrant's securities or the grant of options, warrants or rights providing for the purchase of the registrant's securities may be aggregated and disclosed as a single item.

This information would be provided without regard to whether the equity compensation plan was previously approved by a registrant's security holders. Registrants would be required to identify, either in the table or through a narrative statement, which of the equity compensation plans, if any, was adopted without security holder approval. Registrants also would be required to provide a brief, narrative description of the material features of each plan adopted without security holder approval during the last completed fiscal year. This information would be provided without regard to whether the securities to be issued under the equity compensation plan were authorized but unissued securities of the registrant or repurchased or "treasury" shares.

C. Location of Proposed Disclosure

The proposed disclosure would be set forth in a tabular format

- in the registrant's proxy statement, whenever the registrant is seeking security holder action regarding a compensation plan; or
- in the registrant's annual report on Form 10-K in years when the registrant is not seeking security holder action regarding a compensation plan. However, the information could be incorporated by reference from a registrant's definitive proxy statement that involves the election of directors, if the definitive proxy statement is filed with the SEC not later than 120 days after the end of the fiscal year covered by the Form 10-K.

The disclosure requirements would apply to registrants registered under Section 12 of the Exchange Act. It appears that the SEC intended the disclosure requirement to also apply to registrants with a Section 15(d) reporting obligation, but not to foreign private issuers.

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This memorandum provides only a general overview of the amendments to proxy and Form 10-K rules regarding equity compensation Plans. It is not intended to provide legal advice, and no legal or business decision should be based on its contents.

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