

MEMO# 16839

December 3, 2003

INSTITUTE LETTER ON NYSE PROPOSAL RELATING TO THE EXCHANGE'S CORPORATE GOVERNANCE AND MANAGEMENT STRUCTURE

[16839] December 3, 2003 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 34-03 SEC RULES MEMBERS No. 173-03 RE: INSTITUTE LETTER ON NYSE PROPOSAL RELATING TO THE EXCHANGE'S CORPORATE GOVERNANCE AND MANAGEMENT STRUCTURE The Institute has filed a comment letter with the Securities and Exchange Commission on the NYSE's proposed rule change to alter the governance and management structure of the Exchange.¹ The most significant aspects of the comment letter are summarized below and a copy of the letter is attached. Board of Directors The letter states that the Institute is pleased that the NYSE has undertaken to implement much needed changes to its corporate governance structure, in particular, placing responsibility for governance, compensation, internal controls and supervision of regulation in a Board of Directors independent from owner-constituents. Nevertheless, given that requiring Board independence from owner-constituents of the Exchange is intended to align the Board with the interests of investors, the letter states that it is illogical that the NYSE Constitution does not guarantee any investor representation on the Board, especially in view of the significant challenges facing the Exchange relating to governance, self-regulation and market structure. The letter therefore recommends that the NYSE Constitution be amended to explicitly reserve several Board seats for representatives of investors. In addition, because institutional investors submit a significant portion of the orders traded on the Exchange, the letter recommends that Board seats be set aside specifically for "representatives of significant investors of equity securities on the Exchange" (e.g., mutual funds, pension funds). Board of Executives The letter states that the "buyside" should have a greater voice on the Board of Executives. In particular, in order to facilitate a meaningful debate on the issues for which the Board of Executives was established to advise the NYSE senior management and Board of Directors (e.g., market structure, operations and market performance), the letter states that there needs to be a more balanced representation on the Board of Executives between the buyside and 1 Securities Exchange Act Release No. 48764 (November 7, 2003), 68 FR 64380 (November 13, 2003) ("Release"). 2 sellside (not just between specific Exchange constituencies). The letter therefore urges the NYSE to assign more slots on the Board of Executives for buyside representatives. Ari Burstein Associate Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 16839, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16839. Attachment (in .pdf format)

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