

MEMO# 15102

September 4, 2002

SEC GRANTS DE MINIMIS EXEMPTION FROM THE ITS PLAN'S TRADE-THROUGH PROVISIONS

[15102] September 4, 2002 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 22-02 RE: SEC GRANTS DE MINIMIS EXEMPTION FROM THE ITS PLAN'S TRADE-THROUGH PROVISIONS The SEC has issued an order¹ granting, on a temporary basis, a de minimis exemption for transactions in certain ETFs from the ITS Plan's trade-through provisions. In particular, the Order exempts participants of the ITS Plan and their members from the Plan's trade-through provisions from September 4, 2002 through June 4, 2003² with respect to transactions in QQQs, DIAMONDS, and SPDRs that are executed at a price that is no more than three cents lower than the highest bid displayed in the Consolidated Quote System ("CQS") and no more than three cents higher than the lowest offer displayed in the CQS. The Order states that with the introduction of decimal pricing and technology changes that have enabled reduced execution times, the trade-through provisions of the ITS Plan have increasingly limited the ability of a market participant to provide an automated execution when a better price is displayed by another market participant that does not offer automated executions. The Order further states that the trade-through provisions are particularly restrictive in the case of the QQQs, DIAMONDS and SPDRs, as these ETFs are highly liquid securities and their value is readily derived from the values of the underlying shares. Therefore, the ability to obtain an immediate execution at a displayed price may be more important than the opportunity to obtain a better price. The Order states that the SEC believes that exempting these types of transactions from the ITS Plan's trade-through provisions will, on balance, provide investors with increased liquidity and with increased choice of execution venues while limiting the possibility that investors will receive significantly inferior prices. Ari Burstein Associate Counsel 1 Securities Exchange Act Release No. 46428 (August 28, 2002) ("Order"). The Order can be found on the SEC's website at <http://www.sec.gov/rules/other/34-46428.htm> 2 The Order states that by granting the exemption on a temporary basis, the SEC will be able to gather data necessary to study the effects of an exemption from the ITS trade-through provisions and the desirability of extending the exemption.