

**MEMO# 14166**

November 20, 2001

## **DRAFT INSTITUTE COMMENT LETTER ON PROPOSED AMENDMENTS TO NYSE CLEAN CROSS RULE**

[14166] November 20, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 47-01 RE: DRAFT INSTITUTE COMMENT LETTER ON PROPOSED AMENDMENTS TO NYSE CLEAN CROSS RULE As we previously informed you,<sup>1</sup> the Securities and Exchange Commission issued a notice of a proposed rule change filed by the NYSE amending NYSE Rule 72 relating to clean crosses. In particular, the amendment would (1) permit clean crosses of 100,000 shares or more when an NYSE member organization is facilitating a customer order and (2) provide that a specialist may not effect a proprietary transaction to break up a cross being effected under Rule 72. The Institute has prepared a draft comment letter on the proposal, a copy of which is attached. The draft letter states that the Institute believes that the clean cross rule, as currently structured, is fundamentally flawed and does not believe that the proposed rule change would address the concerns of institutional investors. The letter notes that the Institute has expressed its concern in the past regarding the lack of priority rules for limit orders on the NYSE and that by permitting the execution of orders notwithstanding preexisting bids or offers on the limit order book, the clean cross rule promotes the bypassing of preexisting customer interest on the Exchange. The draft letter therefore recommends that certain changes be made to the clean cross rule that would better facilitate the trading of large orders. In particular, the draft letter recommends that the rule provide that a clean cross can only be executed at or outside the prevailing quotation if all displayed orders on the specialist's book at the cross price are satisfied. This would ensure that preexisting orders on the limit order book would not be disadvantaged. If a market participant does not wish to satisfy all displayed orders at the cross price, it should be required to provide price improvement to the clean cross. The draft letter also recommends that all market participants be prohibited from breaking up a clean cross. The letter notes that the Exchange's current proposal would provide that a specialist could not effect a proprietary transaction to provide price improvement to one side of a clean cross or the other. The proposal, however, would still permit the non-proprietary interest of specialists and certain floor brokers to step ahead of customer orders for the minimum variation. By extending the prohibition to provide price improvement to one side

1 Memorandum to Equity Markets Advisory Committee No. 41-01, dated November 6, 2001. 2 of a clean cross or the other to all entities, the draft letter states that investors will be ensured that their clean crosses will be executed without being broken up and the "free option" given to market participants in the crowd would be eliminated. Comments on the proposed rule change are due to the SEC no later than November 27, 2001. If you have any comments on the draft Institute letter, please provide them to the undersigned by phone at (202) 371-5408, by fax at (202) 326-5839, or by e-mail at [aburstein@ici.org](mailto:aburstein@ici.org) no later than

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