

OMB APPROVAL

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Page 1 of 28

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2008 - 007

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

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

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
Pilot ☐			Rule		
Extension of Time Period for Commission Action ☐			☐ 19b-4(f)(1) ☐ 19b-4(f)(4) ☐ 19b-4(f)(2) ☐ 19b-4(f)(5) ☐ 19b-4(f)(3) ☒ 19b-4(f)(6)		
Date Expires 					

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change Relating to Permanent Approval of the Pilot Program that Increases Options Position and Exercise Limits

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Kathryn Last Name Moore
Title Assistant General Counsel
E-mail kathryn.moore@finra.org
Telephone (202) 974-2974 Fax (202) 728-8972

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 02/28/2008

By Gary L. Goldsholle
(Name)

Vice President and Associate General Counsel

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Gary Goldsholle,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 2860 (Options) to make permanent a pilot program that increases options position and exercise limits. In addition, FINRA proposes to amend NASD IM-2860-1 (Position Limits) to revise the examples that illustrate the operation of position limits with the proposed permanent position limits.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2800. SPECIAL PRODUCTS

Rule 2860. Options

(a) No Change.

(b) Requirements

(1) through (2) No Change.

(3) Position Limits

(A) Stock Options — Except in highly unusual circumstances, and with the prior written approval of NASD pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any

¹ 15 U.S.C. 78(s)(b)(1).

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, non-member broker, or non-member dealer, an opening transaction through 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, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) [13,500 (or)25,000 [during the pilot period from March 30, 2005 through March 1, 2008 ("Pilot Period"))] 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) [22,500 (or] 50,000 [during the Pilot Period)] option contracts of the put class and the call class on the same side of the market covering the same underlying security, provided that the [22,500 (or)50,000 [during the Pilot Period)] contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules

for a position limit of [22,500 (or)50,000 [during the Pilot Period]] option contracts; or

(iii) [31,500 (or) 75,000 [during the Pilot Period]] option contracts of the put class and the call class on the same side of the market covering the same underlying security provided that the [31,500 (or)75,000 [during the Pilot Period]] contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [31,500 (or)75,000 [during the Pilot Period]] option contracts; or

(iv) [60,000 (or)200,000 [during the Pilot Period]] option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the [60,000 (or) 200,000 [during the Pilot Period]] contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [60,000 (or) 200,000 [during the Pilot Period]] option contracts; or

(v) [75,000 (or) 250,000 [during the Pilot Period]] option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the [75,000 (or) 250,000 [during the Pilot Period]] contract position limit shall only be available for option contracts on securities that

underlie exchange-traded options qualifying under applicable rules for a position limit of [75,000 (or) 250,000 [during the Pilot Period)] option contracts; or

(vi) through (vii) No Change.

(viii) Conventional Equity Options

a. For purposes of this paragraph (b), standardized equity option 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 option contracts or FLEX Equity Option contracts overlying the same security on the same side of the market.

Conventional equity option contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. the basic limit of [13,500 (or) 25,000 [during the Pilot Period)] contracts, or
2. any standardized equity options position limit as set forth in paragraphs (b)(3)(A)(ii) through (v) for which the underlying security qualifies or would be able to qualify.

b. In order for a security not subject to standardized equity options trading to qualify for an options position

limit of more than [13,500 (or]25,000 [during the Pilot Period)] contracts, a member must first demonstrate to NASD's Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Provided, however, that for certain securities in an index designated by NASD, a member may claim such higher position limit as permitted in accordance with the volume and float criteria specified by NASD; provided further, that a member claiming a higher position limit under this subparagraph must notify NASD's Market Regulation Department in writing in such form as may be prescribed by NASD and shall be filed no later than the close of business day on the next business day following the day on which the transaction or transactions requiring such limits occurred; and provided further, that the member must agree to reduce its position in the event that NASD staff determines different position limits should apply.

(B) through (D) No Change.

(4) through (24) No Change.

* * * * *

IM-2860-1. Position Limits

The following examples illustrate the operation of position limits established by NASD Rule 2860(b)(3) (all examples assume a position limit of [4,500]25,000 contracts and that the options are standardized options):

(a) Customer A, who is long [4,500]25,000 XYZ calls, may at the same time be short [4,500]25,000 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]25,000 XYZ calls, may at the same time be long [4,500]25,000 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]20,000 XYZ calls, may not at the same time be short more than [2,800]5,000 XYZ puts, since the [4,500]25,000 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]20,000 XYZ calls, he may not at the same time be long more than [2,900]5,000 puts, since the [4,500]25,000 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]2,000,000 shares of XYZ, may be long up to [4,500]45,000 XYZ calls, since the "hedge" exemption contained in paragraph (b)(3)(A)(vii) permits Customer D to establish an options position up to [4,500]25,000 contracts in size. In this instance, [4,500]25,000 of the [13,500]45,000 contracts are

permissible under the basic position limit contained in paragraph (b)(3)(A)(i) and the remaining [9,000]20,000 contracts are permissible because they are hedged by the [900,000]2,000,000 short stock position.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by the General Counsel of FINRA (or his officer designee) pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing, February 28, 2008.

