the senior officer of the Exchange, the term Chairman is being changed to CEO.

2. Statutory Basis

The Exchange believes that the rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(3)[6] in particular in that it is intended to assure fair representation in the selection of its directors and administration of its affairs.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the 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 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 File No. SR–Amex–99–25 and should be submitted by January 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–387 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(3).

[7] 17 CFR 200.30–3(as)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42306; File No. SR–NASD–99–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the use of Hard To Borrow Lists

January 3, 2000.

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 August 4, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 1, 1999, the NASD filed Amendment No. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

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

NASD Regulation is proposing to amend NASD Rule 3370 to permit the use of a ''Hard to Borrow'' list to comply with affirmative determination requirements for short sales. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

* * * * *

Rule 3370. Prompt Receipt and Delivery of Securities

(a) No change

(b) No change

(1) No change

(2) No change

(3) No change

(4) ''Affirmative Determination''

(A) No change

(B) No change

(C) The manner by which a member or person associated with a member annotates compliance with the ''affirmative determination'' requirement contained in subsection (b)(2) above (e.g., marking the order ticket, recording inquiries in a log, etc.) is not specified by the Rule and, therefore, shall be decided by each member. Members may rely on ''blanket'' or standing assurances *(i.e., ''Easy to Borrow'' lists)* that securities will be available for borrowing on settlement date to satisfy their affirmative determination requirements under this rule. [,] *For any short sales executed in Nasdaq National Market (NNM) or national securities exchange-listed (listed) securities, members also may rely on ''Hard to Borrow'' lists indicating NNM or listed securities that are difficult to borrow or unavailable for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule, provided that: (i) any securities restricted pursuant to UPC 11830 must be included in such a list; and (ii) the creator of the list attests in writing on the document or otherwise that any NNM or listed securities not included on the list are easy to borrow or are available for borrowing. Members are permitted to use Easy to Borrow or Hard to Borrow lists* provided: (i) the information used to generate the *list* [''blanket'' or standing assurance] is less than 24 hours old; and (ii) the member delivers the security on settlement date. Should a member relying on *an Easy to Borrow or Hard to Borrow list* [blanket or standing assurance] fail to deliver the security on settlement date, the Association shall deem such conduct inconsistent with the terms of this Rule, absent mitigating circumstances adequately documented by the member.

(5) No change

* * * * *

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, the Commission, dated October 26, 1999. The substance of Amendment No. 1 is incorporated into this notice.

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

1. Purpose

Currently, NASD Rule 3370, which was designed to prevent abusive short selling and ensure that short sellers satisfied their settlement obligations, requiring members to make an affirmative determination prior to executing certain short sales and to maintain a written record of that affirmative determination. This Rule essentially requires that a member must make an affirmative determination that it will receive delivery of the subject security, or can borrow or otherwise provide delivery of the security, by settlement date. Although the Rule provides that a member firm must record the identity of both the individual and the firm contacted who offered assurances that the subject security would be delivered by settlement date or be available for borrowing by settlement date, the manner in which compliance with this Rule is to be evidenced is not specified by the Rule.

The Rule does, however, in specified circumstances, permit member firms to rely on ''blanket'' or standing assurances that certain, specified securities will be available for borrowing on settlement date to satisfy their affirmative determination obligations.[4] Such ''blanket'' assurances are commonly referred to as ''Easy to Borrow'' lists. The use of ''Hard to Borrow'' lists (*i.e.,* lists reflecting stocks that are difficult to borrow or unavailable for borrowing) is not specifically allowed by the Rule. It is the understanding of NASD Regulation staff that the New York Stock Exchange (NYSE) currently permits its members to rely on such lists.

The proposed amendment will permit member firms to rely on a ''Hard to Borrow'' list for any short sales executed in The Nasdaq Stock Market (Nasdaq) National Market (NM) or national securities exchange-listed securities, provided that any securities restricted pursuant to Uniform Practice Code (UPC) 11830 must be included on such a list[5] and that the creator of the list attests in writing that any Nasdaq NM or national securities exchange-listed securities not included on the list are easy to borrow or are available for borrowing. Operationally, a member firm would refer to the ''Hard to Borrow'' list before executing a short sale in a given security. If the subject security is not on the list, the member firm would have conducted the requisite affirmative determination and can execute the short sale without taking any further steps to satisfy the affirmative determination rule. Conversely, if the security is on the list, then a member firm would not be able to execute the short sale without taking additional steps to ensure the security's availability. Member firms that rely on ''Hard to Borrow'' lists would be required, under the Rule, to maintain and keep such lists to satisfy the requirements of the Rule that such affirmative determinations be annotated. Lastly, the same requirements that apply to ''Easy to Borrow'' lists also will apply to ''Hard to Borrow'' lists.[6]

