The Board has determined that, because the Bond Delivery Period for Exempt VRDOs is at most one business day, it is often not possible for dealers to settle with customers—who expect to receive delivery of their securities on the issue date—without causing a violation of the requirement that they deliver the official statement in final form to such customers by settlement. As a result, the Board is proposing an amendment to Rule G–32 that would permit a dealer, selling new issue Exempt VRDOs, to deliver the official statement in preliminary form to the customer by settlement, together with a written notice that the official statement in final form will be sent to the customer within one business day of receipt. Thereafter, once the dealer receives the official statement in final form, it must send a copy to the customer within one business day of receipt. If no official statement in preliminary form is being prepared, the dealer would only be obligated to deliver by settlement the written notice regarding the official statement in final form and to send the official statement in final form upon receipt.[15] The proposed amendment offers an alternative method of compliance with Rule G–32 in the case of Exempt VRDOs. Thus, in those limited circumstances where dealers may in fact receive the official statement in final form in sufficient time to deliver it to customers by settlement (*e.g.*, if an issuer approves completion of the official statement in final form prior to execution of the purchase contract), dealers would have the option of complying with the existing provision of the rule by delivering the official statement in final form to the customer by settlement.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[16] The Board believes that the proposed rule change will ensure that the primary market in municipal securities continues to experience adequate levels of disclosure without disruption to the market for variable rate demand obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designated 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 the self-regulatory organization consents, the Commission will:

(A) By order approve the 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, NW, Washington, DC 20549. 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 Board's principal offices. All submissions should refer to File No. SR–MSRB–98–4 and should be submitted by May 19, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11209 Filed 4–27–98; 8:45 am]

BILLING CODE 8010–01–M

[15] As in the current rule, if no official statement in final form is being prepared, such dealer would deliver to the customer by settlement the official statement in preliminary form, if any, and written notice to the effect that an official statement in final form is not being prepared. If neither a final nor a preliminary official statement is being prepared, the dealer would only be obligated to deliver by settlement the written notice to the effect that no official statement in final form is being prepared.

[16] Section 15B(b)(2)(C) states that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39893; File No. SR–NASD–98–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to the NASD's Options Position Limits Rule

April 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] notice is hereby given that on March 10, 1998, NASD Regulation, Inc. (''NASD Regulation'') 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD Regulation is proposing to amend Rule 2860(b) of the of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to: (1) increase the position limits on conventional equity options to three times the basic position limits for standardized equity options on the same security; (2) disaggregate conventional equity options from standardized equity options and FLEX Equity Options for position limit purposes; and (3) provide that the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption. Below is the text of the proposed rule change. Proposed new

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

language is in italics; proposed deletions are in brackets.[2]

Rule 2860. Options

* * * * *

(b) Requirements

(2) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

* * * * *

(VV) *Standardized Equity Option—The term ''standardized equity option'' means any equity options contract issued, or subject to issuance by, The Options Clearing Corporation that is not a FLEX Equity Option.*

(WW)—(AAA) Redesignated accordingly.

* * * * *

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances and with the prior written approval of the Association in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate *standardized equity options* position in excess of:

(i) 4,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) 7,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 7,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 7,500 option contracts; or

(iii) 10,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the 10,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 10,500 option contracts; or

(iv) 20,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 20,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 20,000 option contracts; or

(v) 25,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 25,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 25,000 option contracts; or

(vi) such other number stock options contracts as may be fixed from time to time by the Association as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by the Association.

(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is ''hedged'' by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

1. long call and short stock;
2. short call and long stock;
3. long put and long stock.
4. short put and short stock

b. Except as provided [under] *in subparagraph (b)(3)(A)(ix) and in* the OTC Collar Exemption contained in *sub*paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in *sub*paragraph (b)(3)(A)(i)–(v) *with respect to standardized equity options, or subparagraph (b)(3)(A)(ix) with respect to conventional equity options.*

c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1999.[3]

(viii) OTC With Aggregation Exemption

a. For purposes of this paragraph (b), the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.

b. Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subparagraphs (i) through (v) above, the conventional options positions involved in a particular OTC collar transaction [established pursuant to the position limit hedge exemption in subparagraph (vii)] need not be aggregated for position limit purposes, provided the following conditions are satisfied:

1. the conventional options can only be exercised if they are in-the-money;
2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;
3. the conventional options must be European-style (*i.e.*, only exercisable upon expiration) and expire on the same date;
4. The strike price of the short call can never be less than the strike price of the long put; and
5. neither side of any particular OTC collar transaction can be in-the-money when that particular OTC collar is established.
6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subparagraph *(b)(3)(A)(ix)* [(A)(i)–(v) above] must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.

