

**MEMO# 10360**

October 8, 1998

# **NYSE BOARD APPROVAL OF AMENDMENTS TO SHAREHOLDER APPROVAL REQUIREMENTS FOR BROADLY-BASED STOCK OPTION PLANS**

1 In a comment letter on the April amendments, the Institute suggested the following: (1) that all stock option plans (non- broadly based and broadly based) be subject to shareholder approval if they are likely to have a dilutive effect on existing shareholders; (2) that the definition of "broadly-based plan" be based on actual plan participants, rather than mere eligibility; (3) that the 20% be revised to reflect a level that would include participation by a greater number of non-management employees; and (4) that a threshold for cumulative dilution be imposed for all broadly-based plans. [10360] October 8, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 33-98 SEC RULES COMMITTEE No. 100-98 RE: NYSE BOARD APPROVAL OF AMENDMENTS TO SHAREHOLDER APPROVAL REQUIREMENTS FOR BROADLY-BASED STOCK OPTION PLANS

\_\_\_\_ Recently, the New York Stock Exchange Board of Directors approved amendments to the Exchange's shareholder approval requirements concerning the definition of broadly-based stock option plans. According to the attached press release, the Board modified the Exchange's definition of broadly- based plans as follows: ` At least a majority of the issuer's full-time, exempt U.S. employees are eligible to participate under the plan. ` 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. ` The definition of officers conforms to SEC's rule 16-1(f). These amendments were approved by the Board based on recommendations made by a special Task Force, which was established by the Exchange to evaluate comments received on the policy amendment adopted last April. (Those amendments, among other things, defined broadly-based plans as having at least 20% of the company's employees eligible to participate in the plan of which no more than half of whom could be officers or directors.<sup>1</sup>) The press release notes that the policy amendment establishes the definition of a broadly-based plan as an exclusive test, rather than the current safe harbor. The policy amendment will be submitted for SEC comment and approval. Barry E. Simmons Assistant Counsel  
Attachment

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.