

March 14, 2000

**Via Facsimile and First Class Mail**

Katherine 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-99-37 – Hard to Borrow List  
Amendment No. 2**

Dear Ms England:

Pursuant to Securities and Exchange Commission Rule 19b-4, NASD Regulation, Inc. is submitting Amendment No. 2 to the above-numbered rule filing. The purpose of the amendment is to delete one sentence from the rule filing. A copy of the paragraph from which the sentence has been deleted showing changes to the rule filing language has been attached as Exhibit A.

If you have any questions, please contact me at (202) 728-8203; e-mail [Mary.Revell@nasd.com](mailto:Mary.Revell@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Mary N. Revell  
Associate General Counsel

cc: Gordon Fuller  
Ira Brandriss

## EXHIBIT A

Text from the rule filing (as revised and published in the Federal Register)  
[Brackets indicate deletions.]

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<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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

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action could be initiated. As stated above, these same restrictions would apply to the use of a “Hard to Borrow” list.