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July 1, 1998

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: National Association of Securities Dealers, Inc. Proposed Rule 1150
File No. SR-NASD-98-18

Dear Mr. Katz:

The Bond Market Association (the "Association")¹ appreciates the opportunity to comment to the Securities and Exchange Commission (the "Commission") on proposed Rule 1150 (the "Rule") of the National Association of Securities Dealers, Inc. ("NASD"). The proposal is contained in Release No. 34-39892 (April 21, 1998) (the "Proposing Release").

The Rule would establish a uniform standard of qualified immunity for firms in NASD arbitration proceedings with respect to disclosures made on Forms U-4, U-5 and others (collectively, "covered forms"). The Association has previously commented to the NASD in response to the proposal of an earlier version of the Rule (the "First Proposal"),² in a letter dated December 24, 1997 (the "December comment letter"). A copy of the December comment letter is attached to this letter for reference.

The Association applauds the NASD's efforts to promote candid and accurate disclosure by member firms of material information regarding the termination of their former employees. The availability of such information to regulators and the public helps foster the confidence of investors in the integrity and trustworthiness of securities industry personnel and, by extension, the U.S. securities markets. The duty of disclosure, however, routinely exposes member firms to the threat of arbitration claims or lawsuits, as former employees allege that the disclosure contains untrue statements concerning their employment history. The cost of defending and litigating such lawsuits, regardless of the eventual outcome, can have a chilling effect on the nature and extent of disclosure on covered forms. The Association's comments in the December comment letter and in this letter are driven by the experience of its members as to the steps that will foster the objectives of open disclosure while at the same time protecting firms from the cost and burden of defending themselves against meritless claims of defamation.

The NASD has made a number of very positive changes to the proposed Rule based on industry and other reaction to the First Proposal. The Association strongly supports the following changes, in each case for the reasons set forth at length in the December comment letter:

- elimination of the proposed requirement, in section (a)(i) of the Rule, that the disclosure on covered forms be "complete" in addition to "truthful" and "accurate";
- elimination of the proposed requirement to provide the subject employee a ten-day opportunity to review any Form U-5;
- exclusion of the proposal to establish pre-filing dispute resolution through an expedited arbitration or mediation procedure; and
- maintenance of the requirement that the subject employee provide "clear and convincing evidence" in order to be able to overcome the qualified immunity.

However, there are several areas of the Rule as contained in the First Proposal that caused the Association great concern. The Association disagrees, in each case for the reasons set forth in the December comment letter, with the following aspects of the Rule as contained in the Proposing Release, and urges the NASD and the Commission to reconsider these points:

- the Rule need not be subject to a four-year pilot program arrangement, since the most objectionable provisions of the Rule in the First Proposal - the proposed ten-day advance review period and the proposed expedited arbitration or mediation procedures - have been eliminated from the Rule as proposed in the Proposing Release;
- the Rule should make clear that the qualified immunity standard it establishes is a minimum standard, and does not supplant higher standards already in existence in certain jurisdictions;
- the qualified immunity granted under the Rule should apply more broadly to claims with respect to disclosure made on a covered form, rather than solely to those claims characterized by the claimant as defamation;
- customers should be included within the definition of "appropriate persons" so that publication of a covered form to customers carries the qualified immunity; and
- the qualified immunity should only be overcome in circumstances where the firm had actual knowledge that a statement made on a covered form was materially false, rather than the "reckless disregard" standard contained in the Rule as proposed in the Proposing Release.

The Association appreciates this opportunity to provide its views to the Commission. We would be pleased to discuss any of the comments in this letter or the December comment letter with the Commission or its staff. Please address any questions or requests for additional information to the undersigned at 212.440.9407.

Very truly yours,

SARAH M. STARKWEATHER
Vice President and Associate General Counsel

Attachment

cc: The Honorable Arthur Levitt, *Chairman*
Securities and Exchange Commission
Belinda Blaine, *Counsel to the Chairman*
Securities and Exchange Commission
The Honorable Norman S. Johnson, *Commissioner*
Securities and Exchange Commission
Ross Albert, *Counsel to Commissioner Johnson*
Securities and Exchange Commission
The Honorable Isaac Hunt, Jr., *Commissioner*
Securities and Exchange Commission
The Honorable Laura Unger, *Commissioner*
Securities and Exchange Commission
The Honorable Paul Carey, *Commissioner*
Securities and Exchange Commission
Richard R. Lindsey, *Director, Division of Market Regulation*
Securities and Exchange Commission
Robert L.D. Colby, *Deputy Director, Division of Market Regulation*
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National Association of Securities Dealers, Inc.
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NASD Regulation, Inc.
John M. Ramsay, *Deputy General Counsel, Office of General Counsel*
NASD Regulation, Inc.
Members of the Board of Directors
Members of the Litigation Advisory Committee
Selected Staff
The Bond Market Association

FOOTNOTES

- 1 The Association is the bond market trade association, representing approximately 200 securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally. More information about the Association is available on its Internet home page at www.bondmarkets.com. This letter was prepared in consultation with the Litigation Advisory Committee of the Association, comprised of legal representatives of approximately 28 member firms, representing all sectors of the bond market community.
- 2 Contained in NASD Notice to Members 97-77 (November 1997).