

MEMO# 14038

October 11, 2001

NASDAQ PROPOSED RULE CHANGES RELATING TO CHANGES IN FEE STRUCTURE

[14038] October 11, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 37-01 RE: NASDAQ PROPOSED RULE CHANGES RELATING TO CHANGES IN FEE STRUCTURE The NASD, through its subsidiary, the Nasdaq Stock Market, has filed with the SEC two proposed rule changes¹ (copies of which are attached) adjusting the fees charged to NASD members and non-NASD members for use of the Nasdaq National Market System ("NNMS") and SelectNet Service. Nasdaq has implemented the new fees charged to NASD members as of October 1, 2001. Nasdaq states that the changes to its fee structure are the result of several market structure changes in the Nasdaq Stock Market. Specifically, Nasdaq believes that the introduction of the NNMS has significantly reduced the number of orders required for the trading of a given volume of shares and, while these changes are for the benefit of all market participants, they are incompatible with its current fee structure for the NNMS, which is based on the number of orders executed. Therefore, Nasdaq proposes to replace the current order execution charge in the NNMS, which is based on the number of orders executed per month, with a \$0.001 per share charge for the execution of orders through the NNMS. Nasdaq states that a per share charge is more appropriate than a per order execution charge, in light of the enhanced efficiency of the NNMS. In addition, Nasdaq states that larger orders are more likely than smaller orders to be filled through multiple executions against market participant quotes, thereby imposing more burden on system capacity. Therefore, adjusting the charge for order executions to their size will compensate for this additional burden. Nasdaq also proposes to impose a \$0.10 order entry charge on orders in both the NNMS and SelectNet. Nasdaq states that this charge reflects the fact that many market participants enter orders that have little chance of being filled, especially on days when unusual market activity is occurring. Nasdaq believes the imposition of the order entry charge recognizes that these low-probability orders impose burdens on system capacity and that market participants derive value from order entry. ¹ Securities Exchange Act Release Nos. 44898 (October 2, 2001), 66 FR 51703 (October 10, 2001) and 44899 (October 2, 2001), 66 FR 51707 (October 10, 2001). ² Finally, Nasdaq proposes to modify the charges for order execution in SelectNet to reflect its transformation, in connection with the implementation of the NNMS, into a system that is intended to be used primarily for the delivery of negotiable, non-liability orders to market makers and ECNs that participate in the NNMS. Comments on the proposed rule changes are due to the SEC no later than October 31, 2001. If you have any questions or comments regarding the proposed rule changes, please contact the undersigned by phone at 202-371-5408, by fax at 202-326-5839, or by e-mail at aburstein@ici.org. Ari Burstein Associate Counsel Attachment Attachment (in .pdf format)

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