

MEMO# 13166

February 14, 2001

SEC PROPOSAL TO ENHANCE DISCLOSURE OF EQUITY COMPENSATION PLANS IN PROXY STATEMENTS AND FORM 10-K REPORTS

[13166] February 14, 2001 TO: SEC RULES COMMITTEE No. 17-01 RE: SEC PROPOSAL TO ENHANCE DISCLOSURE OF EQUITY COMPENSATION PLANS IN PROXY STATEMENTS AND FORM 10-K REPORTS The Securities and Exchange Commission has issued a release proposing amendments to the disclosure requirements for proxy statements and periodic reports under the Securities Exchange Act of 1934.¹ The proposed amendments would require a registrant to disclose in its proxy statement or annual report filed on Form 10-K certain information related to each of its equity compensation plans, regardless of whether such plans are subject to shareholder approval. The proposed amendments are intended to facilitate investor understanding of a registrant's equity compensation policies and practices so as to better enable investors to make informed voting and investment decisions. The Commission's proposal is attached, and it is summarized below. The comment period for the Commission's proposal ends April 2, 2001. If you have comments that you would like the Institute to consider in its comment letter, please submit them to Barry Simmons by telephone at (202) 326-5923, by facsimile at (202) 326-5827, or by e-mail at bsimmons@ici.org, by Thursday, March 1, 2001. Proposed Disclosure The proposed amendments would require a registrant to provide a table identifying each equity compensation plan in effect as of the end of the last completed fiscal year and containing the following information for each plan -- 1. the number of securities that have been authorized for issuance by the registrant's board of directors; 1 Disclosure of Equity Compensation Plan Information, SEC Release Nos. 33-7944, 34-43892 (Jan. 26, 2001); 66 Fed. Reg. 8732 (Feb. 1, 2001) ("Proposing Release"). The Commission's proposal would amend Item 201 of Regulation S-B, Item 201 of Regulation S-K and Form 10-K, Form 10-KSB and Schedule 14A under the Securities Exchange Act of 1934. 22. the number of securities issued pursuant to equity awards made during the last completed fiscal year, plus the number of securities to be issued upon the exercise of options, warrants or rights granted during the last completed fiscal year; 3. the number of securities to be issued upon the exercise of outstanding options, warrants or rights; and 4. the number of securities remaining available for future issuance, other than securities to be issued upon the exercise of outstanding options, warrants or rights. The proposed amendments would require the above information for any equity compensation plan that provides for the award of a registrant's securities or the grant of options, warrants or rights to purchase the registrant's securities to officers, directors and employees of the registrant or its parent or subsidiary

corporations, or to any other person. The information would also be required regardless of whether the equity compensation plan had received shareholder approval. The proposed amendments would require the identification, however, of any plans that were adopted during the last completed fiscal year that did not receive shareholder approval. Such identification would include, either in the table or through a narrative statement, a brief narrative description of the material features of each plan. Location of Disclosure Proxy Statement - Under the proposed amendments, if shareholders are acting on an equity compensation plan at a meeting, the registrant would have to disclose in the proxy statement relating to such meeting information about each of its equity compensation plans. Thus, disclosure would be required in a proxy statement that seeks shareholder approval to modify an existing compensation plan, such as a vote to increase the number of securities for issuance under the plan. The Proposing Release explains that the purpose for requiring proxy statement disclosure is in recognition of the importance that an understanding of a registrant's equity compensation policies and practices can have on a shareholder's decision on whether to approve a registrant's proposed adoption of a new compensation plan or a modification of an existing plan. Form 10-K - The proposed amendments would require a registrant to include equity compensation plan disclosure in its annual report on Form 10-K. The Proposing Release explains that disclosing this information is necessary, even in years when a registrant is not submitting a compensation plan for shareholder approval, because shareholders should know the extent to which a registrant has awarded securities or granted options, warrants or rights to participants under its existing equity plan. Although required in an annual report on Form 10-K, the Proposing Release also intends to modify Exchange Act Rule 14a-3 to make clear that the required disclosure is not required in an annual report to shareholders. Barry E. Simmons Associate Counsel Attachment Attachment (in .pdf format) 3

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