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September 12, 2003

Ms. Katherine A. England
Assistant Director
Division of Market Regulation
U.S. Securities and Exchange Commission
450 5th Street, NW
Washington, DC 20549

Re: **File No. SR-NASD-2001-85**
NASD Rule 3370, Affirmative Determination Requirements
Amendment No. 2

Dear Ms. England:

NASD is submitting Amendment No. 2 to the above-referenced rule filing in response to discussions with Securities and Exchange Commission (“SEC”) staff. With Amendment No. 2, NASD is proposing to delete language that could allow a firm to identify itself as a market maker even though it is not deemed to be a market maker by the applicable SRO, and thus claim an exemption from the affirmative determination requirements.

Rule 3370(b)(2)(A) is amended as follows. The text reflects the changes proposed in the original rule filing and in Amendment No. 1. New language proposed in Amendment No. 2 is underlined; deletions are bracketed.

(A) Customer and non-member broker/dealer short sales

No member or person associated with a member shall accept a “short” sale order for any customer or non-member broker/dealer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or non-member broker/dealer or that the member can borrow the security on behalf of the customer or non-member broker/dealer for delivery by settlement date. This requirement shall not apply, however, to transactions in corporate debt securities or transactions in security futures, as defined in Section 3(a)(55) of the Act, or proprietary orders of a non-member broker/dealer that meet one of the exceptions in subparagraph (B) below, provided, however, that (i) the non-member broker/dealer is registered with the Securities and Exchange Commission, and (ii) if using the market maker exception, the non-member broker/dealer is registered[,] or qualified[, or otherwise identified] as a market maker in the securities and is selling such securities in connection with bona fide market making.

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We hope the foregoing amendment will enable the SEC staff to approve the proposed rule change. If you have any questions, please do not hesitate to contact me at (202) 728-8104.

Sincerely,

Gary L. Goldsholle