

MEMO# 10088

July 1, 1998

INSTITUTE DRAFT COMMENT LETTER ON NYSE REQUEST FOR COMMENT ON SHAREHOLDER APPROVAL REQUIREMENTS FOR BROADLY-BASED STOCK OPTION PLANS

* See Memorandum to Investment Advisers Committee No. 22-98 and SEC Rules Committee No. 58-98, dated June 16, 1998, and Memorandum to Investment Advisers Committee No. 14-98 and SEC Rules Committee No. 38-98, dated April 30, 1998. [10088] July 1, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 23-98 SEC RULES COMMITTEE No. 66-98 RE: INSTITUTE DRAFT COMMENT LETTER ON NYSE REQUEST FOR COMMENT ON SHAREHOLDER APPROVAL REQUIREMENTS FOR BROADLY-BASED STOCK OPTION PLANS

As we previously informed you, the New York Stock Exchange recently issued a Request for Comment regarding certain amendments to its shareholder approval policy ("Policy"), which requires shareholders of a listed company to approve certain stock issuances.* In response, the Institute prepared the attached draft comment letter. Comments are due to the NYSE by Friday, July 10, 1998. If you have any comments on the draft letter, please contact me by telephone (202) 326-5923, by fax (202) 326-5839, or e-mail at simmonbe@ici.org no later than Wednesday, July 8, 1998. The draft letter recommends that the Policy be amended to require shareholder approval of all stock option plans (broadly-based and non-broadly-based Plans alike). In the event that the Exchange determined to continue its policy of exempting shareholder approval for broadly-based Plans, the draft letter recommends: (1) that the 20 percent test reflected in the definition of "broadly-based Plan" be based on plan participation, rather than plan eligibility; (2) that the 20 percent figure be amended to reflect a more broadly based representation of a company's non-executive employee workforce; (3) that the 20 percent test be exclusive, rather than non-exclusive; and (4) that a threshold for cumulative dilution be imposed for broadly-based Plans. In reviewing the draft letter, please provide comment on an appropriate percentage, other than the present 20 percent figure, we should recommend be reflected in the definition of "broadly based." Also, please provide comment on an appropriate threshold level of cumulative dilution we should recommend be imposed on broadly-based Plans.

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.