[2] The proposed new language assumes that the proposed rule changes filed with the Commission in SR–NASD–98–15, on February 13, 1998, and SR–NASD–98–02, on January 20, 1998, have been approved. The Commission notes that SR–NASD–98–15 was approved on March 19, 1998, and SR–NASD–98–02 was approved on April 14, 1998. *See* Exchange Act Release Nos. 39771 (March 19, 1998), 63 FR 14743 (March 26, 1998) (SR–NASD–98–15); 39865 (April 14, 1998) (SR–NASD–98–02).

[3] The Commission notes that the NASD filed a proposed rule change requesting that the Equity Option Hedge Exemption pilot program be extended until December 31, 1999. An amendment was later filed, reducing the extension until December 31, 1998. The Commission approved the proposed rule change, as amended. *See* Exchange Act Release No. 39865 (April 14, 1998) (SR–NASD–98–02). The NASD will be submitting an amendment to this filing (SR–NASD–98–23), clarifying in the proposed rule language that the Equity Option Hedge Exemption pilot program has been extended only until December 31, 1998.

c. For multiple OTC collars on the same security meeting the conditions set forth in subparagraph b. above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

d. Except as provided above in subparagraphs b. and c., in no event may a member fail to aggregate any conventional [or standardized] options contract of the put class and the call class overlying the same equity security on the same side on the market with conventional option positions established in connection with an OTC collar.

e. Nothing in this subparagraph (viii) changes the applicable position limit for a particular equity security.

(ix) For purposes of this paragraph (b), standardized equity options contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity options contracts or FLEX Equity Options contracts overlying the same security on the same side of the market. Conventional equity options contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a basic position limit equal to three times the applicable position limit established for standardized equity options overlying the security pursuant to subparagraphs A(i)–(v) above and are eligible for the OTC Collar Exemption set forth in subparagraph A(viii) above and the Equity Option Hedge Exemption set forth in subparagraph A(vii) above.

(Footnotes omitted. No changes).

* * * * *

IM–2860–1. Position Limits

The following examples illustrate the operation of position limits established by Rule 2860(b)(3) (all examples assume a position limit of 4,500 contracts *and that the options are standardized options*):

(a) Customer A, who is long 4,500 XYZ calls, may at the same time be short 4,500 XYZ calls, since long and short positions in the same class of options (*i.e.*, in calls only, or in puts only) are on opposite sides of the market and are not aggregated for purposes of paragraph (b)(3).

(b) Customer B, who is long 4,500 XYZ calls, may at the same time be long 4,500 XYZ puts. Paragraph (b)(3) does not require the aggregation of long call and long put (or short call and short put) positions, since they are on opposite sides of the market.

(c) Customer C, who is long 1,700 XYZ calls, may not at the same time be short more than 2,800 XYZ puts, since the 4,500 contract limit applies to the aggregation of long call and short put positions in options covering the same underlying security. Similarly, if Customer C is also short 1,600 XYZ calls, he may not at the same time be long more than 2,900 puts, since the 4,500 contract limit applies separately to the aggregation of short call and long put positions in options covering the same underlying security.

(d) Customer D, who is short *900,000* [450,000] shares of XYZ, may be long up to *13,500* [9,000] XYZ calls, since the ''hedge'' exemption contained in paragraph (b)(3)(A)(*vii*) permits Customer D to establish an options position up to *13,500* [9,000] contracts in size. In this instance, 4,500 of the *13,500* [9,000] contracts are permissible under the basic position limit contained in paragraph (b)(3)(A)(i) and the remaining *9,000* [4,500] contracts are permissible because they are hedged by the *900,000* [450,000] short stock position.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization has 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

NASD Rule 2860(b)(3) provides that the position limit[4] for each equity option is determined according to a five-tiered system whereby more actively traded securities with larger public floats are subject to higher position limits and less actively traded stocks are subject to lower limits.[5] Presently, conventional and standardized equity options are subject to the same position limits, and all equity options overlying a particular equity security on the same side of the market are aggregated for position limit purposes, regardless of whether the option is a conventional, standardized or FLEX Equity Option.[6] On September 9, 1997, the Commission approved a two-year pilot program (''Pilot Program'') to eliminate position and exercise limits for FLEX Equity Options, which are traded on the American Stock Exchange, Inc. (''AMES''), the Chicago Board Options Exchange, Inc. (''CBOE''), and the Pacific Exchange, Inc. (''PCX'') (collectively ''Options Exchanges'').[7] In light of the Pilot Program, NASD Regulation is proposing to amend its rules governing position and exercise limits for conventional equity options. NASD Regulation previously has filed a proposed rule change to eliminate position and exercise limits on FLEX Equity Options to make its rules consistent with the Pilot Program.[8] NASD Regulation believes the proposed rule change herein is necessary to foster competition between the over-the-counter (''OTC'') market and the Options Exchanges.

