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.

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[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).

the Nasdaq to all NNM and NSCM issuers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission finds that the rule change is consistent with the provisions of Sections 15A(b) (5) and (6) of the Act.[7] Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system which the NASD operates or controls. Section 15A(b)(6) requires in pertinent part that the rules of the NASD be designed to promote just and equitable principles of trade and not permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes that the revised NNM and NSCM fee structures, which affect the fees payable by issuers for listing additional shares, are consistent with the Act because they should serve to spread more evenly the costs of various issuer-related surveillance and educational initiatives among the issuers who may benefit from them.

IV. Conclusion

The Commission finds that the rule change is consistent with the Act, in general, and in particular with Sections 15A(b) (5) and (6) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–99–40) be, and hereby is, approved.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[7] 15 U.S.C. 78o–3(b) (5) and (6).

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposal, the Commission has considered the rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42280; File No. SR–NASD–99–72]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Effectiveness of the Pilot Injunctive Relief Rule

December 28, 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 December 15, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by NASD Regulation. On December 28, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration (''Code'') of the NASD, to extend the pilot injunctive relief rule for one year, pending Commission action on a rule filing to amend Rule 10335 and make it a permanent part of the Code. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

10335. Injunctions

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [January 3, 2000] *January 5, 2001,* unless extended by the Association's Board of Governors.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Joan C. Conely, Senior Vice President and Corporate Secretary, NASD Regulation, dated December 23, 1999 (''Amendment No. 1'').

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 III below. NASD Regulation 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

Rule 10335 took effect on January 3, 1996 for a one-year pilot period. The Commission has periodically extended the initial pilot period in order to permit NASD Regulation's Office of Dispute Resolution to assess the effectiveness of the rule. The rule is currently due to expire on January 3, 2000. In July 1998, the NASD filed a rule filing proposing to amend Rule 10335 and to make it a permanent part of the Code. The NASD filed amendments and responses to comments received by the Commission regarding the rule filing in December 1998.

After considering additional comments received by the Commission regarding both the original rule filing and the amendments, as well as comments from the Commission staff, the Injunctive Relief Rule Subcommittee of NASD Regulation, Inc.'s National Arbitration and Mediation Committee (''NAMC'') reconsidered every aspect of the proposed rule change.

After careful consideration of the comments received, the Subcommittee unanimously approved new amendments to the rule filing. The amendments were approved by the Board of NASD Regulation, Inc. at its meeting on December 8, 1999 and will be filed with the Commission shortly.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect

[4] 15 U.S.C. 78*o*–3(b)(6).