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312.00 Shareholder Approval Policy

312.03 Shareholder Approval

Shareholder approval is a prerequisite to issuing securities in the following situations:

- (a) Shareholder approval is required for equity compensation plans. See Section 303A.08.
- (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.

- (c) 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 if:
- (1) the common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or
 - (2) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock.

However, shareholder approval will not be required for any such issuance involving:

- any public offering for cash;
- any bona fide private financing, if such financing involves a sale of:
- common stock, for cash, at a price at least as great as each of the book and market value of the issuer's common stock; or
- securities convertible into or exercisable for common stock, for cash, if the conversion or exercise price is at least as great as each of the book and market value of the issuer's common stock.

(d) Shareholder approval is required prior to an issuance that will result in a change of control of the issuer.

(e) Sections 312.03 (b), (c) and (d) shall not apply to issuances by limited partnerships.

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.