comply with the standards of Section 11A of the Act.

The Schwab Letter further contended that CTA should demonstrate that the proposed fees do not unfairly discriminate among users of market information. Schwab supported a ''cost-based, non-discriminatory'' enterprise fee and stated that the proposed enterprise fee of $500,000 was discriminatory because it was not connected to the actual costs of CTA.[12] Schwab also asserted that the proposed annual increase to the enterprise fee ''further exemplifies the disregard for setting fees reasonably related to costs.'' [13]

The Schwab Letter believed that the tiered fee structure improperly discriminated among broker-dealers and vendors based on the number of subscribers they have and their subscribers' use of market data. Finally, although it supported giving vendors the choice of paying the lower of the monthly nonprofessional fee or the per-quote fee, the Schwab Letter contended that to ''ensure the benefit of the election, the $0.50 per-subscriber fee should be used for those subscribers of a broker-dealer or vendor beyond the first 250,000.''[14]

IV. Discussion

The Commission finds that the proposed plan amendments are consistent with the Act and the rules and regulations thereunder.[15] Specifically, the Commission finds that approval of the amendments is consistent with Rule 11Aa3–2(c)(2) [16] of the Act.

The Commission currently is conducting a broad review of the fee structures for obtaining market information and of the role of market information revenues in funding the self-regulatory organizations. As part of its review, the Commission intends to issue a release describing existing market information fees and revenues and inviting public comment on the subject. The proposed rule change implicates many of the issues that the Commission is reviewing. These include identifying the appropriate standards for determining (1) whether the fees charged by an exclusive processor of market information are fair and reasonable, and (2) whether a fee structure is unreasonably discriminatory or an inappropriate burden on competition.

The Commission has decided to approve the proposed plan amendments pending its review because they represent, in part, a very substantial reduction in the market information fees applicable to retail investors, In particular, the monthly fee for non-professional subscribers would be reduced from $5.25 per month to no greater than $1.00 per month. Under this monthly fee structure, there would be no limit on the amount of market information that retail investors would be entitled to receive. Such a fee structure may enable vendors to provide retail investors with more useful services than previously has been the case. In this regard, the proposed plan amendments are consistent with, and significantly further, one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii)increasing the availability of market information to broker-dealers and investors. The Commission wishes to emphasize, however, that its review of market information fees and revenues is ongoing and may require a reevaluation of the fee structures contained in the proposed plan amendments at some point in the future.

The Commission recognizes that the commenters supported approval of the proposed fee reductions primarily because they represent an improvement over the CTA's current fee structure. Other issues raised by the commenters (*e.g.*, discriminatory impact of the CTA fee structure on on-line investors, the appropriate standard to be applied in assessing the fairness and reasonableness of market information fees) have broader implications on the functioning and regulation of the national market system. As such these issues will be addressed in the Commission's forthcoming concept release on market information fees and revenues.

The Commission also finds that the minor, non-substantive changes made to the form of Schedules A–1 and A–2 of Exhibit E to both the CTA and CQ Plans reflect the proposed amendments, thereby clarifying the fee schedules to make them more understandable.

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[17] and the rules thereunder, that the proposed amendments to the Plans (SR–CTA/CQ–99–01) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

[FR Doc. 99–26620 Filed 10–12–99; 8:45 am]

BILLING CODE 8010–01–M

[12] Schwab Letter at 5.

[13] *Id.*

[14] *Id.* at 6.

[15] The Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission realizes that the modified fee structure, as applied, may create competitive disparities. The new fee structure will, however, reduce the cost of access to market information, which should result in a reduction of costs for investors. The competitive concerns and solutions suggested by the commenters will be addressed in the Commission's forthcoming concept release on market information fees and revenues.

[16] 17 CFR 240.11Aa3–2(c)(2).

[17] 15 U.S.C. 78k–1.

[18] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41981; File No. SR–Amex–99–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending the Exchange's Audit Committee Requirements

October 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing standards pertaining to audit committee requirements. The text of the proposed rule change is as follows. Proposed new language is italicized; deletions are in brackets.

