

**acceleration:** provisions causing all outstanding stock-based awards “whether or not vesting requirements have been met” to become fully exercisable. This clause is frequently triggered by a change-in-control event, such as a merger.

**advance notice:** a charter, bylaw or other provision that requires shareholders to provide advance notice of business that they intend to present at a shareholders’ meeting. Typically, such requirements apply to board nominations, resolutions to be offered from the floor, or both. In most cases, the advance notice requirements take the form of a “window” that specifies the earliest and latest dates for such submissions. In other instances, only a deadline is specified. If shareholders fail to comply with the requirements, the company has the right to disregard any efforts to discuss or vote on the business at the meeting.

**affiliated director:** a director who is linked to the company through certain relationships, and whose views may be affected because of such links. Investors generally consider any director affiliated who is a former employee; is an employee of or is a service provider, supplier, customer; is a recipient of charitable funds; is considered an interlocking or designated director; or is a family member of a director or executive. More specifically, an affiliated director is:

- A former employee of the company or of a majority-owned subsidiary.
- A provider of professional services-such as legal, consulting or financial-to the company. The services may be provided either personally by the director or by the director’s employer.
- A customer of or supplier to the company, unless the transaction occurred in the normal course of business and was explicitly deemed “not material” by the company in proxy materials.
- An employee of an affiliate of which the company owns less than 50 percent. (An employee of a subsidiary that is 50 percent or more owned by the company, is considered an employee director.)
- A designee under a documented agreement by a group (such as a union) or significant shareholder. Majority holders (or employees of majority holders) are assumed to be designated.
- A family member of an executive officer.
- A part of an interlocking directorship whereby a director and executive of the company sits on a board of another company that has an executive and director who also sit on the original company’s board.
- A recipient of the company’s charitable giving, if this is disclosed in the proxy statement.
- Any other type of affiliation that may compromise the ability or incentive of a director to perform oversight duties in the best interests of shareholders.

**Altman’s Z-score:** bankruptcy predictor developed by Edward I. Altman, Professor of Finance at New York University’s Stern School of Business. The Z-score is a multivariate formula used to measure the financial health of a company. It can be used to assign a probability of bankruptcy using the following financial ratios--return on total assets, sales to total assets, equity to debt, working capital to total assets, and retained earnings to total assets. The methodology has proven to be a powerful diagnostic tool that forecasts the probability of a company entering bankruptcy within a 2 year period. Studies measuring the effectiveness of the Z-Score have shown that the model is 70 to 80 percent reliable.

**American Depository Receipts (ADRs):** negotiable certificates that represent ownership of shares in a non-U.S. corporation, held in trust in the vault of a U.S. bank, and entitling the share owner to all dividends and capital gains. ADRs are quoted and traded in U.S. dollars on a U.S. exchange.

**Annual Meeting:** the meeting of stockholders each year called to elect officers and directors and to vote on corporate matters presented by the board or shareholders.

**Annual Report:** a report for shareholders and other parties that is prepared by a corporation annually. The report usually includes an opening letter from the Chief Executive Officer, financial data, results of continuing operations, market segment information, new product plans, subsidiary activities and research and development activities on future programs. (Form 10K)

**Anti-takeover defense:** a device designed to prevent a hostile takeover.

**Articles of Incorporation:** the basic governing rules which set out the rights and duties of officers, directors and shareholders and the organizational structure of the company. The articles of incorporation, also known as the charter, are supplemented by the bylaws. Shareholder approval is required to amend a company’s Articles of Incorporation.

**At-the-money option:** an option with an exercise price equal to the current market

price.

**Audit Committee:** a subset of the board of directors with a responsibility to oversee the organization’s financial reporting, risk management and audit processes.

**Authorized Stock:** the amount of stock that a corporate charter permits a corporation to issue.

**Backend Loaded Stock Options:** options that vest at a time close to when the options expire.

**Ballot:** an issuer card or vote instruction form which details the proposals to be voted on at a meeting and allows for a share owner to make their election.

**Beneficial Owner:** an owner of shares of stock that are held through a financial institution. Often referred to as being held in “Street Name.”

**Binding Shareholder Proposal:** proposal that actually amends the company’s charter or bylaws, unlike a typical precatory shareholder proposal that requests or urges the board to make a change. Binding proposals are relatively rare and are limited by some state laws.