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

(a) Purpose

FINRA is proposing amendments to its options position and exercise limits in NASD Rule 2860 to make permanent a pilot program that increases position and exercise limits for both standardized and conventional options.² In addition, FINRA proposes to

² A "conventional option" is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. See NASD Rule 2860(b)(2)(O). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security. The proposed rule change would maintain this parity between standardized and conventional options. FINRA has maintained parity between conventional and standardized options since 1999. See Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999). Before 1999, position limits on conventional options were three times greater than the limits for standardized options. See Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

amend NASD IM-2860-1 (Position Limits) to revise the examples that illustrate the operation of position limits with the proposed permanent position limits.

NASD Rule 2860(b)(3) subjects standardized and conventional options to one of five different position limits. Options exercise limits, which are set forth in NASD Rule 2860(b)(4), and which incorporate by reference the position limits in Rule 2860(b)(3), also would increase. The original pilot program became effective on March 30, 2005, and has been extended five times. It is scheduled to expire on March 1, 2008.³ FINRA is proposing making the pilot program permanent in order to preserve the benefits to the marketplace from the higher levels. The proposed rule change also is substantively identical to the proposal by the Chicago Board Options Exchange, Inc.⁴ FINRA anticipates all other self-regulatory organizations (“SROs”) with the pilot program also

FINRA’s limits on standardized equity options are applicable only to those members that are not also members of the exchange on which the option is traded; the limits on conventional options are applicable to all FINRA members. NASD Rule 2860(b)(1)(A); see also Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999).

³ See Securities Exchange Act Release No. 52271 (August 16, 2005), 70 FR 49344 (August 23, 2005) (Notice of Filing and Immediate Effectiveness of SR-NASD-2005-097); Securities Exchange Act Release No. 53346 (February 22, 2006), 71 FR 10580 (March 1, 2006) (Notice of Filing and Immediate Effectiveness of SR-NASD-2006-025); Securities Exchange Act Release No. 54334 (August 18, 2006), 71 FR 50961 (August 28, 2006) (Notice of Filing and Immediate Effectiveness of SR-NASD-2006-097); Securities Exchange Act Release No. 55225 (February 1, 2007), 72 FR 6634 (February 12, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-007); and Securities Exchange Act Release No. 56265 (August 15, 2007), 72 FR 47102 (August 22, 2007) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2007-002).

⁴ See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change. File No. SR-CBOE-2008-07).

will seek to make their program permanent. Thus, the proposed rule change will ensure that FINRA's position limits are consistent with other SROs.

A. Position and Exercise Limits

The standard position limits were last increased nine years ago, on December 31, 1998.⁵ Since that time, there has been a steady increase in the number of accounts that approach the position limit or have been granted an exemption to the applicable position limit. To the best of the staff's knowledge, during the operation of the pilot program, there have been very few violations of the position limits or exercise limits and none of these violations were deemed to be a result of manipulative activities.

B. Growth in Options Market

Since the last position limit increase, there has been an exponential increase in the overall volume in options trading. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in options trading. FINRA has no reason to believe that the current trading volume in equity options will not continue. Rather, FINRA expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve. FINRA believes that the non-pilot position and exercise limits might constrain liquidity in the options markets.

⁵ See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999).

C. Manipulation

Since the last position limit increase, and throughout the duration of the pilot program, FINRA has not encountered any significant regulatory issues regarding the applicable position limits. Moreover, we believe that there is a lack of evidence of market manipulation schemes, which justifies the proposed permanent approval of the pilot program. FINRA believes that its existing surveillance procedures and reporting requirements are reasonably designed to detect unusual and/or illegal trading activity. FINRA represents that its surveillance and reporting mechanisms (which have been significantly enhanced since the last position limit increase in 1999) will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes resulting from position limit violations.

D. No Adverse Consequences from Past Increases

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, we are unaware of any adverse affects on the markets as a result of these past increases in the limits for equity option contracts.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

⁶ 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change would make permanent a pilot program increasing options position and exercise limits. FINRA's experience administering the higher limits of the pilot program over the past three years has not revealed any adverse concerns or any other reasons to suggest that such limits should not be made permanent.

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

FINRA 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act⁷ and paragraph (f)(6) of Rule 19b-4 thereunder,⁸ in that the proposed rule change does not significantly affect the protection of investors or the public interest; and does not impose any significant burden on competition.

FINRA requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in

⁷ 15 U.S.C. 78s(b)(3).