Section 121. INDEPENDENT DIRECTORS *AND AUDIT COMMITTEE*

A. Independent Directors:

The Exchange requires that domestic listed companies have [at least two] *a sufficient number of* independent directors *to satisfy the audit committee requirement set forth below.* [, that is,] *Independent* directors [who] are not officers of the company [; who are neither related to its officers nor represent concentrated or family holdings of its shares;] and *are* [who], in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the view of the company's board of directors, [are] free of any relationship that would interfere with the exercise of independent judgment. *The following persons shall not be considered independent:*

(a) a director who is employed by the corporation or any of its affiliates for the current year or any of the past three years;

(b) a director who accepts any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(c) a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, and anyone who resides in such person's home;

(d) a director who is a partner in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years;

(e) a director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

***B.* Audit Committee:**[-Listed companies shall establish and maintain an audit committee. The Exchange recommends that such committees be composed solely of independent directors; however, a company shall be in compliance with this requirement if at least a majority of the committee's members are independent directors.]

(a) Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to ensure the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(b) Composition

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i) one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (b)(i) and (b)(ii) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (''Blue Ribbon Committee'') issued a report containing ten recommendations aimed at strengthening the independence of the audit committee; making the audit committee more effective; and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[3] In response to the Blue Ribbon Committee's six recommendations regarding listing standards, the Exchange proposes these rule changes relating to its audit committee requirements. These changes fall into three general areas: (1) The definition of independence; (2) the structure and membership of the audit committee; and (3) the audit committee charter.

With regard to the definition of independence, the Exchange proposes to provide greater specificity for all directors, not just for those serving on the audit committee. Specifically, consistent with the recommendations of the Blue Ribbon Committee, the Exchange proposes to augment its current definition of ''independent director'' with five relationships that would disqualify a director from being considered independent because these relationships could impair a director's independent judgment as a result of financial, familial, or other material ties to management or the corporation. The first of these relationships is a director who is employed by the corporation or any of its affiliates for the current year or any of the past three years. The second is a director who accepts any compensation from the corporation or any of its affiliates in excess of $60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation. The third relationship is a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. The fourth relationship is a director who is a partner in, or a

[3] *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).* A copy of this Report can be found on-line at www.nasdaqnews.com.

controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5 percent of the corporation's or business organization's consolidated gross revenues for that year, or $200,000, whichever is more, in any of the past three years. The final relationship is a director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

Although the above-enumerated relationships are similar to those recommended by the Blue Ribbon Committee, the Exchange looked to existing SEC rules and other pronouncements to provide additional specificity. In this regard, the five-year ban recommended by the Blue Ribbon Committee was reduced to three years, which the Exchange views as a more reasonable period while still greater than the SEC's rule 144[4] two year time frame. Furthermore, although the Blue Ribbon Committee recommended that a director who received any compensation from the corporation (other than for board service or under a tax-qualified retirement plan) be disqualified form being considered independent, the Exchange believes that a compensation threshold of $60,000 is appropriate as it corresponds to the *de minimis* threshold for disclosure of relationships that may affect the independent judgment of directors set forth in SEC Regulation S–K, Item 404.[5] In addition, the Exchange believes that the receipt of non-discretionary compensation should not automatically disqualify a director from being considered independent. Furthermore, the proposed rule change provides further clarification of the fourth relationship by specifying that payments resulting solely from investments in the corporation's securities will not prevent a director from being considered independent and by looking to the American Law Institute's measurement of ''significant'' when determining what payments to or from a company could impair a director's independent judgment.[6] Lastly, the Exchange believes that the heightened independence standard should apply to all issuers due to the importance of this issue.

