MEMO# 12138

June 29, 2000

DRAFT INSTITUTE COMMENT LETTER ON NYSE DIRECT+ PROPOSAL

[12138] June 29, 2000 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 39-00 RE: DRAFT INSTITUTE COMMENT LETTER ON NYSE DIRECT+ PROPOSAL 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") relating to NYSE Direct+, a proposed new facility of the Exchange which would provide automatic execution for certain limit orders of 1,099 shares or less ("auto ex" orders). The Institute has prepared a draft comment letter (attached) on the proposal. The draft letter states that, in general, the Institute supports modifications to the Exchange's trading systems and supports the intent of the proposal. Nevertheless, the Institute believes that there are certain aspects of the proposal that require further examination before the SEC approves the proposal. In particular, the Institute questions the purpose of and necessity for the mandatory thirty second delay between the entry by the same person of each auto ex order for the same stock. The draft letter states that a mandatory delay of thirty seconds will frequently result in the market having moved away from the price at which a market participant is willing to transact in that stock. The Institute therefore recommends that, absent compelling reasons for a delay, the thirty second delay be eliminated or significantly reduced. The draft letter also questions whether the proposed rule that provides that orders of greater than 1,099 shares may not be broken up into smaller amounts in order to receive an automatic execution would encompass certain trading practices utilized by institutional investors. For example, would a broker working a large order for an institution be permitted to utilize NYSE Direct+ to execute part or all of this order. The Institute therefore requests clarification of what constitutes an "order" for purposes of the proposed rules and recommends that the type of trading practices described above not be considered orders for purposes of this aspect of the proposed rules.2 Finally, the draft letter recommends that price/time priority be applied to NYSE Direct+, which would rectify, for example, a situation where a market participant would be able to participate on the contra side of an automatic execution even though another participant may have placed an order in the NYSE earlier in time and, if the proposal is implemented at the outset as a pilot program in a limited number of stocks, that the pilot should include securities representing a substantial portion of the NYSE 1 See Memorandum to Equity Markets Advisory Committee No. 37-00, dated June 23, 2000. 2 The draft letter also states that the Institute strongly supports increasing the maximum number of shares that can be entered into NYSE Direct+ (under the Proposal, an "auto ex" order is defined as a limit order of 1,099 shares or less) as the gap between the size of orders that can be entered into NYSE's proposed Institutional Xpress system (15,000 shares) and NYSE Direct+ is too great and excludes a large number of orders that institutions typically place in the NYSE for execution. 2market, e.g., the top 100 NYSE listed

securities, with the remainder chosen from quintiles of NYSE securities. Comments on this proposal are due to the SEC no later than July 6, 2000. If you have any comments on the draft Institute letter, please provide them to the undersigned by phone at (202) 371-5408 or by e-mail at aburstein@ici.org no later than July 5. Ari Burstein Assistant Counsel Attachment Attachment (in .pdf format)
