

Comment Letter on NYSE Corporate Governance and Disclosure Report, July 2002

July 19, 2002

Mr. James L. Cochrane
Senior Vice President
New York Stock Exchange, Inc.
11 Wall Street
New York, N.Y. 10005

Re: Report of the New York Stock Exchange Corporate Accountability and Listing Standards Committee

Dear Mr. Cochrane:

The Investment Company Institute¹ is pleased to comment on the New York Stock Exchange's Corporate Accountability and Listing Standards Committee Report (the "Report").² We commend the Exchange for taking the initiative to improve corporate governance and listing standards in the wake of failures of diligence, ethics, and controls at significant companies. As investors in U.S. equities worth approximately \$3 trillion on behalf of millions of middle-income Americans, the Institute's members rely on high-quality financial reporting, audited by independent, objective professionals, to make investment decisions on a daily basis. Accordingly, the Institute supports the objectives of the Report—to enhance the accountability, integrity, and transparency of the Exchange's listed companies.³

The Institute generally supports many of the Report's recommendations. We are particularly pleased that the Report recommends that shareholders be given the opportunity to vote on all equity compensation plans. In May, the Institute submitted a statement to the Committee urging the Exchange to require shareholder approval for stock option plans.⁴ As we discussed in our May statement, the increasing popularity of stock option plans and the potentially dilutive effect they can have on shareholder value highlight the need to ensure that they receive appropriate shareholder scrutiny. This is particularly compelling given the unavoidable conflict of interest faced by management as they design such plans. Requiring that shareholders have the right to review, evaluate, and vote on these plans should help to assure that corporate management acts consistently with shareholders' best interests. Therefore, the Institute strongly supports this recommendation.⁵

The Institute also believes that several of the other recommendations made in the Report may serve to enhance the interests of investors by improving the integrity of financial reporting and corporate governance. Among these recommendations are those: requiring audit committees to have the authority to retain and terminate the company's independent auditors, including the sole authority to approve all significant non-audit engagements with the independent auditors; requiring listed companies to adopt and disclose their corporate governance guidelines; and requiring listed foreign private issuers to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards. We believe that these, and perhaps other, recommendations in the Report are worthy of serious consideration and we look forward to providing more specific comments on them when they are formally proposed.

In addition, we support many of the Report's recommendations to other institutions, several of which we have already commented on to the SEC. In particular, we support the recommendations that: the SEC should require companies, in all public or shareholder communications, to report complete GAAP-based financial information before any reference to "pro forma" or "adjusted" financial information and any pro forma information should be reconciled to the GAAP information;⁶ the SEC should exercise more active oversight of the Financial Accounting Standards Board to improve the quality of GAAP and the speed of FASB actions; the SEC should act to improve Management's Discussion and Analysis disclosure with respect to accounting estimates;⁷ the SEC should require companies to more promptly disclose insider transactions;⁸ and Congress should allocate additional resources to the SEC.

We appreciate the Committee's consideration of our comments on this significant and comprehensive Report. If you have any

questions or need additional information, please contact me at (202) 326-5815, Amy Lancellotta at (202) 326-5824 or Dorothy Donohue at (202) 218-3563.

Sincerely,

Craig S. Tyle
General Counsel

ENDNOTES

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,984 open-end investment companies (“mutual funds”), 504 closed-end investment companies and six sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.925 trillion, accounting for approximately 95 percent of total industry assets, and over 88.6 million individual shareholders.

² [Report of the New York Stock Exchange Corporate Accountability and Listing Standards Committee](#) (June 6, 2002).

³ The Institute has commented separately on the application of the recommendations in the Report to investment companies listed on the Exchange. See [Letter](#) from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to James L. Cochrane, Senior Vice President, New York Stock Exchange, dated July 19, 2002.

⁴ See [Statement of the Investment Company Institute to the NYSE Corporate Accountability and Listing Standards Committee](#) (Matthew P. Fink, President) (May 17, 2002). In addition to recently expressing support for such a requirement to the Committee, the Institute has previously recommended that the NYSE amend its listing standards to require shareholder approval of certain stock option plans. See [Letter](#) from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated December 10, 1998; [Letter](#) from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Stephen Walsh, Vice President and Managing Director, New York Stock Exchange, Inc., dated July 9, 1998.

⁵ We note that the SEC staff recently revised its position under Rule 14a-8(i)(7) under the Securities Exchange Act of 1934, no longer permitting companies to omit shareholder proposals seeking to obtain shareholder approval of equity compensation plans that potentially would result in material dilution to existing shareholders. See Division of Corporation Finance: Staff Legal Bulletin No. 14A (July 12, 2002).

⁶ See [Letter](#) from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated May 21, 2002.

⁷ See [Letter](#) from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated July 19, 2002.

⁸ See [Letter](#) from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated June 24, 2002.