

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of the filing, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6). The CBOE also provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2001-30 and should be submitted by July 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margot H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44435; File No. SR-CBOE-2001-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Goldman, Sachs Technology Composite Index ("GSTI") and the GSTI Sub-Indexes

June 15, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 14, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule change has been filed by the CBOE as a "non-controversial" rule change under Rule 19b-4(f)(6) of the Act.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE currently lists and trades European-style, cash-settled options on the Goldman Sachs Technology Composite Index ("GSTI Composite Index" or "Index")⁴ and on six GSTI Sub-indexes ("Sub-Indexes").⁵ Pursuant

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 37693 (September 17, 1996), 61 FR 50362 (September 25, 1996) (order approving File No. SR-CBOE-96-43).

⁵ See Securities Exchange Act Release No. 37696 (September 17, 1996), 61 FR 50358 (September 25, 1996) (order approving File No. SR-CBOE-96-44) ("Sub-Index Order"). The six Sub-Indexes include:

to determinations by Goldman, Sachs & Co. ("Goldman Sachs"), the CBOE proposes to: (1) Revise the guidelines governing the selection of stocks in the GSTI Composite Index to allow Goldman Sachs to exclude from the GSTI Composite Index companies that Goldman Sachs believes are classified inappropriately as technology companies despite their Standard Industrial Classification ("SIC")/Russell code; (2) revise the weighting criteria for the six Sub-Indexes so that all components will be subject to a maximum weight cap of 8.5% of the total capitalization of any Sub-Index; and (3) change the dates of the semi-annual rebalancing for the GSTI Composite Index and the six Sub-Indexes from the third Friday in January and July of each year to the third Friday in December and June of each year. The CBOE seeks continued approval to list and trade options on the GSTI Composite Index and on the Sub-Indexes after the proposed revisions become effective after the close of trading on June 15, 2001. In addition, the CBOE proposes to amend CBOE rule 24.14, "Disclaimers," to include a specific reference to Goldman Sachs as entitled to the benefit of the disclaimer of liability with respect to the GSTI Composite Index and the six Sub-Indexes.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE currently lists and trades European-style, cash-settled options on

the GSTI Hardware Index, the GSTI Internet Index, the GSTI Semiconductor Index, the GSTI Software Index, the GSTI Services Index, and the GSTI Multimedia Networking Index.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

the GSTI Composite Index and on the six GSTI Sub-Indexes. The GSTI Composite Index is a broad-based, modified capitalization-weighted index of the universe of technology-related company stocks meeting certain objective criteria. The narrow-based Sub-Indexes are also calculated using a modified capitalization-weighting methodology. Components for each of the six GSTI Sub-Indexes are chosen from the GSTI Composite Index.

Goldman Sachs has informed the CBOE that as of June 15, 2001 (after the close of trading), Goldman Sachs will change certain guidelines governing the selection of stocks included in the GSTI Composite Index to refine the definition of "technology-related" companies. Under the proposal, the Goldman Sachs Technology Index Committee ("Committee") will have the discretion to exclude companies that, based on its knowledge of the technology sector, the Committee believes are inappropriately classified as technology companies despite their SIC/Russell code.⁶

Currently, the components of the GSTI Composite Index are drawn from a universe of companies that fall within a set of predetermined Russell or SIC code classifications. Notwithstanding the Russell and SIC classifications, Goldman Sachs may believe that some companies are not in actuality technology companies and thus are not proper components for inclusion in the GSTI Composite Index. In these limited instances, Goldman Sachs seeks the flexibility to remove these components from the Index. The Committee, which will make the decision to exclude a component, will meet before every scheduled rebalancing date to determine whether a GSTI Composite Index constituent meets the industry membership criterion. In making the determination, the Committee will examine a component company's primary source of revenue or, alternatively, its emerging business activity and strategy. If the Committee determines that a company's primary source of revenue is from sources that are not technology-related, the Committee may determine that the company should not be classified as a technology company and, therefore, the

⁶ In 1999, a CBOE proposal in which Goldman Sachs added a supplemental sector/industry classification method used for identifying the universe of technology stocks eligible for inclusion in the Index became effective on filing. See Securities Exchange Act Release No. 41882 (Sept. 17, 1999), 64 FR 51818 (Sept. 24, 1999) (notice of filing and immediate effectiveness of File No. SR-CBOE-99-54) ("1999 Notice"). In that proposal; Goldman Sachs refined the definition of "technology-related" to include Internet-related companies.