**Blank Check Preferred Stock:** a term used to describe preferred stock that, when authorized, gives the board of directors broad discretion to establish voting, dividend, conversion and other rights for the stock if and when it is eventually issued. Such a broad authorization provides flexibility to boards to meet changing financial conditions, but it also vests them with authority to issue the stock necessary to implement certain defenses, including a shareholder rights plan. Blank check preferred also can be placed with an employee stock ownership plan or a friendly investor. These parties may control enough voting power to block a takeover attempt.

**Blasius Test:** a rule under which an action taken by a corporation’s board of directors without shareholder approval, with the sole or primary purpose of thwarting a shareholder vote or disenfranchising shareholders, will be upheld only if the director can show a compelling justification for the action. This rule was articulated by the Delaware Court of Chancery in *Blasius Industries, Inc. v. Atlas Corp.*, 464 A.2d 651 (Del. Ch. 1988)

**Board of Directors:** the governing body of a corporation elected by the shareholders, usually made up of officers of the corporation and outside (non-employee) directors. The board is empowered to elect and appoint officers and agents to act on behalf of the corporation. The board is charged with selecting and monitoring the corporation’s management team.

**Bonus Shares:** share awards which in some cases may not vest until various performance goals are met or the employee has remained with the company for a minimum number of years.

**Bylaws:** the bylaws of a corporation constitute the internal set of operating rules for the corporation. In corporate law, the bylaws have been regarded as the proper place for the self-imposed rules and regulations deemed necessary for the corporation’s efficient functioning to be set forth. Thus, the bylaws can be seen as the proper location for constraints that limit the exercise of corporate power, including the exercise of corporate power by the directors. Some common examples of the subject matter of corporate bylaws include: (i) the number, tenure and qualifications of directors, (ii) time, place and notice requirements for meetings of the board of directors, (iii) board of director quorum requirements, (iv) director committees and (v) removal of directors from office.

**Call Option:** the right, but not the obligation, to buy shares at a predetermined exercise price before a predetermined expiration date. Holders are rewarded when the option has a “positive” spread, or difference between its exercise price and its market price.

**Change-in-control Provision:** a provision in a stock option plan that allows for immediate vesting of outstanding options if certain events take place which may be deemed a “change in control,” such as the purchase of a majority of the company’s outstanding shares by a third party.

**Charter:** also known as the articles of incorporation, the charter sets forth the respective rights and duties of shareholders, officers, and directors. The charter constitutes the fundamental governing rules for each company. Shareholder approval is required to amend a company’s charter.

**Class of Stock:** indicates different types of equity ownership in corporations as determined by rights of ownership (identified by the last three digits of the CUSIP).

**classified board:** a board that is divided into separate classes, with directors serving overlapping terms. A company with a classified board usually divides the board into three classes—each year, one-third of the directors stand for election. A classified board makes it difficult to change control of the board through a proxy contest, since it would normally take two years to gain control of a majority of the board seats.

**cliff vesting:** a compensation plan feature providing that all awards vest in full after a specified date. If the employee leaves the company's prior to the vesting date, no partial vesting will occur.

**common stock:** securities that represent an ownership interest in a corporation.

**compensation committee:** a subset of the board of directors with a responsibility to determine the compensation strategies for the company's top executive officers, including salary, bonus, stock and performance-based remuneration.

**confidential voting:** also known as closed voting or voting by secret ballot. Under confidential voting procedures, all proxies, ballots and voting tabulations that identify shareholders are kept confidential. Independent vote tabulators and inspectors of election are responsible for examining individual ballots, while management and shareholders are only told vote totals.

**corporate governance:** Defined broadly as the processes and structures through which suppliers of capital ensure themselves a return on their investment. Its focus is on the relationship between the company's officers, directors, shareholders, stakeholders and government regulators, and how these parties interact to oversee the operations of a company. Particular emphasis is placed on ameliorating the inherent tensions between a company's shareholders (principals) and the board of directors and management (agents).

**COSO:** Formed in 1985, the Committee of Sponsoring Organizations of the Treadway Commission's objective is to study fraudulent financial reporting.

