October 3, 2000

Ms. Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-00-03 - Amendment No. 1, Margin Requirements for Day-Trading Customers

Dear Ms. England:

NASD Regulation, Inc. ("NASD Regulation") hereby submits Amendment #1 to SR-NASD-00-03 (the "rule filing"). The attached proposed rule language incorporates the proposed amendments described herein.

1. Consistent with the day-trading margin proposal by the New York Stock Exchange,[1] NASD Regulation is proposing to delete the provision relating to the 90 day period in which a pattern day trader can shed the pattern day trading classification. NASD Regulation determined that this provision is not necessary as part of the definition of pattern day trader, because if a pattern day trader informs the broker/dealer that he or she will not day trade and requests his or her funds be returned, the broker/dealer cannot retain the customer funds on the basis of the day-trading margin requirements alone. Therefore, the following sentence is deleted from proposed Rule 2520(f)(8)(B)(ii): "If a pattern day trader does not day trade for a 90 day period, the customer will no longer be considered a pattern day trader."

2. NASD Regulation is clarifying that, if a pattern day trader claims that he or she is no longer a day trader and then later resumes day trading, the member may determine that the customer is a "pattern day trader" for the purposes of the day-trading margin requirements pursuant to the "knowledge" or "reasonable belief" standard of the

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[1] The New York Stock Exchange ("NYSE") proposed a substantially similar rule change to its day-trading margin requirements in SR-NYSE-99-47.

definition of pattern day trader. In this regard, NASD Regulation is amending Rule 2520(f)(8)(B)(ii) as follows (new language indicated with double underline):

> (ii) The term "pattern day trader" means any customer who executes four or more day trades within five business days. However, if the number of day trades is 6% or less of total trades for the five business day period, the customer will not be considered a pattern day trader and the special requirements under paragraph (f)(8)(B)(iv) of this Rule will not apply. In the event that the organization at which a customer seeks to open an account or to resume day trading knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the special requirements under paragraph (f)(8)(B)(iv) of this Rule will apply.

3. To clarify that proposed NASD Rule 2520(f)(B)(iv)e. applies to accounts of *pattern* day traders, not all day traders, NASD Regulation is amending that provision as follows (new language indicated with double underline):

> e. Funds deposited into a pattern day trader's account to meet the minimum equity or maintenance margin requirements of paragraph (f)(8)(B) of this Rule cannot be withdrawn for a minimum of two business days following the close of business on the day of deposit.

4. NASD Regulation is proposing to change the effective date of the proposed rule change from 30 days to 6 months from the date of the Notice to Members announcing the approval of the rule. The rule filing specified that the NASD would announce an effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. This extension of the effective date will provide members additional time to comply with the new day-trading margin rules and to make the necessary changes to systems and existing margin arrangements.

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If you have any questions, please feel free to contact Stephanie Dumont at (202) 728-8176.

Very truly yours,

Alden S. Adkins
Senior Vice President
and General Counsel

Attachment

SR-NASD-00-03, Proposed Rule Language, as amended

Below is the text of the proposed rule change incorporating the proposed amendments described in Amendment No. 1 to File No. SR-NASD-00-03. Proposed new language is underlined; proposed deletions are in brackets.

2520. Margin Requirements

(a) Definitions No change.

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) through (3) No change.

(4) equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). The minimum equity requirement for a "pattern day trader" is $25,000 pursuant to paragraph (f)(8)(B)(iv)a. of this Rule.

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with Regulation T of the Board of Governors of the Federal Reserve System and after such withdrawal the equity in the account is at least the greater of $2,000 ($25,000 in the case of a "pattern day trader") or an amount sufficient to meet the maintenance margin requirements of this [paragraph] Rule.

(c) through (f)(8)(A)(iii) No change.

(f)(8)(B) **Day[-] Trading**

(i) The term "day[-] trading" means the purchasing and selling or the selling and purchasing of the same security on the same day in a margin account except for:

a. a long security position held overnight and sold the next day prior to any new purchase of the same security, or

b. a short security position held overnight and purchased the next day prior to any new sale of the same security.

(ii) [A "day- trader" is any customer whose trading shows a pattern of day-trading.] The term "pattern day trader" means any customer who executes four or more day trades within five business days. However, if the number of day trades is 6% or less of total trades for the five business day period, the customer will not be considered a pattern day trader and the special requirements under paragraph (f)(8)(B)(iv) of this Rule will not apply. In the event that the organization at which a customer seeks to open an account or to resume day trading knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the special requirements under paragraph (f)(8)(B)(iv) of this Rule will apply.

(iii) The term "day-trading buying power" means the equity in a customer's account at the close of business of the previous day, less any maintenance margin requirement as prescribed in paragraph (c) of this Rule, multiplied by four for equity securities.

Whenever day[-] trading occurs in a customer's margin account the special maintenance margin required for the day trades in equity securities [to be maintained] shall be [the margin on the "long" or "short" transaction, whichever occurred first, as required pursuant to the other provisions of this Rule. When day-trading occurs in the account of a "day-trader" the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required by Regulation T of the Board of Governors of the Federal Reserve System or as required pursuant to the other provisions of this Rule, whichever amount is greater.] 25% of the cost of all the day trades made during the day. For non-equity securities, the special maintenance margin shall be as required pursuant to the other provisions of this Rule. Alternatively, when two or more day trades occur on the same day in the same customer's account, the margin required may be computed utilizing the highest (dollar amount) open position during that day. To utilize the highest open position computation method, a record showing the "time and tick" of each trade must be maintained to document the sequence in which each day trade was completed.

(iv) Special Requirements for Pattern Day Traders

a. Minimum Equity Requirement for Pattern Day Traders - The minimum equity required for the accounts of customers deemed to be pattern day traders shall be $25,000. This minimum equity must be deposited in the account before such customer may continue day trading and must be maintained in the customer's account at all times.

b. Pattern day traders cannot trade in excess of their day-trading buying power as defined in paragraph (f)(8)(B)(iii) above. In the event a pattern day trader exceeds its day-trading buying power, which creates a special maintenance margin deficiency, the following actions will be taken by the member:

1. The account will be margined based on the cost of all the day trades made during the day,

2. The customer's day-trading buying power will be limited to the equity in the customer's account at the close of business of the previous day, less the maintenance margin required in paragraph (c) of this Rule, multiplied by two for equity securities, and

3. "time and tick" (i.e., calculating margin using each trade in the sequence that it is executed, using the highest open position during the day) may not be used.

c. Pattern day traders who fail to meet their special maintenance margin calls as required within five business days from the date the margin deficiency occurs will be permitted to execute transactions only on a cash available basis for 90 days or until the special maintenance margin call is met.

d. Pattern day traders are restricted from using the guaranteed account provision pursuant to paragraph (f)(4) of this Rule for meeting the requirements of paragraph (f)(8)(B).

e. Funds deposited into a pattern day trader's account to meet the minimum equity or maintenance margin requirements of paragraph (f)(8)(B) of this Rule cannot be withdrawn for a minimum of two business days following the close of business on the day of deposit.

(C) When the equity in a customer's account, after giving consideration to the other provisions of this [paragraph (c)] Rule, is not sufficient to meet the requirements of [subparagraph (i) or (ii) hereof] paragraph (f)(8)(A) or (B), additional cash or securities must be received into the account to meet any deficiency within [seven] five business days of the trade date.

In addition, on the sixth business day only, members are required to deduct from Net Capital the amount of unmet maintenance margin calls pursuant to SEC Rule 15c3-1.

(f)(9) and (f)(10) No change.