July 25, 2002

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-2002-100 - Proposed Rule Change to Section 4 of Schedule A to the NASD By-Laws

Dear Ms. England:

Pursuant to Section 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Shirley H. Weiss, Office of General Counsel, NASD Regulatory Policy and Oversight Division, at (202) 728-8844; e-mail Shirley. Weiss@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney Senior Vice President and Corporate Secretary

cc: Beth Badawy

Enclosures

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

National Association of Securities Dealers, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws (hereinafter referred to as "Section 4") by establishing a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository ("CRD®" or "Web CRDSM"). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

* * * * *

Section 4 - Fees

- (a) No change.
- (b) NASD shall assess each member a fee of:
 - (1) through (6) No change.
- (7) 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary annual renewal statement.
- (c) through (l) No change.

* * * * *

2. <u>Procedures of the Self-Regulatory Organization</u>

- (a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on May 22, 2002, which authorized the filing of the rule change with the Commission. Counsel for The Nasdaq Stock Market, Inc. and NASD Dispute Resolution, Inc. have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on May 23, 2002. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.
- (b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight Division, at (202) 728-8844.
- 3. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>
 - (a) Purpose

The purpose of the proposed rule change is to amend Section 4(b) of Schedule A to the NASD By-Laws by establishing a fee comprised of 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary annual renewal statement. As further

detailed below, the proposed rule change is effective immediately upon filing and becomes operative on September 1, 2002.

NASD administers an annual renewal program that simplifies the process of renewing registrations and licenses for member firms and their associated persons by allowing members to pay a single amount to NASD in December of each year. This annual renewal fee covers all NASD registration and licensing fees and fees imposed by states and other self-regulatory organizations ("SROs"). NASD also collects broker-dealer and investment adviser renewal fees on behalf of SROs and state regulators, as applicable, through this program.

During the first week of November, NASD publishes on-line, on Web CRD, a Preliminary Renewal Statement for each member that advises the member of the total amount of renewal fees owed for the following year. The renewal fees are generally due to NASD by the end of the first week in December. Members currently pay the amount indicated on their Preliminary Renewal Statement by check or bank wire transfer, and NASD pays the fees to the various regulators by year-end. NASD advises its members that their failure to return full payment to NASD by the stated deadline could cause a member to become ineligible to do business in the jurisdictions in which it is registered as of the first business day of the new year. The timely payment of renewal fees by NASD members and their subsequent disbursement to appropriate regulators ensures that NASD members will not be precluded from conducting business in the next calendar year as a result of the non-payment of renewal fees.

Because of the potential risk to members' ability to conduct business if they fail timely to make their renewal payments, NASD engages in a comprehensive communications and operational effort beginning in August of each year that informs members of their obligation to

complete the renewals process by the stated deadline and the risk associated with their failure to do so. These communications include an Advance Calendar of Key Dates, a Notice to Members, a CRD Bulletin, reminder e-mails, and daily reminder Broadcast Messages through CRD.

In early January, NASD makes available on-line a Final Renewal Statement that reflects the final status of agent and firm registrations and/or Notice Filings as of December 31 of the previous year. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the Preliminary Renewal Statement are made in this final, reconciled statement on Web CRD. NASD issues a credit/refund to members that paid an amount greater than the final amount based on their Preliminary Renewal Statements. NASD assesses additional fees if a member paid less than the final reconciled amount.

Notwithstanding NASD's efforts to obtain timely payments of renewal fees, a significant percentage of NASD members miss the payment deadline each year, prompting NASD staff to expend additional time and resources to collect these fees after the renewal deadline has passed. NASD staff expends considerable effort to contact delinquent members to prevent them from failing to renew with the jurisdictions with which they are registered. This annual effort is in addition to, and detracts from, NASD's efforts to serve its members in the normal course of business.

NASD is therefore proposing that a late renewal fee be established and assessed against any NASD member that has not paid its renewal fees by the published deadline. NASD believes that such a fee would serve a two-fold purpose. It would provide members with an additional incentive to meet the renewals payment deadline, and it also would cover the costs of NASD

collection activities (<u>i.e.</u>, the time and resources expended in contacting and collecting fees from NASD members that miss the deadline). The purpose of the proposed fee is not to generate significant net revenue, and it should not do so. Ideally, establishment of the late fee will encourage members to pay their renewal fees by the stated deadline and eliminate a significant number of late payments.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) and 15A(b)(6) of the Act, which require, among other things, the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system that NASD operates or controls, and that NASD's rules must 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 believes that the proposed late renewal fee will encourage NASD members to pay their yearly renewal fees on a timely basis, since failure to do so could cause them to become ineligible to do business in jurisdictions where they are registered, effective the first business day of the new year. Reducing the number of members that do not timely pay their renewal fees will also reduce the time spent by NASD in collection efforts, thereby freeing NASD staff to serve NASD members in the normal course of business.