**cumulative voting:** a provision that permits shareholders to apportion the total number of votes they are entitled to cast in the election of directors in any fashion they desire. The total number is equal to the number of directors to be elected at the meeting multiplied by the number of shares eligible to be voted. With cumulative voting, each shareholder may cast the total number of votes that he or she is entitled to cast for one director, or apportion them among the candidates as desired. The use of cumulative voting enables holders of a minority stake to elect one or more directors if they are able to muster sufficient support. For example, the owners of 11 percent of the voting shares in a corporation with 10 open board seats is assured of electing one director if they vote all their shares cumulatively for a single nominee. The greater the number of directors to be elected, the lower the level of support needed to elect directors cumulatively.

**CUSIP:** the trademark for a system (Committee on Uniform Securities Identification Procedures) that identifies and assigns a unique number to companies for their securities of stocks and bonds.

**dead-hand poison pill:** under a dead-hand poison pill (shareholder rights plan) provision, only the directors in place at the time the pill is adopted, or their designated successors, can remove the pill. Dead-hand pills are illegal under Delaware corporate law.

**deferred stock:** a share grant in which the participant receives a specified amount of shares, granted at no cost, if they remain employed with the company for a certain period of time. The participant does not have voting or dividend rights prior to vesting, though dividends typically cumulate until vesting.

**Depository Trust Company (DTC):** depository that provides computerized, book-entry transfer and pledges of securities for financial institutions (brokerage firms, banks, etc.) held in the depository nominee name, Cede & Company.

**dilution:** when options are exercised or restricted shares are awarded, a company's assets, shareholders' voting power, cash flow and profits are spread over a larger number of shares, and each shareholder's voting rights are diluted correspondingly.

**directors' duties:** a provision that requires or allows directors to evaluate the impact that a proposed change in control would have on employees, host communities, suppliers and other constituencies. Some state laws allow directors to consider such factors whether or not the company has adopted a charter or bylaw provision.

**discretionary option grants:** pay programs in which the compensation/administering committee has the discretion to grant options and also issue reloads on those

options.

**discretionary voting:** a vote that is issued on behalf of broker clients on routine proposals, without the direction of the beneficial share owner. The vote is issued in accordance with management's recommendation, prior to a meeting.

**dividend equivalent:** a Unit that accrues to option holders based on dividends declared and paid on shares covered by outstanding underlying options. When the option is exercised, the option holder receives cash or additional stock in exchange for the value of the dividend units.

**divisional or unbundled incentive compensation plans:** plan participants are rewarded based on the performance of their division or business unit, rather than based on the performance of the company as a whole.

**dual class common stock:** some companies have two or more classes of common stock. The voting rights attached to each class of stock may (but do not always) vary from the one share per vote standard. Under some voting schemes, one class of stock will be granted super voting rights—typically five or 10 votes per share. In other instances, a class of shares may carry a fraction of a vote per share or none at all. Some companies also provide one or more classes of stock with special rights, such as the ability to elect a certain percentage of the directors.

**duty of care:** a fiduciary duty owed by the directors of a corporation under state corporate law to be adequately informed in making a business decision. Under Delaware case law, this includes the requirement to consider all material information reasonably available.

**duty of loyalty:** a fiduciary duty owed by the directors of a corporation under state corporate law, which requires them, in making a business decision, not to have a material self-interest or lack independence in the decision and to act in good faith.

**employee stock ownership plan (ESOP):** a qualified defined contribution plan under the IRS Code which allows the ESOP plan trustees to invest up to 100% of the plan's assets in shares of its own company stock. Variants of these plans include the stock bonus plan, the leveraged stock bonus plan (where the trust can borrow money from lending sources to buy more stock) and matching ESOPs (in which employees match the contribution that the company makes). ESOPs offer employees tax deferral benefits and companies a tax deduction.

**employee stock purchase plan:** a plan qualified under Section 423 of the IRS Code, which allows employees to purchase shares of stock through payroll deductions.

**enterprise value:** A measure of a company's total market value calculated as the sum of the following: Price multiplied by Common Shares Outstanding; Preferred Stock - Carrying Value; Total Short-Term Debt; Total Long-Term Debt; and Accumulated Minority Interest; minus Cash & Equivalents.

**equity ownership plans:** a generic term for any type of plan that promotes employee ownership. Equity ownership plans may include employee stock ownership plans, stock option plans, stock purchase plans, or a variety of other plans.

