

MEMO# 11472

December 15, 1999

SEC PROPOSES AMENDMENTS TO RULE GOVERNING UNLISTED TRADING PRIVILEGES

1 Securities Exchange Release No. 42209 (December 9, 1999), 64 FR 69975 (December 15, 1999), a copy of which is attached. 2 By extending UTP to a security, an exchange allows its members to trade the security as if it were listed on the exchange. 3 These entities are not subject to the same requirements because they do not transact business on an exchange. 1 [11472] December 15, 1999 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 39-99 SEC RULES COMMITTEE No. 105-99 RE: SEC PROPOSES AMENDMENTS TO RULE GOVERNING UNLISTED TRADING PRIVILEGES

The Securities and Exchange Commission ("SEC") has proposed an amendment to Rule 12f-2(a) under the Securities Exchange Act of 1934,¹ which governs unlisted trading privileges ("UTP")² in listed initial public offerings ("IPOs"). The amendment would provide that an exchange may extend UTP to a listed IPO security when at least one transaction in the subject security has been effected on the listing exchange and the transaction has been reported pursuant to an effective transaction reporting plan as defined in Exchange Act Rule 11Aa3-1 (i.e., the Consolidated Tape). Currently, exchanges must wait one full day before they can extend UTP to a listed IPO security. Comments on this proposal are due to the SEC no later than January 31, 2000. If you have any comments you would like the Institute to consider including in a 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 no later than January 10. In the release proposing the amendment, the SEC states that it sees no compelling reason to maintain a restriction that inhibits competition among the exchanges. The proposal, according to the SEC, should enhance the ability of exchanges to compete for order flow in these securities, especially since OTC dealers and alternative trading systems may already trade IPO securities with no delays.³ The SEC stated, however, that it preliminarily believes it necessary to retain a minimal, one trade waiting requirement before non-listing exchanges may begin trading. It noted that the first transaction in an IPO, as disseminated on the Consolidated Tape, conveys essential information to the public concerning the price of the security set by the underwriting process and the timing of the initial trade and beginning of trading in a new issue involves significant coordination involving the issuer, the listing exchange, and the underwriters of the public offering of the security. The SEC believes that if competing exchanges were to allow their members to trade a listed IPO security before it initially traded on the listing exchange, it could be difficult to ensure that all the

4 See letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, The Chicago Stock Exchange, dated December 9, 1999, a copy of which is attached.

The staff emphasized that this position demonstrates only their interpretation of the term "initial public offering" for purposes of Exchange Act Section 12(f)(1)(G)(i) and is unique to the application and purpose of that section and is not applicable to any other term, rule, or requirement under the federal securities laws. 2 preparation for the IPO had been completed before public trading in the security commenced. The SEC specifically requested comment on the one trade waiting period as proposed and whether the current period should remain unchanged or a different interval should be used. The SEC also requested comment on whether any changes to the consolidated quotation system or trade reporting systems should be made as a result of reducing the waiting interval from one day to the first trade on the listing exchange. In addition, the SEC solicited comment on the possible impact in trading and whether additional procedures or enhancements may be necessary to ensure that a UTP market does not commence trading prior to the first trade on the listing exchange. In conjunction with the proposed amendments to Rule 12f-2, on December 9, 1999, the staff of the SEC's Division of Market Regulation issued a no-action letter to the regional exchanges clarifying the definition of IPO for purposes of Rule 12f-2.4 The no-action letter would permit the regional exchanges to begin trading securities in certain "technical IPO" transactions on the same day those securities begin trading on another exchange on which they are listed. Specifically, the no-action letter identifies six situations where securities are offered in a transaction that meets the definition of IPO under Exchange Act Section 12(f), but that are not traditional, first time offerings. These examples all involve offerings of securities where (1) new shares are issued to an existing class of public shareholders, (2) that class of existing shareholders held shares in a class of exchange-traded securities that were subject to the reporting requirements of the Exchange Act before the filing of the Securities Act registration statement covering the IPO, and (3) the Securities Act registration statement for the IPO does not relate to an offering of securities for cash. Ari Burstein Assistant Counsel Attachments