

MEMO# 14437

February 7, 2002

NASDAQ PROPOSED RULE CHANGE RELATING TO AUTHORITY TO INITIATE AND CONTINUE TRADING HALTS

[14437] February 7, 2002 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 7-02 RE: NASDAQ PROPOSED RULE CHANGE RELATING TO AUTHORITY TO INITIATE AND CONTINUE TRADING HALTS The Securities and Exchange Commission has issued a notice of the filing of a proposed rule change by the Nasdaq Stock Market¹ (a copy of which is attached) to make permanent an amendment to NASD Rule 4120 clarifying Nasdaq's authority to initiate and continue trading halts. The amendment currently is approved on a pilot basis until April 30, 2002. Specifically, NASD Rule 4120 provides Nasdaq with authority to halt trading in securities in a number of circumstances in which Nasdaq deems a trading halt necessary to protect investors and the public interest. Prior to the adoption of the pilot amendment, the bases for initiating a trading halt focused primarily on ensuring that all investors have access to material news about an issuer. The pilot amendment added a new basis for the imposition of a trading halt, particularly in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. Nasdaq is proposing to amend the rule to require a finding that an observed instance of extraordinary market activity is likely to have a material effect on the market for the security that is the subject of a trading halt. In addition, because the pilot amendment allows Nasdaq to take action in response to problems with systems that Nasdaq does not operate, Nasdaq is proposing to amend the rule to specify procedures that it will follow in connection with a trade halt based on the misuse or malfunction of a system that is linked to, but not operated by, Nasdaq. Specifically, Nasdaq will promptly contact the operator of the system in question to ascertain information that will assist Nasdaq in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken by the operator of the system to address the misuse or malfunction. If the operator of the system is unavailable when contacted by Nasdaq, Nasdaq will continue efforts 1 Securities Exchange Act Release No. 45355 (January 29, 2002), 67 FR 5351 (February 5, 2002). Comments on the proposed rule change are due to the SEC no later than February 26, 2002. 2 to contact the operator of the system to ascertain information that will assist Nasdaq in determining whether the trading halt should be terminated. Ari Burstein Associate Counsel Attachment Attachment (in .pdf format)

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.