**evergreen plan:** a plan provision that typically increases the number of shares available for issue under the plan on an annual basis by a predetermined percentage of the company's common stock outstanding. Such plans often have no termination date and permit the plan to operate indefinitely without further shareholder approval.

**exchange ratio:** the ratio used to compute how much of a type of consideration is to be issued in a business combination for each share of the target firm.

**exchange-traded fund (ETF):** A security that tracks an index and represents a basket of stocks like an index mutual fund, but trades like a stock on an exchange.

**executive committee:** a subset of the board of directors that concentrates on matters occurring between board meetings and may often act on behalf of the board. Typically, the executive committee includes executive directors.

**exercise price:** the price at which a stock option may be exercised. This price may be above (premium priced) or below (discounted) the current or projected future price of an option grant. Exercise prices may be fixed, based on a formula or variable.

**fairness opinion:** a letter from an investment banking firm to the board of directors (or in some cases, such as going private transactions, to a special committee of disinterested directors) of one of the corporations in a business combination to the effect that the consideration to be paid (or, in the case of a stock merger or an

exchange offer, the exchange ratio) in the business combination is fair to the shareholders (in some cases such as going private transactions, the public shareholders) of the target, or if addressed to the board of directors of the bidder, to the bidder, from a financial point of view.

**fair price requirements:** provisions that compel anyone acquiring control of a corporation to pay all shareholders the highest price that the acquirer pays to any shareholder during a specified period of time. Fair price requirements may be included in a corporation's charter, or in state business incorporation statutes. Fair price requirements are intended to deter two-tier tender offers in which shareholders who tender their shares first received a higher price for their shares than other shareholders.

**"fiduciary out":** a provision in a negotiated merger or acquisition agreement that permits the target's board to take certain actions, such as considering competing bids, providing confidential information to potential bidders, entering into merger discussions with them, and even terminating the agreement, even though such actions are prohibited by the deal protection provisions of the agreement, if failure to take such actions would be inconsistent with the board's fiduciary duties to the target or its shareholders.

**formula-based stock incentive plan:** a plan whereby an executive receives phantom stock (see definition below) which is not publicly traded. The value of these shares is derived through a formula, which is normally based on accounting variables. This form of compensation is very much like a performance share or performance unit plan.

**global depository receipts:** negotiable certificates that represent ownership of shares in a non-U.S. corporation, held in trust. They are listed and traded on two or more capital markets (i.e., a European exchange and a U.S. exchange).

**"golden parachute":** a popular phrase for severance agreements that provide generous benefits to top executives who are fired or who resign following a change in management control. Some golden parachutes can be deployed even without a change in control if a potential acquirer crosses a specified ownership threshold.

**"golden" shares:** shares of stock (and/or takeover-veto rights) owned by the government and public sector organizations, commonly found in state-owned enterprises (SOE's).

**governance committee:** a subset of the board of directors responsible for overseeing corporate governance issues. A governance committee reviews the size, composition, performance and compensation of the board.

**greenmail:** practice of repurchasing shares from a bidder at an above market price in exchange for the bidder's agreement not to acquire the target company. Greenmail is widely considered to be a form of blackmail. Some companies have attempted to deter greenmail by adding anti-greenmail provisions to their charters.

**in-the-money:** a situation in which an underlying stock is trading above the option's strike (exercise) price.

**Incentive (qualified) stock option (ISO):** as defined under section 422(b) of the tax code, this is an option that qualifies for preferential tax treatment. This type of option must be priced at fair market value. The option holder is not taxed on these options at the time of the grant or the time of the exercise. Instead, the applicable tax is deferred until the stock received under the option is sold and is then calculated based on the capital gains rate. The tax-favored nature of incentive stock options to executives is offset, however, by a loss of the deduction to the company. For an incentive option to qualify for such tax treatment, it must satisfy a number of conditions stipulated in Section 422A of the Internal Revenue Code, including:

- The stock option plan must indicate the total number of shares that may be issued and identify the employees or class of employees that qualify.
- The plan must be approved by shareholders within 12 months before or after its adoption by the board of directors.
- Options must be granted within 10 years of adoption or shareholder approval, whichever is first, and granted options must be exercised within 10 years of the grant.
- The exercise price of the option may not be less than the market price of the stock at the time the option is granted.
- No individual may exercise incentive options worth more than \$100,000 in a single year. Under current accounting regulations, a company is generally not required to take any charges to its reported earnings for a stock option grant.

