

MEMO# 10204

August 14, 1998

INSTITUTE COMMENT LETTER ON NYSE SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS

1 See Memorandum to Investment Advisers Committee No. 23-98 and SEC Rules Committee No. 66-98, dated July 1, 1998. [10204] August 14, 1998 TO: INVESTMENT ADVISERS COMMITTEE No. 30-98 SEC RULES COMMITTEE No. 82-98 RE: INSTITUTE COMMENT LETTER ON NYSE SHAREHOLDER APPROVAL POLICY REGARDING STOCK OPTION PLANS

Attached is a copy of the Institute's comment letter to the New York Stock Exchange, Inc., in response to its request for comment on its recent amendments to its shareholder approval policy ("Policy"), which requires shareholders of a listed company to approve certain stock issuances. The letter is substantially similar to the draft that we circulated to you.¹ The letter notes that although generally stock option plans can be beneficial in aligning shareholder and corporate management interests, certain plans have the significant potential of transferring wealth or voting power from shareholders to corporate management, which could have a dilutive effect on shareholders' equity. The letter recommends that all stock option plans (non-broadly based and broadly based) be subject to shareholder approval if they are likely to have a significant dilutive effect on existing shareholders. In the event the Exchange determined to continue its policy of exempting "broadly-based Plans" from the shareholder approval requirement, the letter suggested ways to make the Policy more effective in protecting shareholders' interests. First, the letter suggests that the definition of "broadly-based Plan" be based on actual plan participation, rather than mere eligibility, and take into account the mix of employees that may be considered (i.e., non-management versus management). Next, the letter suggests that the 20 percent test be revised to reflect a level that would include participation by a greater number of a company's non-management employees. Finally, the letter recommends that a threshold for cumulative dilution be imposed for all broadly-based Plans (e.g., five percent) in order to impose safeguards to further protect shareholders' interest in those instances where broadly-based Plans are not subject to shareholder approval. Barry E. Simmons Assistant Counsel Attachment