

**MEMO# 11084**

June 29, 1999

## **SEC APPROVES NYSE'S PROPOSED AMENDMENTS TO ITS SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS**

1 SEC Release No. 34-41479 (June 4, 1999); 64 Fed. Reg. 31667 (June 11, 1999). To briefly summarize the chronology of events, in December 1997, the Exchange proposed amendments to its shareholder approval policy, which, among other things, codified existing Exchange interpretation regarding “broadly-based” plans, and codified a non-exclusive safe harbor for plans in which at least twenty percent of a company’s employees were eligible, provided that the majority of those eligible were neither officers nor directors. The Commission approved the amendments in April, 1998, but the Exchange later revisited them in June, 1998 and solicited comment on the definition of “broadly-based” plans. The Exchange also established the Stockholder Approval Policy Task Force to review the comments submitted and to make recommendations concerning possible changes to the policy. As a result, in November, 1998, the Exchange proposed amendments to the policy to reflect the Task Force’s recommendations, and solicited further comment. The amendments approved by the Commission in the current release are consistent with those recommendations. 1 [11084] June 29, 1999 TO: INVESTMENT ADVISERS COMMITTEE No. 7-99 SEC RULES MEMBERS No. 44-99 RE: SEC APPROVES NYSE'S PROPOSED AMENDMENTS TO ITS SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS

The Securities and Exchange Commission has approved, on a pilot basis until September 30, 2000, the New York Stock Exchange’s (“Exchange”) proposed amendments to its shareholder approval policy regarding stock option and similar plans. A copy of the Commission’s release is attached.<sup>1</sup> In summary, the amendments: 1. Modify the definition of a “broadly-based” plan as one in which, pursuant to the terms of the plan: (a) at least a majority of the issuer’s full-time, exempt U.S. employees are eligible to participate under the plan; and (b) at least a majority of the shares awarded under the plan (or shares of stock underlying options awarded under the plan) during the shorter of the three-year period commencing on the date the plan is adopted by the issuer, or the term of the plan itself, are made to employees who are not officers or directors of the issuer. (In this regard, the Exchange defines “officer” as it is defined in Rule 16a-1(f) under the Securities Exchange Act of 1934.) 2. Establish the definition of “broadly-based” plan as an exclusive test, rather than a safe harbor. 3. Revise the Exchange’s general policy on shareholder approval issues to recognize the increased use of plans as a means to compensate officers and directors and state the Exchange’s view that companies should consider submitting plans to shareholders whether or not required by Exchange policy. 2 In addition, the

Exchange has established a "Dilution Task Force" to consider a maximum overall dilution listing standard for all non-tax qualified plans that otherwise would be exempt from shareholder approval. (The Exchange expects to propose a dilution test to replace the revised "broadly-based" test by the year 2000 proxy season.) The Release explains that the SEC approved the Exchange's rule change on a pilot basis in order to provide the Exchange time to develop a dilution test. Barry E. Simmons Assistant Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment referred to in this Memo, please call the ICI Library at (202) 326-8304, and ask for attachment number 11084. ICI Members may retrieve this Memo and its attachment from ICINet (<http://members.ici.org>). 3

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