

MEMO# 18326

December 13, 2004

INSTITUTE LETTER ON NYSE PROPOSED RULE CHANGE RELATING TO AMENDMENTS TO "HYBRID" PROPOSAL

[18326] December 13, 2004 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 52-04 SEC RULES MEMBERS No. 172-04 RE: INSTITUTE LETTER ON NYSE PROPOSED RULE CHANGE RELATING TO AMENDMENTS TO "HYBRID" PROPOSAL The Institute has filed a comment letter with the Securities and Exchange Commission on amendments to a proposed rule change by the New York Stock Exchange to create a "hybrid" market.* The most significant aspects of the comment letter are summarized below and a copy of the letter is attached. The letter states that while the amendments to the hybrid proposal are an improvement over the original filing, certain modifications continue to be necessary to address concerns in several areas, most significantly, how the "broker agency interest file" would interact with other orders on the Exchange. In particular, the letter states that concerns remain about the lack of transparency of the broker agency interest file and the accompanying priority provided to a broker. Under the proposal, while orders in the broker agency interest file would not be publicly disseminated, orders in that file would be executed on parity with investors' orders placed on the NYSE's display book, which are required to be displayed for the full size of the orders. The letter therefore recommends that the Exchange provide execution priority on the same level as fully displayed investor orders only to the portion of those orders represented by floor brokers that are displayed. The letter also recommends that the NYSE reexamine the proposed rules governing halts to, and the resumption of, automation to ensure that they are structured in a manner to cause disruption to automation as infrequently as possible. In particular, the letter recommends that the NYSE examine existing market data to ensure that the parameters of the "momentum-based Liquidity Replenishment Point" are appropriate. The letter states that these parameters may be too restrictive in the current market environment, especially for very liquid stocks that may reach the proposed parameters within a very short period of time. Finally, the letter recommends that certain information that would be provided to specialists under the hybrid proposal also be made available to investors. For example, much of the information that specialists would be privy to when developing their proprietary algorithm * Securities Exchange Act Release No. 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004). 2 would remain unavailable to investors, e.g., the aggregate amount of broker agency interest at each price level. The letter states that the availability of this information solely to specialists could provide them with an unfair advantage over investors in interacting with orders on the Exchange. Ari Burstein Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 18326, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18326.

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