

**MEMO# 11697**

March 3, 2000

# **NASD RULE CHANGE INCORPORATING REGULATION ATS INTO THE ECN RULE AND THE LOCKED AND CROSSED MARKETS RULE**

1 Securities Exchange Act Release No. 42461 (February 25, 2000), 65 FR 11359 (March 2, 2000). 1 [11697] March 3, 2000 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 11-00 RE: NASD RULE CHANGE INCORPORATING REGULATION ATS INTO THE ECN RULE AND THE LOCKED AND CROSSED MARKETS RULE

The Securities and Exchange Commission ("SEC") has published for comment a proposed rule change<sup>1</sup> filed by National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), to amend several NASD rules to incorporate the requirements of Regulation ATS. Currently, NASD rules capture only those ATSs that meet the definition of an ECN. The proposed rule change will amend several NASD rules to capture those ATSs that do not meet the definition of ECN, e.g., an electronic trading system that only accepts orders from institutions and non-market-maker broker-dealers. This type of system, according to Nasdaq, would not be an ECN because, by definition, an ECN is a system that accepts orders from market makers. In particular, Nasdaq is proposing to amend the ECN Rule and the Locked and Crossed Markets Rule. Currently, Regulation ATS requires ATSs (including ECNs) that account for a significant percentage of the volume in a security listed on Nasdaq to display in the public quotation stream the orders of all subscribers of the ATS, including orders from institutions and broker-dealers that are not market makers. The ECN Rule, however, currently only requires ECNs to display orders entered by market makers. Nasdaq is therefore proposing to amend the ECN Rule to require ECNs to display in Nasdaq any subscriber orders required under Regulation ATS. Nasdaq believes this will permit it to incorporate ATS orders into the Nasdaq quote montage and provide NASD members with the ability to access these orders. The Locked and Crossed Markets Rule is designed to limit locked and crossed markets by imposing on market makers an obligation to take reasonable measures before locking or crossing a market. Currently included within the definition of market maker for purposes of this rule is: (1) any NASD member that enters orders into an ECN, or (2) any NASD member that operates as an ECN (when the priced order being displayed by the ECN has been entered by an entity that is not an NASD member). Nasdaq is proposing to amend the Locked and Crossed Markets Rule to capture NASD members that place orders in an ATS or operate as an ATS (when the priced order being displayed by the ATS has been entered by an entity that is not an NASD member). <sup>2</sup>Comments on this proposal are due to the SEC no later than March 23. If you have any comments you would like the Institute to consider

including in a possible comment letter, please provide them to Ari Burstein by phone at (202) 371-5408, by fax at (202) 326-5839, or by e-mail at [aburstein@ici.org](mailto:aburstein@ici.org) no later than March 14. Ari Burstein Assistant Counsel Attachment

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