**indemnification:** permits corporations to reimburse officers and directors for expenses they incur as a result of being named as defendants in lawsuit awards and settlements, as well as expenses. Without indemnification, or directors' liability

insurance, most companies would be unable to attract outside directors to serve on their boards.

**Independent chairman:** a chairman of the board who is not an employee/executive of, or affiliated with, the company. In this situation, a company has separated the roles of the chairman and CEO. (Non-employee chairman)

**Independent director:** a director elected by the shareholders who is not affiliated with the company.

**Industry-indexed options:** option plans in which the exercise price of an at-market grant adjusts upward or downward for each period (typically a quarter) based on the average performance of an industry peer group. Under these plans, participants are rewarded only for above-average stock price performance.

**interlocking directorship:** a conflict where a director and executive of company ABC sits on a board of company XYZ and a director and executive of company XYZ sits on the board of company ABC. This arrangement is particularly controversial when the interlock involves board members serving on compensation committees.

**junior stock :** a variation of restricted stock whereby a company seeks to depress the initial value of the stock by design, yet leave the employee with the upside potential of the company's regular common stock.

**lead director:** a director who assumes responsibility for certain subject matters and acts as an independent conduit of communication between the board and management.

**limited stock appreciation rights (LSARs):** rights that are used in the event of a change in ownership or control. Usually granted in tandem with incentive stock options and nonqualified stock options, LSARs allow the holder to receive the difference between the exercise price and market price of an option without having to make a personal cash outlay to exercise the option. The design of these rights permits the recipient to receive the higher offer price in a two-tier tender offer. In many cases, LSARs are granted only to insiders (as defined by the SEC) because insiders are prohibited from selling shares within six months of a share purchase. The latter applies even if the company is in the midst of a tender offer or other event impacting a company's ownership or control.

**megagrants/super options:** very large grants of stock options given to key executives. These large option grants are usually granted to offset a low base salary in a company that has the potential for significant future growth.

**merger:** a statutory combination of two corporations, in which one corporation ceases to exist as a legal entity. The surviving corporation retains its corporate identity and acquires all of the assets and liabilities of the other corporation.

**"MRV":** acronym which refers to the vote recommendation of the management of a company (or the Management Recommended Vote).

**nominating committee:** a subset of the board of directors that has a responsibility to nominate candidates for board seats.

**nonqualified stock options (NSOs) or nonstatutory stock options:** stock option grants that do not qualify for tax-favored status. The option exercise price of such awards can be set above or below 100 percent of fair market value at grant date, and the term of such awards can be longer or shorter than ten years. Such grants are taxable to the recipient in the year the options are exercised. The option spread is deductible by companies for tax purposes, allowing the company to take the tax deduction at the time the recipient receives the option income. Some companies permit an exercise price as low as par value, or just pennies per share in certain cases, while other companies allow the compensation committee, at its sole discretion, to set the exercise price of NSOs. Also referred to as "discounted" stock options.

**omnibus plan:** a stock-based incentive plan providing significant flexibility by authorizing the issue of a number of award types (usually five or more), which may include incentive stock options, nonqualified stock options, SARs, restricted stock, performance shares, performance units, stock grants and cash.

**option overhang:** the number of stock options granted and outstanding at a company, expressed as a percentage of its outstanding common stock.

**option run rate:** the average number of stock options granted by a company annually (usually the three-year average), expressed as a percentage of its outstanding common stock.

**out-of-the-money:** a situation in which an underlying stock is trading below an option's strike (exercise) price.

**performance shares:** stock grants contingent upon the achievement of specified performance goals. The number of shares available typically varies with performance as measured over a specified period. Few companies clearly identify the criteria used to select performance measures or the specific hurdle rates that must be met. Performance periods typically extend for a three to five year period.

**performance units:** cash awards contingent upon the achievement of specified performance goals. The amount of cash payable typically varies with performance as measured over a specified period. Few companies clearly identify the criteria used to select performance measures or the specific level of growth, or profit return, that must be realized. Performance periods typically extend for a three- to five-year period.