⁸ 17 CFR 240.19b-4(f)(6).

Rule 19b-4(f)(6)(iii),⁹ in order to allow FINRA's position limits to allow the limits of the pilot program to continue uninterrupted.

FINRA requests that the Commission waive the five-day pre-filing notice requirement specified in Rule 19b-4(f)(6)(iii) under the Act.¹⁰ FINRA proposes to make the proposed rule change operative on the date of filing.

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

The proposed rule change is being made to achieve consistency between FINRA's options position limits and those of the CBOE (and FINRA anticipates the options position limits of all other SROs with the pilot program).

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2008-007)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Permanent Approval of the Pilot Program that Increases Options Position and Exercise Limits

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 , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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 FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend NASD Rule 2860 (Options) to make permanent a pilot program that increases options position and exercise limits. In addition, FINRA proposes to amend NASD IM-2860-1 (Position Limits) to revise the examples that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

illustrate the operation of position limits with the proposed permanent position limits.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2800. SPECIAL PRODUCTS

Rule 2860. Options

(a) No Change.

(b) Requirements

(1) through (2) No Change.

(3) Position Limits

(A) Stock Options — Except in highly unusual circumstances, and with the prior written approval of NASD pursuant to the Rule 9600 Series for good cause shown 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, non-member broker, or non-member dealer, an opening transaction through 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, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) [13,500 (or)25,000 [during the pilot period from March 30, 2005 through March 1, 2008 ("Pilot Period"))] 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) [22,500 (or) 50,000 [during the Pilot Period]] option contracts of the put class and the call class on the same side of the market covering the same underlying security, provided that the [22,500 (or)50,000 [during the Pilot Period]] contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [22,500 (or)50,000 [during the Pilot Period]] option contracts; or

(iii) [31,500 (or) 75,000 [during the Pilot Period]] option contracts of the put class and the call class on the same side of the market covering the same underlying security provided that the [31,500 (or)75,000 [during the Pilot Period]] contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [31,500 (or)75,000 [during the Pilot Period]] option contracts; or

(iv) [60,000 (or) 200,000 [during the Pilot Period]] option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the [60,000 (or) 200,000 [during the Pilot Period]] contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [60,000 (or) 200,000 [during the Pilot Period]] option contracts; or

(v) [75,000 (or) 250,000 [during the Pilot Period]] option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the [75,000 (or) 250,000 [during the Pilot Period]] contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [75,000 (or) 250,000 [during the Pilot Period]] option contracts; or

(vi) through (vii) No Change.

(viii) Conventional Equity Options

a. For purposes of this paragraph (b), standardized equity option 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 option contracts or FLEX Equity Option contracts overlying the same

security on the same side of the market. Conventional equity option contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. the basic limit of [13,500 (or) 25,000 [during the Pilot Period]] contracts, or
2. any standardized equity options position limit as set forth in paragraphs (b)(3)(A)(ii) through (v) for which the underlying security qualifies or would be able to qualify.

b. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than [13,500 (or) 25,000 [during the Pilot Period]] contracts, a member must first demonstrate to NASD's Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Provided, however, that for certain securities in an index designated by NASD, a member may claim such higher position limit as permitted in accordance with the volume and float criteria specified by NASD; provided further, that a member claiming a higher position limit

under this subparagraph must notify NASD's Market Regulation Department in writing in such form as may be prescribed by NASD and shall be filed no later than the close of business day on the next business day following the day on which the transaction or transactions requiring such limits occurred; and provided further, that the member must agree to reduce its position in the event that NASD staff determines different position limits should apply.

(B) through (D) No Change.

(4) through (24) No Change.

* * * * *

IM-2860-1. Position Limits

The following examples illustrate the operation of position limits established by NASD Rule 2860(b)(3) (all examples assume a position limit of [4,500]25,000 contracts and that the options are standardized options):

(a) Customer A, who is long [4,500]25,000 XYZ calls, may at the same time be short [4,500]25,000 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]25,000 XYZ calls, may at the same time be long [4,500]25,000 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]20,000 XYZ calls, may not at the same time be short more than [2,800]5,000 XYZ puts, since the [4,500]25,000 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]20,000 XYZ calls, he may not at the same time be long more than [2,900]5,000 puts, since the [4,500]25,000 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]2,000,000 shares of XYZ, may be long up to [4,500]45,000 XYZ calls, since the "hedge" exemption contained in paragraph (b)(3)(A)(vii) permits Customer D to establish an options position up to [4,500]25,000 contracts in size. In this instance, [4,500]25,000 of the [13,500]45,000 contracts are permissible under the basic position limit contained in paragraph (b)(3)(A)(i) and the remaining [9,000]20,000 contracts are permissible because they are hedged by the [900,000]2,000,000 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, FINRA 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. FINRA 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

FINRA is proposing amendments to its options position and exercise limits in NASD Rule 2860 to make permanent a pilot program that increases position and exercise limits for both standardized and conventional options.⁴ In addition, FINRA proposes to amend NASD IM-2860-1 (Position Limits) to revise the examples that illustrate the operation of position limits with the proposed permanent position limits.

