

MEMO# 10020

June 16, 1998

NYSE REQUEST FOR COMMENT REGARDING SHAREHOLDER APPROVAL REQUIREMENTS FOR BROADLY-BASED STOCK OPTION PLANS

1 See Memorandum to Investment Advisers Committee No. 14-98 and SEC Rules Committee No. 38-98, dated April 30, 1998. [10020] June 16, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 22-98 SEC RULES COMMITTEE No. 58-98 RE: NYSE REQUEST FOR COMMENT REGARDING SHAREHOLDER APPROVAL REQUIREMENTS FOR BROADLY-BASED STOCK OPTION PLANS

As we recently informed you, the New York Stock Exchange adopted amendments to its shareholder approval policy ("Policy"), which requires shareholders of a listed company to approve certain stock issuances. 1 Among other things, the Policy requires shareholder approval of "any stock option or purchase plan, or any other arrangement, pursuant to which officers or directors may acquire stock." This requirement excepts a "broadly-based Plan that includes other employees." The Exchange is soliciting comment on how it should define "broadly-based Plan" for this purpose. The Exchange's request for comment is attached. Comments are due to the NYSE by July 10, 1998. If you have comments that you would like the Institute to consider including in its comment letter, please contact me by June 24, 1998 (telephone: 202/326-5824, fax: 202/326-5828, or e-mail: amy@ici-org). In its recent amendments to the Policy, the Exchange added guidance for determining whether a plan is "broadly-based." As part of this guidance, the Exchange adopted a "safe harbor," to provide that a plan will be deemed to be "broadly-based" if at least 20 percent of the company's employees are eligible to receive stock or options under the plan and at least half of those eligible are neither officers nor directors. The Exchange has received a number of inquiries from the financial community regarding this new 20-percent test. In response, the Exchange explained that the test is based on the "rule of thumb" that it historically has used in determining whether a plan is broadly-based. In light of these inquiries, however, the Exchange is requesting additional comment on this area. The Exchange will establish a task force to evaluate such comments and will then determine whether it is appropriate to propose any additional amendments to the Policy. In addition to requesting comment generally on the definition of "broadly-based Plans," the Exchange has requested comment on a number of specific issues that are identified in its Request. Amy B.R. Lancellotta Senior Counsel Attachment

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