Committee will remove the component from the GSTI Composite Index. Similarly, the Committee may determine to remove a company from the GSTI Composite Index if it determines that the company's emerging business strategy is not technology-related.⁷

Goldman Sachs believes that these changes will prevent the inclusion in the GSTI Composite Index of stocks that are not commonly considered to be part of the universe of technology-related companies, even though they may have the proper SIC or Russell code. Goldman Sachs expects that the GSTI Composite Index, as a result of the proposed change, will more accurately represent the technology sector and will be better suited to track future changes in the industry.⁸

Goldman Sachs also intends to revise the weighting criteria for the Sub-Indexes, effective June 15, 2001 (after the close of trading). Currently, component weights are capped in each of the Sub-Indexes so that no component accounts for more than 12.5% of the total capitalization of any Sub-Index. Goldman Sachs proposes to revise the weighting criteria for the Sub-Indexes so that all components will be subject to a maximum weight cap of 8.5%. By reducing the maximum weight cap, Goldman Sachs notes that the revised weighting methodology will require that each of the Sub-Indexes be comprised of at least 12 components.⁹

⁷ Goldman Sachs views the decision by the Committee regarding changes to the Index to be material non-public information. In this respect, a Chinese wall has been erected around the personnel at Goldman Sachs who have access to information concerning changes and adjustments to the Index. Further, upon the completion of any addition or deletion of a security from the Index, Goldman will review trading in the subject securities for any irregularities. Goldman Sachs' revised Chinese wall procedures, which have been submitted to CBOE, are closely modeled on existing procedures for other Goldman Sachs indexes underlying standardized options. The CBOE notes that in the Sub-Index Order the Commission found that Goldman Sachs' Chinese wall procedures "adequately serve to minimize the susceptibility to manipulation of the Sub-Indexes and the securities in the Sub-Indexes." See Sub-Index Order, *supra* note 5. Further, in the 1999 Notice, the Exchange represented that "Goldman Sachs will not have any informational advantage concerning modifications to the composition of the GSTI composite Index and the Sub-Indexes due to Goldman Sachs' role in maintaining such indexes, including the classification of stocks." See 1999 Notice, *supra* note 6. Upon reviewing Goldman Sachs' revised Chinese wall procedures, the CBOE again represents that Goldman Sachs will not have any informational advantage concerning modifications to the composition of the GSTI Composite Index and the Sub-Indexes due to Goldman Sachs' role in maintaining the indexes, including the classification of the stocks.

⁸ See 1999 Notice, *supra* note 6.

⁹ A proposal that similarly reduced the maximum weighting criteria applicable to the Sub-Indexes

Goldman Sachs expects this revised methodology to promote portfolio weight diversification, thereby further limiting the domination of the Sub-Indexes by a few large stocks.

Goldman Sachs also proposes to change the dates of the semi-annual rebalancing for the GSTI Composite Index and the six Sub-Indexes from the third Friday in January and July of each year to the third Friday in December and June of each year.

With the exception of the foregoing changes, the Exchange proposes no other changes to the GSTI Composite Index and the six Sub-Indexes.

The CBOE will notify market participants of Goldman Sach's decision to alter the guidelines for inclusion in the GSTI Composite Index and the revised calculation methodology in the Sub-Indexes through a notice to members and member firms in advance of the changeover.

On the Monday following the expiration Friday when Goldman Sachs implements these changes, the CBOE will bring up new series of options overlying the GSTI Composite Index and the six Sub-Indexes under the current ticker symbols. The outstanding series will be traded under new ticker symbols and will continue to settle based on the present guidelines and calculation method. No new series will be added to the "old" index classes and when the existing series expire, the "old" indexes will cease to trade.¹⁰ The Exchange believes this action will be adequate to prevent any problems because, as noted above, the Exchange will continue to list outstanding series under a different symbol that will settle under the old methodology; thus, there will be no change to outstanding contracts. The Exchange previously has employed the same system for introducing new series after a change in the calculation of the index value or settlement value of an index.¹¹

became effective on filing with the Commission. See 1999 Notice, *supra* note 6.

