

MEMO# 16823

November 26, 2003

DRAFT INSTITUTE LETTER ON NYSE PROPOSAL RELATING TO THE EXCHANGE'S CORPORATE GOVERNANCE AND MANAGEMENT STRUCTURE

[16823] November 26, 2003 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 33-03 SEC RULES COMMITTEE No. 98-03 RE: DRAFT INSTITUTE LETTER ON NYSE PROPOSAL RELATING TO THE EXCHANGE'S CORPORATE GOVERNANCE AND MANAGEMENT STRUCTURE As we previously informed you,¹ the SEC has published for comment a proposed rule change filed by the New York Stock Exchange amending and restating the NYSE's Constitution to alter the governance and management structure of the Exchange.² The Institute has prepared a draft comment letter on the proposal. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the proposal must be received by the SEC no later than December 4, 2003. If you have any comments on the Institute's draft letter, please contact the undersigned by phone at 202-371-5408 or by e-mail at aburstein@ici.org no later than December 2. The draft letter states that the Institute is pleased that the NYSE has undertaken to implement much needed changes to its corporate governance structure, in particular, placing responsibility for governance, compensation, internal controls and supervision of regulation in a Board of Directors independent from owner-constituents. Nevertheless, given that requiring Board independence from owner-constituents is intended to align the Board with the interest of investors, the draft letter states that it is illogical that the NYSE Constitution does not guarantee any investor representation on the Board. The draft letter therefore recommends that the NYSE Constitution be amended to explicitly reserve several Board seats for representatives of investors. In addition, because institutional investors submit a significant portion of the orders traded on the Exchange, the draft letter also recommends that several Board seats be set aside specifically for "representatives of significant investors of equity securities on the Exchange" (e.g., mutual funds, pension funds). The draft letter also states that the "buyside" should have a greater voice on the Board of Executives. In particular, in order to facilitate a meaningful debate on the issues for which the Board of Executives was established to advise the senior management and the Board of

1 Memorandum to SEC Rules Committee No. 96-03 and Equity Markets Advisory Committee No. 31-03, dated November 21, 2003 [16807].

2 Securities Exchange Act Release No. 48764 (November 7, 2003), 68 FR 64380 (November 13, 2003).

2 Directors of the NYSE (e.g., market structure, operations, and market performance), the draft letter states that there needs to be a more balanced representation on the Board of Executives between the buyside and sellside (not just between specific Exchange constituencies). The draft letter therefore urges the NYSE to assign more slots on the Board of Executives for buyside representatives. Ari Burstein

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