

MEMO# 11460

December 10, 1999

NASD PROPOSAL RELATING TO THE ESTABLISHMENT OF THE NASDAQ ORDER DISPLAY FACILITY

1 Securities Exchange Act Release No. 42166 (November 22, 1999), 64 FR 68125 (December 6, 1999). 1 [11460] December 10, 1999 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 38-99 SEC RULES COMMITTEE No. 104-99 RE: NASD PROPOSAL RELATING TO THE ESTABLISHMENT OF THE NASDAQ ORDER DISPLAY FACILITY

The Securities and Exchange Commission ("SEC") has published for comment a proposed rule change¹ filed by National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), to enhance the Nasdaq quotation montage by creating a new facility for the display of trading interest (the "Nasdaq Order Display Facility"). The proposed rule change also would substantially modify the proposed Nasdaq National Market System ("NNMS"). Nasdaq Order Display Facility Under the proposal, Nasdaq will add a new display to the Nasdaq Workstation II that would show the best bid/best offer in Nasdaq and two price levels away from the best bid/best offer, in addition to the aggregate size at each price level of the "displayed" trading interest of market makers, electronic communication networks ("ECNs"), and Unlisted Trading Privilege ("UTP") Exchanges. Nasdaq market makers and ECNs that are NASD members ("Nasdaq Quoting Market Participants") will be able to display their quotes/orders anonymously at these price levels in the Nasdaq Order Display Facility. Market participants would be able to access the best prices in the Nasdaq Order Display Facility using a substantially modified version of Nasdaq's proposed NNMS trading platform. Specifically, Nasdaq would provide order delivery or automatic execution against the best prices displayed in the Nasdaq Order Display Facility and would continue to offer market participants the ability to electronically negotiate transactions with specific market makers. The Order Display Facility also would allow Nasdaq Quoting Market Participants to give the Nasdaq system multiple agency and principal quotes/orders at single, as well as multiple, price levels. The proposed system also incorporates the concept of a market maker agency quote previously proposed by Nasdaq. 2 The "reserve size" feature allows a Nasdaq market maker or ECN to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. 3 A "liability order" means an order to which an ECN, market maker, or UTP Exchange specialist owes a firm quote obligation under Securities Exchange Act Rule 11Ac1-1. 2 Nasdaq Quoting Market Participants would be required to designate a quote/order as "attributable" or "non-attributable," and would be able to indicate a reserve size for the quote/order. 2 If an order is "attributable," the price and size of the order would be displayed next to the Nasdaq Quoting Market Participant's market maker ID ("MMID") in

the Nasdaq Quotation Montage if this is the Quoting Market Participant's best-priced attributable order. Attributable orders or quotes would be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest when the price of the quote/order is within the best three price levels. If a Nasdaq Quoting Market Participant designates a quote/order as "non-attributable," it will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest when the price of the quote/order is within the best three price levels. That order or quote would not, however, be displayed in the Nasdaq Quotation Montage next to the Quoting Market Participant's MMID. Order Collector Facility Under the proposal, Nasdaq will create an Order Collector Facility ("OCF"), that would serve as a single point of order entry and single point of delivery of "liability orders" and executions.³ To access the best-priced quotes/orders, a market participant would be required to enter an order into the OCF, which would deliver either an automatic execution or a liability order to the next Quoting Market Participant in the queue. The OCF would determine whether to deliver an order or an execution based on the manner in which the market participant receiving the order participates in the Nasdaq market (e.g., automatic execution for market makers, automatic execution for ECNs that agree to participate in the automatic-execution functionality of the system, order delivery for ECNs that choose to take order delivery, and order delivery for UTP Exchanges). By creating the OCF as the single point of order entry and the single point of delivery of executions and orders, Nasdaq believes that the proposal should fully integrate its two current trading systems, SelectNet and SOES, from the end user's perspective. Comments on this proposal are due to the SEC no later than December 27. 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 December 20. Ari Burstein Assistant Counsel Attachment