¹⁰ On June 18, 2001, the "old" series will be fixed and no new series of the "old" index will be introduced. As of June 13, 2001, there was open interest in the September and December 2001 series for the GSTI Composite Index and/or five of the Sub-Indexes. There are no LEAPS trading on any of the "old" indexes.

¹¹ See Securities Exchange Act Release Nos. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving File No. SR-CBOE-92-09) (continued listing and trading of SPX options after a change to a.m. settlement); 37089 (April 9, 1996), 61 FR 16660 (April 16, 1998) (order approving File No. SR-CBOE-96-12) (change in the method of determining the settlement value for NDX options); and 40642 (November 5, 1998), 63 FR 63759 (November 16, 1998) (order approving File No. SR-CBOE-98-43) (continued listing and trading of

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Combinations of options based on the “old” GSTI Composite Index and the “new” GSTI Composite Index will be aggregated and cannot exceed 100,000 contracts. In addition, options based on an “old” Sub-Index will be aggregated with options based on the corresponding “new” Sub-Index and cannot exceed 31,500 contracts.¹²

Finally, the Exchange proposes to amend CBOE Rule 24.14 to include specific reference to Goldman Sachs as entitled to the benefit of the disclaimer of liability with respect to the GSTI Composite Index and the Sub-Indexes.

2. Statutory Basis

The CBOE believes that the proposed changes to the GSTI Composite Index will help to ensure that the Index continues to provide an accurate representation of the technology sector. Further, by reducing the maximum allowable weighting of any single component of the Sub-Indexes from 12.5% to 8.5% of the total capitalization of the Sub-Index, the CBOE believes that Goldman Sachs is providing for better portfolio weight diversification. For these reasons, the Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act, in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

NDX options after a change in the weighting methodology of the Nasdaq-100 Index).

¹²In its notice to members regarding the revised guidelines for inclusion in the GSTI Composite Index and the revised calculation methodology for the Sub-Indexes, the CBOE will advise members and member organizations that positions in the “old” and “new” GSTI Composite Index and in the corresponding “old” and “new” Sub-Indexes will be aggregated for the purpose of calculating position and exercise limits. Telephone conversation between Stephen M. Youhn, Attorney, CBOE, and Yvonne Fraticelli, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on June 13, 2001 (“June 13 Conversation”).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has filed the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission designate such shorter time period so that the Exchange may continue to list and trade options based on the GSTI Composite and Sub-Indexes without interruption following the implementation of the new guidelines and weighting methodology after the close of trading on June 15, 2001.

The CBOE believes that the proposed changes do not present any unique or novel questions. In addition, the Exchange believes that the proposed revisions will strengthen the GSTI Composite and Sub-Indexes by providing for the inclusion of components that better represent the current state of the technology sector and will be better suited to track future changes in the industry. The Exchange also believes that the revisions to the weighting criteria will promote portfolio weight diversification, thereby further limiting domination of the Sub-Indexes by a few large stocks. The CBOE also notes that the Commission previously approved the continued listing of options on the GSTI Composite Index after a similar change in its weighting methodology.¹⁶

The Commission, consistent with the protection of investors and the public interest, has determined to make the

proposed rule change operative after the close of trading on June 15, 2001, for the following reasons.¹⁷ As noted above, the proposal will permit Goldman Sachs to remove or exclude a component company from the GSTI Composite Index regardless of the company’s SIC/Russell classification if Goldman Sachs determines that the company’s primary sources of revenue are not technology-related or if the company’s emerging business strategy is not technology-related. The Commission believes that this limited flexibility with regard to the selection of Index components may help Goldman Sachs to ensure that the GSTI Composite Index accurately reflects the market for technology-related companies.

The Commission believes that the change in the component weighting guidelines for the Sub-Indexes will ensure greater weight diversification among the component stocks of the Sub-Indexes and will eliminate concentrations in weighting that might cause the Sub-Indexes to be dominated by a few highly-capitalized stocks.

