

MEMO# 10535

December 4, 1998

ICI DRAFT LETTER ON NYSE'S PROPOSED AMENDMENTS TO ITS SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS

* See Memorandum to Investment Advisers Committee No. 37-98 and SEC Rules Committee No. 120-98, dated November 24, 1998. [10535] December 4, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 39-98 SEC RULES COMMITTEE No. 124-98 RE: ICI DRAFT LETTER ON NYSE'S PROPOSED AMENDMENTS TO ITS SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS

As we previously informed you, the SEC issued a release soliciting comment on the New York Stock Exchange's ("Exchange") proposed amendments to its shareholder approval policy regarding stock option plans.* The Exchange's amended proposal focuses primarily on defining "broadly-based" Plans. Attached is a copy of the Institute's draft comment letter. The comment period ends on Thursday, December 10th. Please submit your comments to me at (202) 326-5923 (phone), (202) 326-5839 (fax), or simmonbe@ici.org (e-mail) by Wednesday, December 9, 1998. The Institute's draft letter generally supports the Exchange's amended proposal. It notes that the definition of "broadly-based" Plan addresses many of the concerns expressed in our earlier letter, including that the definition emphasizes employee participation in stock option plans, rather than mere eligibility for such plans. The letter also supports the Exchange's decision to designate the definition as an exclusive test rather than a non-exclusive safe harbor as was originally proposed. The letter also notes that the Exchange's approach in developing a workable definition for broadly-based Plans is a step in the right direction, but that more work needs to be done in order to ensure that stock option plans that contain features that have the greatest potential for excessively diluting shareholder interests are appropriately submitted for shareholder approval. The letter provides examples of potentially dilutive features, such as evergreen plans, and plans that permit repricing of underwater options, among others. The letter notes that while the Exchange's amended proposal does not address these issues, the Release does provide some guidance in the form of the Task Force recommendations, which include the possible development of a dilution standard. The letter notes our support and offers to assist in any such endeavor. Barry E. Simmons Assistant Counsel Attachment

should not be considered a substitute for, legal advice.