With regard to the structure and membership qualifications of the audit committee, the Exchange proposes to change the required composition of the audit committee from at least two to at least three members. Furthermore, the audit committee must be comprised solely of independent directors rather than a majority of independent directors. The Exchange is conscious of the fact that in exceptional circumstances, issuers may appropriately conclude that it would be in the best interests of a corporation for a non-independent director to serve on the audit committee. In such exceptional and limited circumstances, a non-independent director can serve on the audit committee, provided that the board determines that it is required by the best interests of the corporation and its shareholders, and the board discloses the reasons for the determination in the next annual proxy statement. Due to the nature of this exception, however, a corporation could have no more than one non-independent director serving on its audit committee. Also, current employees or officers, or their immediate family members may not serve on the audit committee under this exception.

As a result of the audit committee's responsibility with respect to a corporation's accounting and financial reporting, the Exchange believes that audit committee members should have a basic understanding of financial statements. As such, the proposed rule change requires that each member of the audit committee be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or become able to do so within a reasonable period of time after his or her appointment to the audit committee. Furthermore, in order to further enhance the effectiveness of the audit committee, at least one member of the audit committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

The Exchange is sensitive to the potential burden that the proposed changes to the audit committee composition requirements may place on small companies. Therefore, the Exchange proposes to exempt those corporations that file under SEC Regulation S–B from these proposed changes. Corporations that are small business filers will be held to the existing Exchange requirements with respect to audit committee composition, that is, they must maintain an audit committee of at least two members, a majority of whom are independent directors.

With regard to the audit committee charter, the Exchange believes that a written charter would help the audit committee as well as management and the corporation's auditors recognize the function of the audit committee and the relationship among these parties. As such, the proposed rule change would require each audit committee to adopt a formal written charter. This charter must specify the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements. In addition, the charter must specify the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board 1,[7] and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take appropriate action to ensure the independence of the outside auditor. Also, the charter must specify the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement). Issuers would be required to review their charter on an annual basis.

The Exchange proposes to allow directors serving on the audit committee at the time the proposed rule change is approved by the Commission to continue serving on the audit committee until they are re-elected or replaced. The Exchange also believes that the new rules should be made effective 18 months after the proposed rule change is approved by the Commission to provide issuers adequate time to recruit the requisite members.

[4] 17 CFR 230.144.

[5] 17 CFR 229.404.

[6] American Law Institute, Principles of Corporate Governance § 1.34 (1994).

[7] Independence Standard No. 1, Independence Discussions with Audit Committees (January 1999), which can be found on-line at www.cpaindependence.org.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. As noted above, the Exchange's proposed rule change is aimed at improving the effectiveness of audit committees of Exchange issuers, which is consistent with these goals. Accordingly, this proposal is properly within the discretion of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–38 and should be submitted by November 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 99–26624 Filed 10–12–99; 8:45 am]

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[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–41974; File No. SR–NASD–99–52)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Delay in Implementing Changes to Nasdaq Riskless Principal Trade Reporting Rules

October 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 1999, the National Association of Securities Dealers (''NASDA'' or ''Association''), through its wholly-owned subsidiary, Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy and interpretation with respect to the meaning of an existing rule under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1)[4] thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed with the SEC a re-interpretation to NASD Rules 4632, 4642, 4652, and 6620, regarding Nasdaq riskless principal trade reporting. The purpose of this re-interpretation of NASD Rules 4632, 4642, 4652, and 6620, is to delay the effective date of the Nasdaq riskless principal trade reporting rule changes announced in SR–NASD–98–59[5] and the interpretation thereto file in SR–NASD–99–39.[6]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 24, 1999, the Commission approved a proposal to amend the trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq Small Cap Market, Nasdaq convertible debt, and non-Nasdaq OTC equity securities (''Riskless Principal Rule Changes'').[7] Under the proposed Riskless Principal Rule Changes, a ''riskless'' principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell). The proposed rule changes provide that if a transaction is ''riskless'', the offsetting transaction/leg (*i.e.*, the transaction with the customer), does not need to be reported to the tape.

When the SEC approved the rule change, the Commission asked Nasdaq to submit an interpretation giving examples of how mark-ups, mark-downs, and other fees will be excluded for purposes of the amended riskless

[5] Securities Exchange Act Release No. 40382 (August 28, 1998), 63 FR 47337 (September 4, 1998).

[6] Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[7] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).