

MEMO# 16186

June 10, 2003

DRAFT INSTITUTE LETTER ON SEC CONCEPT RELEASE REGARDING THE REGULATION OF NASDAQ-LISTED SECURITIES

[16186] June 10, 2003 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 14-03 SEC RULES COMMITTEE No. 55-03 RE: DRAFT INSTITUTE LETTER ON SEC CONCEPT RELEASE REGARDING THE REGULATION OF NASDAQ-LISTED SECURITIES As we previously informed you, the SEC has issued a concept release requesting comment on a petition submitted by the Nasdaq Stock Market concerning the regulation of Nasdaq-listed securities.¹ The Institute has prepared a draft comment letter (a copy of which is attached) on the concept release. The most significant aspects of the draft comment letter are summarized below. The draft letter states that given the short time frame to address the complex issues raised by the concept release, the letter focuses on the issue most directly impacting institutional investors, i.e., the debate over uniform trading rules. In particular, the draft letter states that uniform trading rules governing certain issues, such as those that go to the core of investor protection principles and that are designed to prevent violations of the securities laws, can prove beneficial to the securities markets and investors. The draft letter adds that, if the lack of uniformity in these areas are hindering the detection of securities laws violations, the SEC should reexamine these issues and determine if uniform rules would best protect investors. The draft letter states, however, that uniform trading rules for all aspects of trading could hinder competition and act to the detriment of investors and notes that the ITS trade-through rule is one example of such a rule. The draft letter therefore states that allowing automatic execution participants to trade through manual participants for a de minimis amount is an idea worthy of consideration. The draft letter notes that permitting such an exemption would address the problem of forcing an investor to send its order to a market that, for example, is slow in executing orders and would provide investors with a choice as to whether they want to execute their trades at the market with the best price, or execute their trade in a different market if they believe speed or certainty of execution, for example, were more important for a particular trade. [Members: Do we want to support a de minimis exemption to the trade-through rule or elimination of the trade-through rule altogether?] ¹ Memorandum to Equity Markets Advisory Committee No. 9-03 and SEC Rules Committee No. 48-03 [16102], dated May 21, 2003. ² Finally, in response to a request by the SEC on what may be the best self-regulatory model for the markets, the draft letter states that while the Institute does not have a definitive view at this time as to the best approach, we believe there should be at least a strict separation of the self regulatory role from the marketplace it oversees. Ari Burstein Associate Counsel Attachment (in .pdf format)

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