

**MEMO# 10627**

January 6, 1999

# **SEC PUBLISHES FOR COMMENT PROPOSAL TO ESTABLISH THE NASDAQ APPLICATION OF THE OPTIMARK SYSTEM**

1 Securities Exchange Act Release No. 40835, 64 FR 549 (January 5, 1999), a copy of which is attached. 2 A non-member may become a user of the system, provided it is authorized in advance by one or more NASD members who are "Designated Brokers." 3 The Application would be available for securities listed on Nasdaq, including securities listed on the Nasdaq SmallCap market. The proposed rule change notes, however, that the Application would not be available to securities not listed on Nasdaq, such as those that may be quoted in the OTC Bulletin Board. [10627] January 6, 1999 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 1-99 RE: SEC PUBLISHES FOR COMMENT PROPOSAL TO ESTABLISH THE NASDAQ APPLICATION OF THE OPTIMARK SYSTEM

On December 28, the Securities and Exchange Commission ("SEC") published for comment a proposed rule change filed by the National Association of Securities Dealers ("NASD")<sup>1</sup> to establish the Nasdaq Application ("Application"), a new electronic screen-based trading system based on the information processing technology provided by OptiMark, and to adopt new rules to govern the use of the Nasdaq Application by NASD members and non-member users.<sup>2</sup> The Application will provide trading in securities listed on the Nasdaq Stock Market.<sup>3</sup> The Application will be operated as a new, additional facility of the Nasdaq Stock Market. As a facility of Nasdaq, the Application allows NASD members to access the new trading facility through the Nasdaq Workstation and the Nasdaq network that connects those workstations. Because the Nasdaq Application is to be operated as a Nasdaq facility, rules relating to its operation will be subject to SEC review as well as NASD rules and oversight by NASD Regulation ("NASDR"). Information regarding all profiles submitted to the Application, whether executed or not, also will be subject to review by NASDR and the SEC. Therefore, the proposed rule change notes that although the profiles entered into the system will be anonymous with respect to other users and the operators of the system itself, NASDR and the SEC will have full access to all information entered. In addition to profiles submitted directly by users, the Nasdaq Application will include certain system-generated profiles known as the "Nasdaq Quote Montage Profiles," which reflect the national best bid and offer quotes from Nasdaq market makers and ECNs as displayed in the Nasdaq Quote Montage at the time a matching cycle begins. The expressions of interests of all users of the system as well as the publicly displayed quotes comprising the national best bid and offer will therefore be reflected in the Application. Comments on this proposal are due to the SEC no later than January 26, 1999. If you have any comments you would like us to consider including in a possible Institute comment letter, please - 2 - provide them to Ari Burstein by phone (202) 371-5408, fax (202) 326-5841, or e-mail

(aburstein@ici.org) no later than January 18. Ari Burstein Assistant Counsel Attachment

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