**perquisites:** benefits given to selected employees that include: chauffeured limousines, personal use of corporate aircraft, security systems, executive dining rooms, legal/tax/financial counseling and services, and zero- or low-interest rate loans. Perks are not based on any performance standards and are rarely taken away once bestowed.

**phantom stock or formula value stock:** shares analogous to company stock frequently used by a private company or a division of a publicly traded company. The value of phantom shares is determined by a formula rather than the market price. Payment of phantom awards may be made in cash or stock.

**poison pill:** term for a takeover defense that permits all shareholders other than an acquirer to purchase shares in a company at a discount if the company becomes a takeover target. A company with a pill (also known as a "shareholder rights plan") usually distributes warrants or purchase rights that become exercisable when a triggering event occurs. The triggering event occurs when an acquirer buys more than a specified amount of a target company's stock without permission of the target company's board. Once the pill is triggered, shareholders (except for the acquirer) usually have the right to purchase shares directly from the target company at a 50% discount, diluting both ownership interest and voting rights. Most pills have provisions that permit the board to cancel the pill by redeeming the outstanding warrants or rights at nominal cost. Pills can force acquirers to bargain directly with a target company's board, but they can also be used to deter or to block acquisition bids altogether. Corporations are not required by law to submit their poison pills for shareholder approval.

**precatory shareholder proposal:** a shareholder proposal which asks or urges the board to adopt and implement a policy. Most shareholder proposals are submitted as precatory proposals, meaning the proposal's passage by shareholders is not legally binding on the board of directors to implement.

**preemptive rights:** preemptive rights are intended to allow existing shareholders to maintain their proportionate level of ownership by giving them the opportunity to purchase additional shares pro rata before they are offered to the public. Preemptive rights are something of an anachronism today, because shareholders of publicly traded companies who want to maintain their proportionate ownership interest may do so by purchasing shares in the open market. Many companies whose charters have preemptive rights provisions have asked shareholders to amend their charters to abolish preemptive rights.

**premium priced options:** an option whose exercise price is above the market price at the time of grant.

**proxy:** the granting of authority by shareholders to others, most often corporate management, to vote their shares at an annual or special shareholders' meeting.

**proxy contest:** the most common type of contest is an effort by dissident shareholders to elect their own directors. A contest may involve the entire board, in which case the goal is to oust incumbent management and take control of the company. Or, it may involve a minority of board seats, in which case dissidents seek a foothold position to change corporate strategy without necessarily changing control. Proxy contests may also be fought over corporate policy questions; dissidents may, for example, wage a proxy contest in support of a proposal to restructure or sell a corporation. Many proxy contests are today waged in conjunction with tender offers as a means of putting pressure on a target company's board to accept the tender offer. In a well-financed proxy contest, dissidents usually print and distribute their own proxy materials, including their own proxy card. Proxy contests usually feature letter writing and advertisement campaigns to win shareholder support.

**proxy statement:** a document in which parties soliciting shareholder proxies provide shareholders with information on the issues to be voted on at an annual or special shareholders' meeting. The soliciting party generally presents arguments as to why shareholders should grant them their proxy. The information that must be disclosed to shareholders is set forth in Schedule 14A of the Securities Exchange Act of 1934 for a proxy solicited by the company, and in Schedule 14B of the act for proxies solicited by others.

**put option:** the right to sell the corresponding stock or futures contract at a fixed price until the expiration date

**recapitalization plan:** any plan in which a company changes its capital structure. Recapitalization can result in larger or smaller numbers of shares outstanding, or in creation of new classes of stock in addition to common stock. Recapitalization plans must be approved by shareholders.

**reincorporation:** changing the state of incorporation. A company that reincorporates must obtain shareholder approval for the move and for the new charter it adopts when it shifts its state of incorporation. Many reincorporations involve moves to Delaware to take advantage of Delaware's flexible corporate laws.

**reload options, restoration options, incremental stock ownership, or accelerated-ownership options:** A compensation scheme in which a new option is granted for each exercise of a plan participant's stock options. These types of awards assure that early exercise of options does not result in the termination of the total amount of options granted, since each exercised option is replaced with a new option. Under this form of compensation, the risk that a plan participant will not have captured the highest stock price is eliminated because every time an option is exercised, another option replaces the exercised option, thus enabling the plan participant to continue to realize all the upside potential inherent in the original option grant. For example, if an executive exercises an option to purchase 1,000 shares by turning in 500 shares already owned, such person would receive a reload option to buy 500 shares. Reload options are issued at the market price on the reload date and may be held for the remainder of the original option's term.