The Commission believes that the proposal to change the dates of the semi-annual rebalancing for the GSTI Composite Index and the six Sub-Indexes from the third Friday in January and July of each year to the third Friday in December and June of each year, and the proposal to amend CBOE Rule 24.14 to include a specific reference to Goldman Sachs as entitled to the benefit of the disclaimer of liability with respect to the GSTI Composite Index and the Sub-Indexes, do not raise new regulatory issues.

The Commission believes that the proposed changes to the GSTI Composite Index and the Sub-Indexes are reasonable and that investors should be permitted to trade options on the revised GSTI Composite Index and the Sub-Indexes on an uninterrupted basis as the old GSTI Composite Indexes and the Sub-Indexes are phased out. The Commission notes that the CBOE will advise members and member organizations of the changes in the guidelines for inclusion in the GSTI Composite Index and in the revised calculation methodology for the Sub-Indexes through a notice to members and member firms in advance of the changeover. The notice to members also will note that positions in the “old” and “new” GSTI Composite Index and the corresponding “old” and “new” Sub-Indexes will be aggregated for purposes

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See Securities Exchange Act Release No. 38852 (July 18, 1997), 62 FR 40128 (July 25, 1997) (order approving File No. SR-CBOE-97-30).

¹⁷ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

of calculating position exercise limits.¹⁸ The different symbols for the old and revised indexes also should help to avoid confusion.

For all of the reasons set forth above, the Commission finds that it is consistent with the protection of investors and the public interest for the proposal to become operative on June 15, 2001. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549,. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2001-34 and should be submitted by July 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44423; File No. SR-NASD-2001-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

June 13, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 8, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On June 4, 2001 the NASD filed Amendment No. 1 to the Proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend its Restated Certification of Incorporation ("Certificate"). Additions are italicized; deletions are bracketed.

* * * * *

Restated Certificate of Incorporation of the NASDAQ Stock Market, Inc.

* * * * *

Article Fourth

- A. No change.
- B. No change.

C. 1. (a) Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated June 12, 2001 ("Amendment No. 1"). In Amendment No. 1, Nasdaq changed the term "debenture" to "note" throughout the proposed rule text and filing, and clarified the circumstances under which Hellman and Friedman would be entitled to an exemption from the restriction contained in the Restated Certificate of Incorporation that prohibits any beneficial owner of more than five percent of common stocks or notes from voting those excess shares or notes.

on all matters on which stockholders generally are entitled to vote, and no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

(b) Except as may otherwise be provided in this Restated Certificate of Incorporation or by applicable law, the holders of the 4.0% Convertible Subordinate Notes due 2006 (the "Notes") which may be issued from time to time by Nasdaq shall be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq, voting together with the holders of the Common Stock (and of any other shares of capital stock of Nasdaq entitled to vote at a meeting of stockholders) as one class. Each principal amount of Notes shall be entitled to a number of votes equal to the number of votes represented by the Common Stock of Nasdaq that could then be acquired upon conversion of such principal amount of Notes into Common Stock, subject to adjustments as provided in the Notes. Holders of the Notes shall be deemed to be stockholders of Nasdaq, and the Notes shall be deemed to be shares of stock, solely for the purpose of any provision of the General Corporation Law of the State of Delaware or this Restated Certificate of Incorporation that requires the vote of stockholders as a prerequisite to any corporate action.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall (i) any record owner of any outstanding Common Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, or (ii) any holder of any Notes which are beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock and/or Notes ("Excess Shares and/or Notes") in excess of five percent (5%) of the then-outstanding shares of Common Stock, be entitled or permitted to vote any Excess Shares and/or Notes. For all purposes hereof, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of filing this Restated Certificate of Incorporation.

3. The following definitions shall apply to this paragraph C. of this Article Fourth:

(a) "Affiliate" shall have the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of filing this Restated Certificate of Incorporation.

(b) A person shall be deemed the "beneficial owner" of, shall be deemed to have "beneficial ownership" of and shall be deemed to "beneficially own" any securities:

¹⁸ See June 13 Conversation, *supra* note 12.

¹⁹ 17 CFR 200.30-3(a)(12).