

**MEMO# 16741**

November 6, 2003

## **NYSE ISSUES GOVERNANCE AND MANAGEMENT STRUCTURE PROPOSAL**

[16741] November 6, 2003 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 30-03 SEC RULES MEMBERS No. 150-03 RE: NYSE ISSUES GOVERNANCE AND MANAGEMENT STRUCTURE PROPOSAL The New York Stock Exchange has sent a proxy statement to its members containing proposed amendments to the NYSE Constitution that would alter the governance and management structure of the Exchange.<sup>1</sup> The most significant aspects of the NYSE's proposal are summarized below. In particular, the NYSE's proposal would place responsibility for governance, compensation, internal controls and supervision of regulation in the hands of a Board of Directors that would be independent from NYSE management, NYSE members, member organizations and listed companies. The new Board would consist of eight members<sup>2</sup> as well as the NYSE Chairman and Chief Executive Officer.<sup>3</sup> The initial Board would serve until June 2004. Thereafter, the entire Board would stand for election in June of each year. The Board of Directors would appoint a Board of Executives made up of approximately twenty constituent representatives, balanced among the major broker-dealers, the "floor," lessor members, institutional investors and large public funds, and listed companies. The Board of Executives would meet at least six times a year and would discuss Exchange performance, membership issues, listed company issues and public issues relating to market structure and performance. The members of the Board of Directors also would serve on several Board-level committees. Specifically, it is anticipated that the Board would have an Audit Committee and a Regulatory Oversight & Regulatory Budget Committee to ensure that proper controls and regulatory supervision are in place; a Human Resources & Compensation Committee to ensure 1 The proxy statement can be found on the NYSE's website at <http://www.nyse.com/pdfs/ProxyStatement110403.pdf>. 2 The proposed slate of directors consists of Madeleine K. Albright, Herbert M. Allison, Jr., Euan D. Baird, Marshall N. Carter, Shirley Ann Jackson, James S. McDonald, Robert B. Shapiro, and Sir Dennis Weatherstone. 3 The Board would choose a Chairman and a CEO annually in June. If the Board identifies a person able to lead both it and the Board of Executives and to discharge the functions of chief executive, one person may serve both roles. Otherwise, it would select a different person for each role. 2 that management is paid appropriately; and a Nominating & Governance Committee to ensure that the Board of Directors and Board of Executives function well and that appropriate people are nominated for the Board and appointed to the Board of Executives. The Board also would appoint some of its members to committees (along with Board of Executives members) dealing with the Quality of Markets, Market Structure and Strategy, Finance, and appeals of disciplinary actions and de-listings. Finally, the transparency of the workings of the Board of Directors and the NYSE in general would be increased. Among other things, prior to the Board's annual meeting, the NYSE would publish a proxy statement disclosing: the Board



Committee charters and the Committee reports on their activities for the year; membership on the Board, on the Board of Executives, and on the various standing and advisory Committees; the facts establishing each Board member's independence, including any non-director relationship between Board members and the NYSE itself and any material relationships among Board members; and Board compensation. In addition, the annual report of the Human Resources & Compensation Committee would detail compensation decisions for the top five NYSE officers, the existence of any contracts for these individuals, the compensation for the top management team as a whole, and the competitive comparisons and performance judgments that guided the Committee's recommendations. The Board of Directors also would detail the considerations that lead to membership on the Board of Executives, and the current membership. A report of the activities of the Board of Executives would be included in the proxy statement. The NYSE's proposal will be voted on by NYSE members at a special meeting on November 18th. If the proposal is approved, the NYSE will submit the proposal to the SEC for consideration and public comment. Ari Burstein Associate Counsel

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