

**MEMO# 10551**

December 10, 1998

# **ICI COMMENT LETTER ON NYSE'S PROPOSED AMENDMENTS TO ITS SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS**

\* See Memorandum to Investment Advisers Committee No. 39-98 and SEC Rules Committee No. 124-98, dated December 4, 1998. [10551] December 10, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 40-98 SEC RULES COMMITTEE No. 125-98 RE: ICI COMMENT LETTER ON NYSE'S PROPOSED AMENDMENTS TO ITS SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS

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The Institute recently filed with the Securities and Exchange Commission the attached comment letter on its release soliciting comment on the New York Stock Exchange's proposed amendments to its shareholder approval policy regarding stock option plans. The Exchange's proposal focuses primarily on defining "broadly-based" plans. The Institute's letter is substantially similar to the draft letter we circulated to you last week.\* The Institute's letter generally supports the Exchange's proposal and notes that the proposed definition of "broadly-based" plan addresses many of the concerns expressed in our earlier letter (also attached), including that the definition reflects the important distinction between employee eligibility and employee participation. The letter also supports the Exchange's decision to designate the definition as an exclusive test rather than a non-exclusive safe harbor as was proposed. The letter also notes that although the Exchange's approach in developing a workable definition for broadly-based plans is a step in the right direction, more work needs to be done in order to ensure that all stock option plans that have the potential to significantly dilute shareholders' interests should require shareholder approval. In this regard, the letter supports the Exchange's adoption of the Task Force's recommendation that "the Task Force or other appropriate group immediately commence a study to establish an overall dilution listing standard for all non-tax qualified Plans that otherwise would be exempt from shareholder approval." Barry E. Simmons Assistant Counsel Attachment