

Sec. 38a-124-5. Exemption from section 38a-119 of acquisitions of shares of stock and stock options under certain stock bonus, stock option and similar plans

Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right), pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings or similar plan, or any acquisition of a qualified or a restricted stock option pursuant to a qualified or a restricted stock option plan, or a stock option pursuant to an employee stock purchase plan, by a director or officer of the issuer of such stock or stock option shall be exempt from the operation of section 38a-119 of the 1965 supplement to the general statutes if the plan meets the following conditions:

(a) The plan has been approved, directly or indirectly, (1) by the affirmative votes of the holders of a majority of the securities of such issuer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of this state, or (2) by the written consent of the holders of a majority of the securities of such issuer entitled to vote; provided, if such vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 38a-147 of the 1965 supplement to the general statutes at the time of such vote or written consent, the issuer shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by the rules and regulations in effect under said section 38a-147 at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of (a) the date the act first applies to such issuer or (b) the acquisition of an equity security for which exemption is claimed. Such written information may be furnished by mail to the last-known address of the security holders of record within thirty days prior to the date of mailing. Four copies of such written information shall be filed with, or mailed for filing to, the commissioner not later than the date on which it is first sent or given to security holders of the issuer. For the purposes of this subdivision, the term "issuer" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the issuer in connection with the succession.

(b) If the selection of any director or officer of the issuer to whom stock may be allocated or to whom qualified, restricted or employee stock purchase plan stock options may be granted pursuant to the plan, or the determination of the number or maximum number of shares of stock which may be allocated to any such director or officer or which may be covered by qualified, restricted or employee stock purchase plan stock options granted to any such director or officer, is subject to the discretion of any person, then such discretion shall be exercised only as follows: (1) With respect to the participation of directors: (i) By the board of directors of the issuer, a majority of which board and a majority of the directors acting in the matter are disinterested persons; (ii) by, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or (iii) otherwise in accordance with the plan, if the plan (a) specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to qualified, restricted or employee stock purchase plan stock options granted to directors and the terms upon which, and the times at which, or the periods within which, such stock may be acquired

or such options may be acquired and exercised; or (b) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the company, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors. (2) With respect to the participation of officers who are not directors: (i) By the board of directors of the issuer, a committee of three or more directors; or (ii) by, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons. For the purpose of this subdivision, a director or committee member shall be deemed to be a disinterested person only if such person is not at the time such discretion is exercised eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom qualified, restricted or employee stock purchase plan stock options may be granted pursuant to the plan or any other plan of the issuer or any of its affiliates entitling the participants therein to acquire stock or qualified, restricted or employee stock purchase plan stock options of the company or any of its affiliates. (3) The provisions of this subdivision shall not apply with respect to any option granted, or other equity security acquired prior to the date that sections 38a-118, 38a-119 and 38a-120 of the 1965 supplement to the general statutes first became applicable with respect to any class of equity securities of any issuer.

(c) As to each participant or as to all participants the plan effectively limits the aggregate dollar amount or the aggregate number of shares of stock which may be allocated, or which may be subject to qualified, restricted or employee stock purchase plan stock options granted, pursuant to the plan. The limitations may be established on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date; and may be determined either by fixed or maximum dollar amounts or fixed or maximum numbers of shares or by formulas based upon earnings of the issuer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provisions for adjustment of the plan or of stock allocable or options outstanding thereunder to prevent dilution or enlargement of rights.

(b) All terms used in this section shall have the same meaning as in the act. In addition, for the purpose of this section, the following definitions apply: (1) "Plan" includes any plan, whether or not set forth in any formal written document or documents and whether or not approved in its entirety at one time. (2) "Qualified stock option" and "employee stock purchase plan" shall be defined as those terms are defined in sections 422 and 423 of the Internal Revenue Code of 1954, as amended. (3) "Restricted stock option" shall be defined as that term is defined in section 424 (b) of the Internal Revenue Code of 1954, as amended; provided for the purposes of this section an option which meets all of the conditions of that section other than the date of issuance shall be deemed to be a "restricted stock option." (4) "Exercise of an option, warrant or right" shall not include (i) the making of any election to receive under any plan an award of compensation in the form of stock or credits therefor if such election is made prior to the making of the award; and if such election is irrevocable until at least six months after termination of employment; (ii) the subsequent crediting of

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such stock; (iii) the making of any election as to a time for delivery of such stock after termination of employment; if such election is made at least six months prior to any such delivery; (iv) The fulfillment of any condition to the absolute right to receive such stock; or (v) the acceptance of certificates for shares of such stock.

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