**repricing:** an amendment to a previously granted stock option contract that reduces the option's exercise price. Options can also be repriced through cancellations and regrants. The typical new grant would have a 10-year term, new vesting restrictions and a lower exercise price reflecting the current lower market price.

**restricted stock:** a grant of stock, subject to restrictions, with little or no cost to the participant. Such shares are usually subject to forfeiture if the holder leaves the company before a specified period of time; thus, the awards are often used to retain key employees. The restrictions usually lapse after three to five years, during which time the holder cannot sell the shares. Typically, the holder is entitled to vote the stock and receives dividends on the shares.

**restructuring plan:** any plan that involves a significant change in a company's capital structure. This would include a recapitalization plan, a leveraged buyout or a major sale of assets. Restructuring plans often require shareholder approval before they can be implemented.

**rights of appraisal:** rights of appraisal provide shareholders who do not approve of the terms of certain corporate transactions the right to demand a judicial review in order to determine the fair value for their shares. The right of appraisal generally applies to mergers, sales of essentially all assets of the company, and charter amendments that may have a materially adverse effect on the rights of dissenting shareholders.

**rule 10b-5:** a major rule promulgated by the U.S. Securities and Exchange Commission, pursuant to its authority granted under the Securities Exchange Act of 1934. The rule prohibits any act or omission resulting in fraud or deceit in connection with the purchase or sale of any security, including insider trading. Whether or not Rule 10b-5 prohibits insider trading is a matter of some dispute. The SEC has long advocated an "equal access theory" with regard to 10b-5, arguing that anyone who has material, non-public information must either disclose that information or abstain from trading. However, the Supreme Court rejected the strongest version of that theory in *Chiarella*, holding a person with no fiduciary duty to the shareholders had no duty to disclose information before trading on it. Recently, the Supreme Court has embraced a "misappropriation" theory of omissions, holding in *O'Hagan* that misappropriating confidential information for securities trading purposes, in breach of a duty owed to the source of that information, gives rise to a duty to disclose or abstain.

**schedule 13D filing:** an SEC disclosure document that must be filed by any person

(including a group) who acquires beneficial ownership of 5 percent or more of the outstanding shares of a class of voting equity securities registered under Section 12 of the Exchange Act with the SEC and with each national exchange on which the securities are traded. A Schedule 13D discloses, among other things, the acquiring person's plans or proposals relating to the company. (an "active" acquirer of stock)

**schedule 13F Filings:** Institutional owners are entities beneficially owning at least \$100 million in equity assets, which (under the Williams Act) requires them to disclose their ownership positions to the SEC each quarter on Form 13F. This includes mutual funds, pension funds, banks, insurers, or anyone else that holds very large portfolios. According to Section 13 of the Exchange Act, a beneficial owner is "any person who, directly or indirectly, through any contract, arrangement, understanding relationship, or otherwise has or shares: (1) Voting power which includes the power to vote, or to direct the voting of such security; and/or (2) Investment power which includes the power to dispose, or to direct the disposition, of such security. All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person." Thus, an investment advisor counts as the "beneficial owner" of shares in any account it manages or advises on.

**schedule 13G filing:** an SEC disclosure document that calls for less disclosure than does a Schedule 13D and that may be filed, as an alternative to Schedule 13D, by any person who beneficially owns less than 20 percent of the outstanding shares of a class of voting equity securities and did not acquire the securities with the purpose or effect of changing or influencing control of the issuer or in connection with or as a participant in any transaction having that purpose or effect. (a "passive" acquirer of stock)

**section 162(m):** the IRS Code Section that limits the deductibility of compensation in excess of \$1 million to a named executive officer unless certain prescribed actions are taken.

**share blocking:** a short period of time (normally 2 to 5 days) prior to the annual general meeting (AGM) during which shareholders who have exercised their voting rights are restricted, and "blocked", from trading their shares. Blocking restrictions can vary significantly across non-U.S. capital markets and is more prevalent in markets with less sophisticated custody and share certification systems.