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

NASD 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.

5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change</u>
<u>Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

6. <u>Extension of Time Period for Commission Action</u>

Not applicable.

7. <u>Basis for Summary Effectiveness Pursuant to Section 19(b)(3)</u>

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder, ¹ in that the proposed rule change establishes or changes a due, fee, or other charge. The fee becomes operative on September 1, 2002.

8. <u>Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission</u>

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the <u>Federal Register</u>.

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¹ 17 CFR 240.19b-4(f)(4).

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Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

National Association of Securities Dealers, Inc. BY:

Barbara Z. Sweeney Senior Vice President and Corporate Secretary

Date: July 25, 2002

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2002-100)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Proposed Rule Change to Section 4 of Schedule A to the NASD By-Laws

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 July 25, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. <u>SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE</u>

NASD is proposing to amend Section 4(b) of Schedule A to the NASD By-Laws by establishing a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository ("CRD®" or "Web CRDSM"). The proposed late fee would be operative September 1, 2002. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * * * *

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

* * * * *

Section 4 - Fees

- (a) No change.
- (b) NASD shall assess each member a fee of:
 - (1) through (6) No change.
- (7) 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary annual renewal statement.
- (c) through (l) No change.

* * * * *

II. <u>SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF,</u> AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD 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 has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis</u> for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to amend Section 4(b) of Schedule A to the NASD By-Laws by establishing a fee comprised of 10% of a member's final annual renewal assessment or \$100, whichever is greater, with a maximum charge of \$5,000, if the member fails timely to pay the amount indicated on its preliminary annual renewal statement. As further detailed below, the proposed rule change is effective immediately upon filing and becomes operative on September 1, 2002.

NASD administers an annual renewal program that simplifies the process of renewing registrations and licenses for member firms and their associated persons by allowing members to pay a single amount to NASD in December of each year. This annual renewal fee covers all NASD registration and licensing fees and fees imposed by states and other self-regulatory organizations ("SROs"). NASD also collects broker-dealer and investment adviser renewal fees on behalf of SROs and state regulators, as applicable, through this program.

During the first week of November, NASD publishes on-line, on Web CRD, a Preliminary Renewal Statement for each member that advises the member of the total amount of renewal fees owed for the following year. The renewal fees are generally due to NASD by the end of the first week in December. Members currently pay the amount indicated on their Preliminary Renewal Statement by check or bank wire transfer, and NASD pays the fees to the various regulators by year-end. NASD advises its members that their failure to return full payment to NASD by the stated deadline could cause a member to become ineligible to do business in the jurisdictions in

which it is registered as of the first business day of the new year. The timely payment of renewal fees by NASD members and their subsequent disbursement to appropriate regulators ensures that NASD members will not be precluded from conducting business in the next calendar year as a result of the non-payment of renewal fees.

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In early January, NASD makes available on-line a Final Renewal Statement that reflects the final status of agent and firm registrations and/or Notice Filings as of December 31 of the previous year. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the Preliminary Renewal Statement are made in this final, reconciled statement on Web CRD. NASD issues a credit/refund to members that paid an amount greater than the final amount based on their Preliminary Renewal Statements. NASD assesses additional fees if a member paid less than the final reconciled amount.

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addition to, and detracts from, NASD's efforts to serve its members in the normal course of business.

NASD is therefore proposing that a late renewal fee be established and assessed against any NASD member that has not paid its renewal fees by the published deadline. NASD believes that such a fee would serve a two-fold purpose. It would provide members with an additional incentive to meet the renewals payment deadline, and it also would cover the costs of NASD collection activities (i.e., the time and resources expended in contacting and collecting fees from NASD members that miss the deadline). The purpose of the proposed fee is not to generate significant net revenue, and it should not do so. Ideally, establishment of the late fee will encourage members to pay their renewal fees by the stated deadline and eliminate a significant number of late payments.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) and 15A(b)(6) of the Act, which require, among other things, the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system that NASD operates or controls, and that NASD's rules must 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 believes that the proposed late renewal fee will encourage NASD members to pay their yearly renewal fees on a timely basis, since failure to do so could cause them to become ineligible to do business in jurisdictions where they are registered, effective the first business day of the new year. Reducing the number of members that do not timely pay their renewal fees will also reduce the time spent by NASD in

collection efforts, thereby freeing NASD staff to serve NASD members in the normal course of business.

(B) <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

NASD 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) <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule</u>
<u>Change Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder, ³ in that the proposed rule change establishes or changes a due, fee, or other charge. The fee becomes operative on September 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

³ 17 CFR 240.19b-4(f)(4).

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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 NASD. All submissions

should refer to the file number in the caption above and should be submitted by [insert date 21]

days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated

authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz

Secretary