

Additions underscored
Deletions [bracketed]

NYSE Listed Company Manual

Section 3—Corporate Responsibility

Sec. 312.03 Shareholder Approval

(b) Shareholder approval is required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to:

(1) a director, officer or substantial security holder of the company (each a "Related Party");

(2) a subsidiary, affiliate or other closely-related person of a Related Party; or

(3) any company or entity in which a Related Party has a substantial direct or indirect interest;

if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

However, if the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as each of the book and market value of the issuer's common stock, then shareholder approval will not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

In addition, the provisions of this Section 312.03(b) will not apply to the sale of stock for cash by an Early Stage Company to (i) a Related Party, (ii) a subsidiary, affiliate or other closely-related person of a Related Party; or (iii) any company or entity in which a Related Party has a substantial direct or indirect interest, provided that the Early Stage

Company's audit committee or a comparable committee comprised solely of independent directors reviews and approves of all such transactions prior to their completion.

The exemption in the preceding paragraph will not be applicable to a sale of securities by the listed company to any person subject to the provisions of this Section 312.03(b) in a transaction, or series of transactions, whose proceeds will be used to fund an acquisition of stock or assets of another company where such person has a direct or indirect interest in the company or assets to be acquired or in the consideration to be paid for such acquisition.

The sale of stock to a Related Party that is an employee, director or service provider is subject to the equity compensation rules in Section 303A.08 of the Manual. For example, a sale of stock by an Early Stage Company to any of such parties at a discount to the then market price would be treated as equity compensation under Section 303A.08 notwithstanding the exemption from shareholder approval provided under Section 312.03(b). Consequently, the company would be required to either: (i) obtain shareholder approval of such sale, or (ii) issue such shares under an equity compensation plan that had previously been approved by shareholders and for which shareholder approval under Section 303A.08 is not otherwise required. Moreover, shareholder approval is required if any of the subparagraphs of Section 312.03 require such approval, notwithstanding the fact that the transaction does not require approval under this subparagraph or one or more of the other subparagraphs. (See Section 312.04(a).)

[Limited Transition Period

Prior to December 21, 2006, this rule included an exception from the required calculations for issuances of treasury stock. In light of companies' need for certainty when planning a transaction involving the issuance of shares, if a company has executed a binding contract prior to October 23, 2006 with respect to the issuance of common stock, the existing treasury share exception will continue to be available for the transaction even though the transaction does not close until after the date the SEC approval of this proposed rule change.]

312.04 For the Purpose of Section 312.03

For the purpose of Section 312.03:

(j) The issuance of shares from treasury is considered an issuance of shares for purposes of Section 312.03. (See Section 703.01, Part 1, of the Listed Company Manual regarding required notice to the Exchange of issuance of shares from treasury.)

(k) “Early Stage Company” means a company that has not reported revenues greater than \$20 million in any two consecutive fiscal years since its incorporation and any Early Stage Company will lose that designation at any time after listing on the Exchange that it files an annual report with the SEC in which it reports two consecutive fiscal years in which it has revenues greater than \$20 million in each year.