FLEX Equity Options are exchange-traded options issued by the Options Clearing Corporation (''OCC'') that give investors the ability, within specified limits, to designate certain terms of the option (*i.e.*, the exercise price, exercise style, expiration date, and option type). Because they are non-uniform and individually negotiated, FLEX Equity Options closely resemble and are

[4] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts; or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts that an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. *See* NASD Rules 2860(b)(3) and (4).

[5] Currently, the five tiers are for 4,500, 7,500, 10,500, 20,000 and 25,000 contracts. NASD rules do not specifically govern how a specific equity option falls within one of the five position limit tiers. Rather, the NASD's position limit rule provides that the position limit established by an options exchange(s) for a particular equity option is the applicable position limit for purposes of the NASD's rule.

[6] Standardized options are exchange-traded options issued by the Options Clearing Corporation (''OCC'') that have standard terms with respect to strike prices, expiration dates, and the amount of the underlying security. A conventional option is any other option contract not issued, or subject to issuance by, OCC.

[7] *See* Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

[8] *See* SR–NASD–98–15. The Commission notes that SR–NASD–98–15 was approved on March 19, 1998. *See* Exchange Act Release No. 39771 (March 19, 1998), 63 FR 14743 (March 26, 1998).

economically equivalent to conventional equity options. Accordingly, to more closely align the NASD's position limit rules for conventional equity options with the rules for FLEX Equity Options, NASD Regulation proposes to amend Rule 2860(b)(3) to provide that: (1) position limits on conventional equity options shall be increased to three times the basic position limits for standardized equity options on the same security; (2) conventional equity options shall be disaggregated from standardized equity options and FLEX Equity Options for position limit purposes; and (3) the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The NASD's Equity Option Hedge Exemption [9] provides for an automatic exemption from equity option position limits for accounts that have established hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). Under the Equity Option Hedge Exemption, the largest options position that may be established (combining hedged and unhedged positions) may not exceed three times the basic position limit. The OTC Collar Aggregation Exemption [10] provides that positions in conventional put and call options establishing OTC collars need not be aggregated for position limit purposes. An OTC collar transaction involves the purchase (sale) of a put and the sale (purchase) of a call on the same underlying security to hedge a long (short) stock position.

At the present time, NASD Regulation believes that the prudent regulatory approach is to increase position limits on conventional equity options in conjunction with continued availability of the Equity Option Hedge Exemption and OTC Collar Aggregation Exemption. NASD Regulation proposes an incremental approach and in this case believes that increasing position limits for conventional equity options to three times the position limits for standardized equity options is appropriate. These proposed limits correspond to the position limits in effect for FLEX Equity Options prior to the Pilot Program.

NASD Regulation also believes that conventional equity options positions should not be aggregated with standardized and FLEX Equity Options on the same securities for position limit purposes. Disaggregation of conventional and other options is necessary to give full effect to the proposed increase in position limits for conventional equity options. Without disaggregation, positions in FLEX Equity Option or standardized option positions would reduce or potentially even eliminate (in the case of FLEX Equity Options) the available position limits for conventional equity options.

To illustrate how these proposed amendments would work, consider the following example of stock ABCD, which is subject to a position limit of 25,000 standardized equity option contracts. In this example, a market participant could establish a position of 25,000 standardized option contracts on ABCD and an additional 75,000 conventional option contracts on ABCD on the same side of the market, since conventional and standardized option positions would be disaggregated. In addition, the market participant also may have a position of any size in FLEX Equity Options overlying ABCD, since such FLEX Equity Options would not be aggregated with either the conventional equity options or standardized equity options overlying ABCD. Further, by taking advantage of the Equity Option Hedge Exemption, which permits a market participant to assume a hedged options position that is three times the otherwise applicable position limit, a market participant could increase the number of conventional equity options to 225,000 contracts.

NASD Regulation proposes to modify the terms of the OTC Collar Aggregation Exemption to apply to an entire conventional equity option position, not just the portion that is established pursuant to the Equity Option Hedge Exemption. NASD Regulation believes such an amendment is consistent with the economic logic underlying the OTC Collar Aggregation Exemption, *i.e.*, that if the terms of the exemption are met, the segments of an OTC collar will never both be in-the-money at the same time or exercised. Under current rules, assuming that stock ABCD is subject to a basic position limit of 25,000 contracts, market participant taking advantage of the Equity Option Hedge Exemption could establish a hedged position on ABCD involving a total of 75,000 conventional equity option contracts (three times the basic limit), including 50,000 contracts that are established under the Equity Option Hedge Exemption. A market participant using the OTC Collar Aggregation Exemption could then establish a conventional position of 50,000 long (short) calls and 50,000 short (long) puts, for a total of 125,000 contracts overlying ABCD. The proposed rule change to the OTC Collar Aggregation Exemption would allow a market participant to establish a collar consisting of two segments, each of which involves a position three times greater than the basic position limit. Consequently, using the example above, a market participant could establish an OTC collar on ABCD involving 75,000 long (short) calls and 75,000 short (long) puts, for a total of 150,000 contracts.[11]

