

**MEMO# 9889**

April 30, 1998

# **AMENDMENTS TO NYSE SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS**

1 See SEC Release No. 34-39839; File No. SR-NYSE-97-37 (April 8, 1998). Specifically, the rule modifies the shareholder approval policy contained in paragraphs 312.03 and 312.04 of the NYSEGs Listed Company Manual. 2 The only exception, which continues in a modified form under the new policy, is for stock or options issued as an inducement for employment to a person not previously employed by the company. In addition, in the past, the NYSE has not required shareholder approval for "broadly-based-plans," and that interpretation continues under the new policy. [9889] April 30, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 14-98 SEC RULES COMMITTEE No. 38-98 RE: AMENDMENTS TO NYSE SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS

The Securities and Exchange Commission recently approved amendments to the New York Stock Exchange, Inc.'s shareholder approval policy ("Policy") to provide greater flexibility for listed companies to adopt stock option and similar plans without shareholder approval.<sup>1</sup> The SEC's release is attached, and it is summarized below. According to the release, the amended Policy exempts from shareholder approval all non-broad-based plans in which: (1) no single officer or director acquires more than one percent of the shares of the issuer's common stock; and (2) the cumulative dilution of all non-broad-based plans of the issuer does not exceed five percent. Previously, the Policy required a listed company to seek shareholder approval of all stock option plans that are not "broadly-based."<sup>2</sup> The Policy was revised, however, to require shareholder approval when there is potential for a material dilution of shareholders' equity, with the threshold based on the cumulative dilution of an issuer's non-broad-based plans, and not on a single plan. The amended Policy also defines the term "broadly-based plan" to codify current interpretations used by the NYSE. The definition generally would require a review of a number of factors, including, among other things, the number of persons covered by the plan and the nature of the company's employees (e.g., whether they are compensated on an hourly or salaried basis). More importantly, in order to provide a level of certainty for companies, the definition stated that the NYSE will consider any plan to be broadly-based if at least 20% of the issuer's employees are eligible, the majority of whom are neither officers nor directors. The definition adds that the NYSE will not automatically consider a plan that does not meet the 20% test to be narrowly-based, but rather encourages a listed company that adopts a plan that it believes to be broadly-based but that fails the test to discuss the plan with NYSE staff. Barry E. Simmons Assistant Counsel Attachment

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