

**MEMO# 14147**

November 15, 2001

## **SEC APPROVES NYSE PROPOSED RULE CHANGE REDUCING XPRESS QUOTE AND ORDER PARAMETERS**

[14147] November 15, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 45-01 RE: SEC APPROVES NYSE PROPOSED RULE CHANGE REDUCING XPRESS QUOTE AND ORDER PARAMETERS As we previously informed you,<sup>1</sup> the NYSE filed a proposed rule change to reduce the required number of shares for XPress quotes and orders and to reduce the time that a published bid or offer must remain at the same price to become XPress eligible. The Institute filed a comment letter with the SEC on the proposed rule change which stated that while reducing the Xpress quote and order parameters represents an improvement, albeit a small one, to the Xpress system as currently structured, the Institute does not believe it will effectively address the most pressing concerns of our members. The comment letter also urged the NYSE to adopt the recommendations that the Institute previously put forth to the NYSE concerning the XPress system, in particular, eliminating the required displayed time for a quote to qualify as an XPress quote, making XPress orders ineligible for price improvement, and allowing XPress orders to reach through to orders on the book below the best bid and offer. The NYSE submitted a letter to the SEC (a copy of which is attached) responding to comments on the proposal.<sup>2</sup> In response to the Institute's comments, the NYSE stated that it "does not believe that it would be appropriate to modify the Institutional Xpress system as the ICI suggests." In particular, the NYSE stated that the Institute's suggested changes would "result in automatic execution of large-size orders against contra side interest that is both reflected in the current quotation, and reflected as away from the market limit orders on the limit order book that have never been exposed to the auction market." The NYSE stated that these modifications would "result in a significant redefinition of the Exchange's agency auction market structure, and would disrupt the Exchange's traditional auction market price discovery mechanism." The NYSE also stated that requiring XPress orders to be exposed to the market for price improvement opportunities is essential "because it affords the opportunity for the most advantageous price to the XPress order, and it allows other market participants, who may ... not wish to show their interest in the displayed quotation, to interact with the XPress order at the improved price." In addition, the NYSE stated that the Institute's proposal to allow XPress 1 Memorandum to Equity Markets Advisory Committee No. 24-01, dated July 18, 2001. 2 In addition to the Institute's comments, a letter was filed by Junius W. Peake, Professor of Finance, University of Northern Colorado. 2 orders to penetrate the limit order book would "distort the auction market pricing mechanism" and "would result in executions at prices away from the current market, with no opportunity for other market participants to interact with XPress orders at the away from the market prices unless they expose their interest on the limit order book."

Finally, the NYSE stated that it is concerned that the Institute's proposal "would create an unequal competitive playing field, as it favors one type of market participant with a particular order execution strategy over other market participants with different strategies." The SEC has issued an order<sup>3</sup> approving the NYSE's proposed rule change. In particular, the SEC stated that by reducing the required number of shares for XPress orders and quotes and the minimum display requirement for XPress quotes, the proposed rule change "should result in more orders and quotes being XPress eligible, which should help to assure the economically efficient execution of securities transactions and remove impediments to and perfect the mechanism of a free and open market and a national market system." In addition, the SEC stated that it believes that the reduced display requirement "should continue to provide brokers and non-XPress orders the opportunity to interact with the quote before it becomes XPress eligible." The SEC also found that the NYSE addressed the most significant concerns raised by commenters and stated that it believes that the proposed parameters of the XPress system are "appropriate and within the Exchange's business discretion." Finally, the SEC stated that it believes that it is appropriate for the NYSE to attempt to balance the needs of institutional investors with its desire to preserve its agency auction market structure. Ari Burstein Associate Counsel Attachment (in .pdf format) 3 Securities Exchange Act Release No. 45023 (November 5, 2001), 66 FR 57498 (November 15, 2001) (a copy of which is attached).

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