**shareholder proposal/resolution:** a proposal submitted to the company by a shareholder under rule 14(a)-8 of the Securities and Exchange Commission. Shareholder proposals are usually precatory, simply requesting the company to make a change.

**solicitor:** an agent hired by a company to handle the proxy process (i.e., distribute material or solicit votes).

**special meeting:** A meeting of stockholders called to vote on corporate matters presented by the board or shareholders. Special meetings are often called to vote on mergers, acquisitions, restructurings or recapitalizations.

**stakeholder laws:** these laws state that corporate directors owe a duty to a host of constituencies beyond shareholders: local communities, employers, suppliers, creditors, and others. This is in contrast to the traditional model of the publicly held corporation in law and economics, which says that corporate directors have a legally enforceable duty to one constituency-their shareholders.

**stock appreciation rights (SARs):** an award paid in cash or shares to the employee equal to the stock price appreciation from the time of grant to the exercise date. When granted in tandem with options, the exercise of the SAR cancels the option.

**stock options:** give holders the right to purchase stock at a fixed price for a specified period of time. The difference between the exercise price and the market price is called the "spread" and constitutes the reward to the option holder. The value of an option grant is heavily dependent on the volatility of a particular company's stock. The more volatile the company's stock, the more valuable the option grant. Thus, options are usually most valuable at high-growth, low-dividend companies.

**stock purchase right:** the right to purchase shares of stock at a discount for a set period of time.

**street name/nominee name :** holding a customer's stock "in street name" is when broker-dealers, banks, or voting trustees register the shares held for customer accounts in their own names. Such a system makes it more difficult to obtain shareholder information. Often the legal owners are not the beneficial owners of the stock and therefore may not have the power to vote or direct the voting of the stock. The beneficial owners direct the brokers and banks as to whether their identity may

be disclosed.

**supermajority:** most state corporation laws require that mergers, acquisitions and amendments to the corporate charter be approved by a majority of the outstanding shares. A company may, however, set a higher requirement by obtaining shareholder approval for a higher threshold. Some supermajority requirements apply to mergers and acquisitions. Others apply to amendments to the charter itself-that is, the charter, or certain parts of it, may be amended in the future only if the amendments receive the specified supermajority level of support, typically two-thirds, 75 percent or 80 percent of the outstanding shares.

**time-accelerated restricted stock award plan (TARSAP):** a restricted stock plan that has built-in performance criteria. The TARSAP normally provides the opportunity to fix flexible terms, thus limiting the economic exposure of an employee.

**tin parachutes:** compensation agreements that cover middle management and other non-highly compensated employees in the event of a change in control. Like golden parachutes, these severance payment packages can be adopted by a board without shareholder approval, provided that the parachute is not adopted primarily as a defensive measure in response to a hostile bid.

**transfer agent:** an agent of a company that maintains the records of registered share owners.

**treasury stock:** stock reacquired by a corporation to be retired or resold to the public. Treasury stock is issued but not outstanding, and is not taken into consideration when calculating earnings per share or dividends, or for voting purposes.

**underwater options:** options for which the exercise price exceeds the current market price.

**unequal voting:** corporations with dual class capitalization plans usually have two classes of stock with different voting and dividend rights. Typically, one class of stock has higher voting rights and lower dividend rights. Insiders owning the higher voting shares are able to maintain control, even though they usually own only a fraction of the outstanding shares.

**vesting schedule:** a holding period following grant date during which time options may not be exercised.

**volatility:** the potential dispersion of a company's stock price over the life of the option program. Volatility is a critical input into option pricing models.

**vote-no campaign:** a protest vehicle used on occasion is the so-called "just-vote-no" campaign, in which shareholders withhold votes from directors on an organized basis to register their displeasure. These campaigns are relatively infrequent, and can be difficult to organize. At times they have received substantial publicity.

**written consent:** the ability to act by written consent allows shareholders to take action collectively without a shareholders' meeting. The written consent procedure was originally developed to permit closely held corporations to act quickly by obtaining consents from their shareholders. The procedure is, however, available in many states to publicly traded companies as well, unless prohibited or restricted in a company's charter. Many companies have sought shareholder approval to restrict or abolish the written consent procedure; their principal reason for doing so is to prevent takeovers opposed by the incumbent board and management.