

MEMO# 12185

July 6, 2000

INSTITUTE COMMENT LETTER ON NYSE DIRECT+ PROPOSAL

[12185] July 6, 2000 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 40-00 RE: INSTITUTE COMMENT LETTER ON NYSE DIRECT+ PROPOSAL As we previously informed you,¹ the Securities and Exchange Commission published for comment a proposed rule change filed by the New York Stock Exchange² ("Proposal") relating to NYSE Direct+, a proposed new facility of the Exchange which would provide automatic execution for certain limit orders of 1,099 shares or less ("auto ex" orders). The Institute has filed a comment letter with the SEC on the Proposal. The comment letter states that, in general, the Institute supports modifications to the Exchange's trading systems and supports the intent of the Proposal. Nevertheless, the Institute believes that there are certain aspects of the Proposal that require further examination before the SEC approves the Proposal. In particular, the Institute questions the purpose of and necessity for the mandatory thirty second delay between the entry by the same person of each auto ex order for the same stock and recommends that, absent compelling reasons for a delay, the thirty second delay be eliminated or significantly reduced. The comment letter also questions whether the proposed rule that provides that orders of greater than 1,099 shares may not be broken up into smaller amounts in order to receive an automatic execution would encompass certain trading practices utilized by institutional investors. The Institute therefore requests clarification of what constitutes an "order" for purposes of the proposed rules. The comment letter also states that the Institute strongly supports increasing the maximum number of shares that can be entered into NYSE Direct+ as the gap between the size of orders that can be entered into NYSE's proposed Institutional Xpress system (15,000 shares) and NYSE Direct+ is too great and excludes a large number of orders that institutions typically place in the NYSE for execution. Finally, the comment letter recommends that price/time priority be applied to NYSE Direct+, which would rectify, for example, a situation where a market participant would be able to participate on the contra side of an automatic execution even though another participant may have placed an order in the NYSE earlier in time and, if the proposal is implemented at the outset as a pilot program in a limited number of stocks before being made available to all stocks, that the pilot should include securities representing a substantial portion of the NYSE market, e.g., the top 100 NYSE listed securities, with the remainder chosen from quintiles of NYSE securities. 1 See Memorandum to Equity Markets Advisory Committee No. 37-00, dated June 23, 2000. 2 Securities Exchange Act Release No. 42913 (June 8, 2000), 65 FR 37587 (June 15, 2000). 2A copy of the comment letter, which is substantially similar to the draft letter previously circulated to the Committee, is attached. If you have any questions, please contact the undersigned by phone at (202) 371-5408 or by e-mail at aburstein@ici.org. Ari Burstein Assistant Counsel Attachment Attachment (in .pdf format)

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