

MEMO# 13056

January 23, 2001

INSTITUTE DRAFT COMMENT LETTER TO NASDAQ CONCERNING SHAREHOLDER APPROVAL REQUIREMENTS FOR STOCK OPTION PLANS

[13056] January 23, 2001 TO: INVESTMENT ADVISERS COMMITTEE No. 1-01 SEC RULES COMMITTEE No. 10-01 RE: INSTITUTE DRAFT COMMENT LETTER TO NASDAQ CONCERNING SHAREHOLDER APPROVAL REQUIREMENTS FOR STOCK OPTION PLANS The Nasdaq Stock Market, Inc. recently issued a Bulletin soliciting comments concerning its consideration of proposals to require shareholder approval of stock option plans. Specifically, Nasdaq requested comment on recommendations by the New York Stock Exchange's Special Task Force on Stockholder Approval Policy that would require shareholder approval for all plans that included officers and directors, and would set an overall dilution standard for plans that did not include officers and directors. Under this standard, shareholder approval would be required for most plans, but issuers generally would be permitted, without obtaining shareholder approval, to adopt plans involving no more than ten percent of the potential dilution authorized under shareholder-approved plans. A copy of the Nasdaq Bulletin is attached. The attached draft comment letter supports the NYSE Task Force recommendations and urges Nasdaq to propose and adopt similar (or alternative) rules in coordination with the NYSE. The letter notes that differing standards among various exchanges might create a "race to the bottom" if exchanges compete with each other to attract new listings. Comments are due to Nasdaq by Monday, February 5, 2001. If you have any comments on the draft letter, please contact me by telephone at (202) 371-5432, by fax at (202) 326-5827, or by e-mail at kireland@ici.org no later than Thursday, February 1, 2001. Kathy D. Ireland Associate Counsel Attachments Attachment no. 1 (in .pdf format)