

MEMO# 14185

November 27, 2001

INSTITUTE LETTER TO SEC ON PROPOSED AMENDMENTS TO NYSE RULE 72 RELATING TO CLEAN CROSSES

[14185] November 27, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 49-01 RE: INSTITUTE LETTER TO SEC ON PROPOSED AMENDMENTS TO NYSE RULE 72 RELATING TO CLEAN CROSSES The Institute has filed a comment letter (a copy of which is attached) with the Securities and Exchange Commission on the proposed rule change filed by the NYSE amending NYSE Rule 72 relating to clean crosses. The comment letter is substantially similar to the draft letter previously sent to members.¹ The comment 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 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 comment 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. In addition to these changes, the 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 of a clean cross or the other to all entities, the letter states that ¹ Memorandum to Equity Markets Advisory Committee No. 47-01, dated November 20, 2001. ² 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. Ari Burstein Associate Counsel Attachment (in .pdf format)

should not be considered a substitute for, legal advice.