MEMO# 11716

March 9, 2000

DRAFT INSTITUTE COMMENT LETTER ON RESCISSION OF NYSE RULE 390

1 See Memorandum to Equity Markets Advisory Committee No. 9-00 and SEC Rules Committee No. 26-00, dated February 25, 2000. [11716] March 9, 2000 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 15-00 SEC RULES COMMITTEE No. 38-00 RE: DRAFT INSTITUTE COMMENT LETTER ON RESCISSION OF NYSE RULE 390 ____ As we previously informed you,1 the Securities and Exchange Commission ("SEC") has published for comment a proposed rule change filed by the New York Stock Exchange ("NYSE") to rescind NYSE Rule 390. The Institute has prepared a draft comment letter (attached) on the proposal. The draft letter states that the Institute supports the rescission of NYSE Rule 390 but that the Institute shares the NYSE's concerns that approving the rescission of the rule without fully considering the collateral effects on internalization may have unintended adverse effects on the securities markets. The letter also states that we agree with the NYSE that the practice of broker-dealer internalization raises concerns about whether agency orders are being afforded an opportunity to receive the best possible price that may be available and therefore questions whether true price discovery occurs in these securities. The draft letter therefore supports the NYSE's recommendation that the SEC adopt a market- wide requirement that broker-dealers not be permitted to trade as principal with their own customer orders unless they provide for price improvement. The Institute believes that this proposal would discourage internalization, or at least help ensure that investors receive a fairer price for internalized orders, and promote the interaction of orders in the securities markets. We therefore recommend that the SEC take this step to address the increase in internalization that could result from the rescission of Rule 390. The draft letter does not state that the rescission of Rule 390 should be contingent on the SEC adopting a rule requiring price improvement. Please comment on whether you believe the Institute letter should include such a condition. 2Comments on this proposal are due to the SEC no later than March 20, 2000. 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) 326-5841, or by e-mail at aburstein@ici.org no later than March 16. Ari Burstein Assistant Counsel Attachment