The use of ''Hard to Borrow'' lists will be permitted only for Nasdaq NM and national securities exchange-listed securities, and not for Nasdaq SmallCap and over-the-counter (OTC) equity securities, for two reasons. First, other short-sale rules apply to Nasdaq NM and national securities exchange-listed securities (NASD Rule 3350 and SEC Rule 10a–1, respectively) to which Nasdaq SmallCap and OTC equity securities are not subject. Second, Nasdaq NM and national securities exchange-listed securities are liquid and highly capitalized, and are less likely to be subject to short sale abuses than Nasdaq SmallCap and OTC equity securities, which generally are more thinly traded and illiquid and potentially more vulnerable to short sale abuses. Therefore, the use of ''Hard to Borrow'' lists will still not be permitted for Nasdaq SmallCap and OTC Equity securities, and member firms will continue to be required to take active steps to determine stock availability for these more illiquid securities, thus providing additional investor protection.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] of the Act, which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it will reduce the administrative burdens that are placed on member firms when they comply with the affirmative determination rule and will expedite the process of executing short sale transactions, thus providing faster and possibly better executions for public investors. The proposed rule change also will allow member firms to use the same affirmative determination procedures that NASD Regulation understands are used on the NYSE for both Nasdaq NM and national securities exchange-listed securities, thereby promoting uniformity and consistency in the application and interpretation of parallel NASD and NYSE rules and avoiding member firm confusion.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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**

[4] *See* Release No. 34–36859 (February 20, 1996), 61 FR 7127 (February 26, 1996) (File No. SR–NASD–95–62), approving reliance on ''blanket'' assurances.

[5] A security becomes restricted pursuant to UPC 11830 when the total number of shares that market participants have failed to deliver in that security exceeds 0.5% of the total shares outstanding. In practice, securities with large fail-to-deliver positions are difficult to borrow.

[6] A member firm is permitted to use an ''Easy to Borrow'' list if the information used to generate the ''blanket'' or standing assurance is less than 24 hours old and the member firm delivers the security on settlement date. If the member firm does not deliver the security on settlement date, disciplinary action could be initiated. As stated above, these same restrictions would apply to the use of a ''Hard to Borrow'' list.

[7] 15 U.S.C. 78*o*–3(b)(6).

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 NASD Regulation 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, N.W., Washington, D.C. 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 the filing will also be available for inspection and copying at the principal offices of the NASD. All submissions should refer to File No. SR–NASD–99–37 and should be submitted by January 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–390 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42300; File No. SR–NASD–99–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Revising Its Fees for Listing Additional Shares

December 30, 1999.

I. Introduction and Background

On August 20, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change modifies the fee rate structures and notification requirements applied by Nasdaq to issuers listing additional shares on either the Nasdaq National Market (''NNM'') or the Nasdaq SmallCap Market (''NSCM'').

Notice of the proposed rule change was published for a comment in the **Federal Register** on November 12, 1999.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NASD proposes to revise its current fee schedule for listing additional shares. Currently, NNM issuers pay a fee of $0.02 per share for all issuances, subject to a cap of $17,500 per issuance, and NSCM issuers pay a fee of $0.01 per share for all issuances, subject to a cap of $7,500 per issuance. The fees are assessed only on certain transactions [4] and are not subject to annual maximum caps. Additionally, under the current administration, fees are assessed discretely on each eligible issuance of shares, and fees on multiple issuances cannot be combined. Under the revised fee schedule, multiple discrete issuances could be combined on a single form, or notification, to the NASD for the purpose of determining fees. Both NNM and NSCM issuers would pay a flat fee of $0.01 per share for all issuances of additional shares, subject to a cap of $17,500 per notification and $35,000 per year. Under the proposal, the minimum fee per notification will be $2,000. NSCM issuers are currently subject to a minimum fee of $1,000 per issuance and NNM issuers to a minimum fee of $2,000 per issuance.

The NASD represents that these fees will be used to support issuer-related initiatives such as surveillance, educational and training programs.[5] The NASD believes that the proposed revision of the fee schedule will better spread the costs of these issuer-related initiatives across the base of issuers benefiting from such initiatives. Specifically, the revised fee structure recognizes that Nasdaq does not distinguish between NNM issuers and NSCM issuers in providing educational initiatives or surveillance measures. Accordingly, the per-share fee for NNM issuers has been reduced to that of NSCM issuers and the minimum and maximum fees payable by NSCM issuers have been increased to the levels paid by NNM issuers. Furthermore, the proposed revised fee structure would eliminate the current fee structure's distinction between issuance of shares eligible to be assessed fees. This distinction, based generally on whether or not an issuance was deemed to raise revenue, caused confusion for issuers as they attempted to interpret the fee criteria and thereby create difficulty for the NASD in administering of the program for listing additional shares.

The proposed fee structure also would allow issuers to file notification of several issuances with the NASD on a single form and aggregate the fees assessed on those issuances toward the $17,500 maximum fee per notification.[6] Currently, issuers must file a separate notification form with respect to each discrete transaction that qualifies as a fee-assessable listing of additional shares, and each such transaction is subject to the maximum fee per issuance. Finally, the proposed $35,000 annual cap would limit the maximum fee an issuer would be required to pay which should help to ensure that no individual issuer will pay, as a result of frequent stock splits or capital raising transactions, a disproportionate share of the total costs of initiatives provided by

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42108 (Nov. 4, 1999), 64 FR 61678.

[4] Generally, transactions involving the issuance of additional shares which raise revenues for an issuer are currently assessed fees, as distinguished from those transactions, such as the creation of an employee stock option or benefit plan, that do not. The proposal would eliminate this distinction and fees would be assessed on all issuances.

[5] The NASD described in detail the intended uses for such fee revenue when it established the additional shares program. *See* Securities Exchange Act Release No. 31289 (Oct 5, 1992), 57 FR 46887 (Oct. 13, 1992), SR–NASD–99–27).

[6] Each issuance must still be filed no later than 15 days prior to issuance of the underlying shares, as required by NASD Rule 4310(c)(17).