If, however, the basic position limits for conventional options were tripled, as proposed above, the permissible options position established under the OTC Collar Aggregation Exemption would be correspondingly increased. For example, if the market participant in the above example had increased the size of its conventional options position to 225,000 contracts pursuant to the Equity Option Hedge Exemption as proposed above (based upon a limit of three times the 75,000 conventional equity options position limit), the market participant could establish an OTC collar on ABCD involving 225,000 long (short) calls and 225,000 short (long) puts, for a total of 450,000 contracts.

Finally, in addition to the proposed rule changes discussed above, the NASD is proposing to clarify and update the examples contained in IM–2860–1 so that they are consistent with the instant proposal and prior increases in the hedge exemption.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change, which will increase the position limits on conventional equity options, disaggregate conventional equity options from exchange-traded equity options for position limit purposes, and provide that the OTC Collar Aggregation Exemption may be

[9] Rule 2860(b)(3)(A)(vii).

[10] Rule 2860(b)(3)(A)(viii).

[11] While the OTC Collar Aggregation Exemption is self-effectuating with respect to the hedged components of conventional options positions, NASD Regulation has also permitted members to include non-hedged positions within OTC collars under the terms of the OTC Collar Aggregation Exemption on a pre-approval basis. Accordingly, the instant rule change would turn this pre-approval process for non-hedged components of OTC collars into a self-effectuating process.

[12] 15 U.S.C. 78*o*–3(b).

utilized with respect to any conventional equity options position, not just that portion of the position that was established pursuant to the NASD's Equity Option Hedge Exemption, will enable market participants to establish larger positions in conventional equity options and, thus, will help to ensure that participants in the OTC options market are not placed at a competitive disadvantage vis-a-vis the exchange markets. In addition, NASD Regulation believes that increasing the position limits for conventional equity options will afford market participants, particularly portfolio managers, issuers, and sophisticated institutional investors, greater flexibility to employ larger options positions when effectuating their investment strategies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal 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 the self-regulatory organization consents, the Commission will:

(A) by order approve the 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. 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 at the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–23 and should be submitted by May 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11169 Filed 4–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39892; File No. SR–NASD–98–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Qualified Immunity in Arbitration Proceedings for Statements Made on Forms U–4 and U–5

April 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 21, 1998, NASD Regulation, Inc. (''NASD Regulation'') 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 Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD Regulation is proposing to add a new rule to the Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to provide members of the NASD with qualified immunity in arbitration proceedings for statements made in good faith in certain disclosures filed with the NASD on Forms U–4 and U–5, the uniform registration and termination notices for registered persons. Below is the text of the proposed rule change.

Proposed new language is in italics.

* * * * *

Rule 1150. Regulatory Form Disclosures

(a) Mandatory Disclosures

A member must make truthful and accurate statements on the covered forms required under Article V, Sections 2 and 3 of the By-Laws.

(b) Qualified Immunity

(1) This paragraph shall apply to any arbitration proceeding between a member or other party and a covered person relating to statements made in response to an information requirement of a covered form with respect to such covered person, to the extent that such statements are contained in a covered form that has been or, at a subsequent point in time, is (A) filed with a regulatory authority or self-regulatory organization, and (B) disseminated by reason of such filing, or otherwise disseminated orally, in writing, or through any electronic medium to an appropriate person.

(2) A defending party shall not be liable in a proceeding to a covered person for any defamation claim related to an alleged untrue statement that is contained in a covered form if the statement was true at the time that the statement was made.

(3) A defending party shall not be liable in a proceeding to a covered person for any defamation claim related to an alleged untrue statement that is contained in a covered form unless the covered person shows by clear and convincing evidence that:

(A) the defending party knew at the time that the statement was made that it was false in any material respect; or

(B) the defending party acted in reckless disregard as to the statement's truth or falsity.

(c) Definitions

For purposes of this Rule:

(1) The term ''appropriate person'' means any federal or state governmental or regulatory authority, and self-regulatory organization, any employer or prospective employer of a covered person, or any person who requests or is required to obtain information concerning the covered person from the defending party and as to whom the defending party has a legal obligation to provide such information.

(2) The term ''claim'' means any claim, counterclaim, third-party claim, or cross-claim.

(3) The term ''covered form'' means any form or notice required under

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).