

MEMO# 13142

February 7, 2001

NASD PROPOSED RULE CHANGE RELATING TO LOCKED AND CROSSED MARKETS

[13142] February 7, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 6-01 RE: NASD PROPOSED RULE CHANGE RELATING TO LOCKED AND CROSSED MARKETS The Securities and Exchange Commission has published for comment a proposed rule change filed by the NASD, through its wholly-owned subsidiary, the Nasdaq Stock Market,¹ relating to locked and crossed markets that occur at or prior to the market's open and the market's close. The Proposing Release is attached and the most significant aspects of the proposed rule change are summarized below. Comments on the proposed rule change are due to the SEC no later than February 28, 2001. Currently, a market participant that locks or crosses the market between 9:20 a.m. and 9:29:59 a.m. is required to send a Trade-or-Move Message to the parties it is locking or crossing. The aggregate size of the Trade-or-Move Message must be at least 5,000 shares in the case of a proprietary quote, or the actual size of an agency order if that is the basis for the locking or crossing quote. A party that receives a Trade-or-Move Message must, within 30 seconds, either: (1) trade in full with the incoming Trade-or-Move Message, (2) decline to trade with the incoming Trade-or-Move Message and move its quotation to a price level that unlocks or uncrosses the market; or (3) trade with a portion of the incoming Trade-or-Move Message and move its quotation to a level that unlocks or uncrosses the market. A market participant that locks or crosses the market prior to 9:20 a.m., however, is not obligated to send a Trade-or-Move Message to all parties to the lock or cross. The Proposing Release states that Nasdaq believes that the occurrence of locked/crossed markets prior to the open would be further reduced if market makers were required to send a Trade-or-Move Message before, rather than after, the lock or cross is entered. Therefore, under the proposal, market participants will be required to send a Trade-or-Move Message and then wait 15 seconds before entering a quotation that would lock or cross a quote. The market participant receiving the Trade-or-Move Message would be required to respond to the message within 15 seconds, rather than within 30 seconds as currently permitted. The Proposing Release also states that Nasdaq believes that increasing the economic significance of the Trade-or-Move Message would offset, and even further reduce, the potential 1 Securities Exchange Act Release No. 43913 (January 31, 2001), 66 FR 9394 (February 7, 2001) ("Proposing Release"). 2for misuse that might arise by allowing market participants to send Trade-or-Move messages without having first locked or crossed the market. Therefore, Nasdaq proposes to increase the minimum size of the Trade-or-Move Message to 10,000 shares from the current 5,000 shares, subject to the agency order exception provided by the current rule. Finally, Nasdaq proposes to expand the application of Trade-or-Move to include the ten-minute period preceding the market's close (3:50 p.m. to 3:59:59 p.m.). The Trade-or-Move Message used prior to the close would operate in the

same manner as is currently proposed for the time period prior to the market's open, with one exception. Prior to the market's close, a Trade-or-Move Message will be considered a liability order. Therefore, a market participant that receives a Trade-or-Move Message prior to the close may move its quote or trade with a portion of the Trade-or-Move Message only if doing so is consistent with its firm quote obligations under NASD and SEC rules. Ari Burstein Associate Counsel Attachment Attachment (in .pdf format)

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