

MEMO# 19230

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NASDAQ AMENDED APPLICATION FOR REGISTRATION AS A NATIONAL SECURITIES EXCHANGE

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19230] October 7, 2005 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 35-05 SEC RULES MEMBERS No. 109-05 RE: NASDAQ AMENDED APPLICATION FOR REGISTRATION AS A NATIONAL SECURITIES EXCHANGE The SEC has published for comment Nasdaq's amended application for registration as a national securities exchange.¹ The most significant changes made by Nasdaq in the amended application are summarized below. The amended application addresses several concerns raised by Nasdaq's initial exchange application. Specifically, the amendment limits the scope of Nasdaq's proposed exchange to those transactions that occur in the Nasdaq Market Center, formerly known as SuperMontage, and Brut. Nasdaq also has proposed that all transactions on the Nasdaq Market Center be executed in price/time priority. Trades that are executed in the internal systems of NASD members would be reported under NASD rules to NASD's Alternative Display Facility ("ADF") or a proposed new NASD facility. To oversee the performance of its regulatory obligations, Nasdaq has proposed to create a fully-independent committee of its Board of Directors, the Regulatory Oversight Committee ("ROC"). The ROC would, among other things, be responsible for monitoring the adequacy and effectiveness of Nasdaq's regulatory program and would oversee Nasdaq's Chief Regulatory Officer ("CRO"). The Release requests comment on whether Nasdaq's proposed regulatory structure, including the ROC and CRO, is consistent with the Exchange Act and, specifically, whether it insulates its regulatory function from its market and other commercial operations so that it may carry out its regulatory obligations under the Exchange Act. Finally, Nasdaq proposes to require its members to comply with the NASD's Order Audit Trail ("OATS") requirements. The Release states that because Nasdaq will require its members to report order information to OATS, Nasdaq will have access to certain OATS data for regulatory purposes. The Release requests comment on the extent to which Nasdaq should be able to use OATS data for non-regulatory purposes and whether Nasdaq should have access

1 Securities Exchange Act Release No. 52559 (October 4, 2005) ("Release"). The amended exchange application can be found on the SEC's website at <http://www.sec.gov/rules/other/34-52559.htm>. Comments on the amended application are due to the SEC no later than 30 days from the date of publication in the Federal Register.

2 to OATS data regarding: (1) all orders its members receive, including those orders that are routed to markets other than Nasdaq; and (2) reports of executions by its members that are reported to the new NASD trade reporting facility. Ari Burstein Associate Counsel

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