

MEMO# 14112

November 6, 2001

PROPOSED AMENDMENTS TO NYSE RULE 72 RELATING TO CLEAN CROSSES

[14112] November 6, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 41-01 RE: PROPOSED AMENDMENTS TO NYSE RULE 72 RELATING TO CLEAN CROSSES The Securities and Exchange Commission has issued a notice of the filing of a proposed rule change¹ (a copy of which is attached) amending NYSE Rule 72 relating to clean crosses. In particular, the amendment would (1) permit clean crosses of 100,000 shares or more when an NYSE member organization is facilitating a customer order and (2) provide that a specialist may not effect a proprietary transaction to break up a cross being effected under Rule 72. Currently, NYSE Rule 72 permits an NYSE member to execute certain types of cross transactions that are not subject to being "broken up" at the cross price. Specifically, Rule 72(b) provides priority to agency crosses of 25,000 shares or more, at or within the prevailing quotation, where neither side of the cross is an order for the account of an NYSE member or member organization. In order to address situations where a member organization may want to facilitate the execution of a large size order at a single price by participating in whole or in part on the other side of the trade, the NYSE proposes to amend Rule 72(b) to provide that a cross of 100,000 shares or more may be executed "clean" at the cross price if the member or member organization is facilitating a customer order in whole or in part. These trades would not be subject to being broken up at the cross price but would still be eligible for price improvement as currently provided for under Rule 72(b). The NYSE states that this proposal "addresses perceptions that because of decimal trading large cross transactions are at risk of being broken up at the cross price with the result that such transactions may not be brought to the Exchange in the first instance and exposed for possible price improvement." The NYSE proposes to operate this amendment as a pilot to run for six months after approval by the SEC in order to ascertain what impact it may have on the NYSE's market. The NYSE also proposes to amend Rule 72(b) to provide that a specialist may not effect a proprietary transaction to provide price improvement to one side of a clean cross or the other. The NYSE states that they "understand that there may be a perception that specialists can break up a proposed cross transaction by trading for their own account at a minimally improved price, and, thereby, step ahead of a public customer on the other side of the cross." The 1 Securities Exchange Act Release No. 45004 (October 31, 2001), 66 FR 56143 (November 6, 2001). 2 proposal would still permit the non-proprietary interest of specialists and floor brokers to offer price improvement at any minimum variation. The NYSE states that this amendment would not be operated as a pilot and is filed for permanent effectiveness. Comments on the proposed rule change are due to the SEC no later than November 27, 2001. If you have any comments that you would like the Institute to consider including in its comment letter on the proposal, please provide them to the undersigned by phone at (202) 371-5408, by fax at (202) 326-5839, or by e-

mail at aburstein@ici.org no later than November 16. Ari Burstein Associate Counsel
Attachment Attachment (in .pdf format)

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