NASD Rule 2860(b)(3) subjects standardized and conventional options to one of five different position limits. Options exercise limits, which are set forth in NASD Rule 2860(b)(4), and which incorporate by reference the position limits in Rule 2860(b)(3), also would increase. The original pilot program became effective on March 30, 2005,

⁴ A "conventional option" is an option contract not issued, or subject to issuance by, The Options Clearing Corporation. See NASD Rule 2860(b)(2)(O). Currently, position limits for standardized and conventional options are the same with respect to the same underlying security. The proposed rule change would maintain this parity between standardized and conventional options. FINRA has maintained parity between conventional and standardized options since 1999. See Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999). Before 1999, position limits on conventional options were three times greater than the limits for standardized options. See Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

FINRA's limits on standardized equity options are applicable only to those members that are not also members of the exchange on which the option is traded; the limits on conventional options are applicable to all FINRA members. NASD Rule 2860(b)(1)(A); see also Securities Exchange Act Release No. 40932 (January 11, 1999), 64 FR 2930, 2931 (January 19, 1999).

and has been extended five times. It is scheduled to expire on March 1, 2008.⁵ FINRA is proposing making the pilot program permanent in order to preserve the benefits to the marketplace from the higher levels. The proposed rule change also is substantively identical to the proposal by the Chicago Board Options Exchange, Inc.⁶ FINRA anticipates all other self-regulatory organizations (“SROs”) with the pilot program also will seek to make their program permanent. Thus, the proposed rule change will ensure that FINRA’s position limits are consistent with other SROs.

A. Position and Exercise Limits

The standard position limits were last increased nine years ago, on December 31, 1998.⁷ Since that time, there has been a steady increase in the number of accounts that approach the position limit or have been granted an exemption to the applicable position limit. To the best of the staff’s knowledge, during the operation of the pilot program, there have been very few violations of the position limits or exercise limits and none of these violations were deemed to be a result of manipulative activities.

⁵ See Securities Exchange Act Release No. 52271 (August 16, 2005), 70 FR 49344 (August 23, 2005) (Notice of Filing and Immediate Effectiveness of SR-NASD-2005-097); Securities Exchange Act Release No. 53346 (February 22, 2006), 71 FR 10580 (March 1, 2006) (Notice of Filing and Immediate Effectiveness of SR-NASD-2006-025); Securities Exchange Act Release No. 54334 (August 18, 2006), 71 FR 50961 (August 28, 2006) (Notice of Filing and Immediate Effectiveness of SR-NASD-2006-097); Securities Exchange Act Release No. 55225 (February 1, 2007), 72 FR 6634 (February 12, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-007); and Securities Exchange Act Release No. 56265 (August 15, 2007), 72 FR 47102 (August 22, 2007) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2007-002).

⁶ See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change. File No. SR-CBOE-2008-07).

⁷ See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999).

B. Growth in Options Market

Since the last position limit increase, there has been an exponential increase in the overall volume in options trading. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in options trading. FINRA has no reason to believe that the current trading volume in equity options will not continue. Rather, FINRA expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve. FINRA believes that the non-pilot position and exercise limits might constrain liquidity in the options markets.

C. Manipulation

Since the last position limit increase, and throughout the duration of the pilot program, FINRA has not encountered any significant regulatory issues regarding the applicable position limits. Moreover, we believe that there is a lack of evidence of market manipulation schemes, which justifies the proposed permanent approval of the pilot program. FINRA believes that its existing surveillance procedures and reporting requirements are reasonably designed to detect unusual and/or illegal trading activity. FINRA represents that its surveillance and reporting mechanisms (which have been significantly enhanced since the last position limit increase in 1999) will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes resulting from position limit violations.

D. No Adverse Consequences from Past Increases

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded

equity options. To date, we are unaware of any adverse affects on the markets as a result of these past increases in the limits for equity option contracts.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA 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. The proposed rule change would make permanent a pilot program increasing options position and exercise limits. FINRA's experience administering the higher limits of the pilot program over the past three years has not revealed any adverse concerns or any other reasons to suggest that such limits should not be made permanent.

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

FINRA 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.

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.

⁸ 15 U.S.C. 78o-3(b)(6).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2008-007 on the subject line.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary,
Securities and Exchange Commission, 100 F Street, NE, Washington, DC
20549-1090.

All submissions should refer to File Number SR-FINRA-2008-007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2008-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Nancy M. Morris

Secretary

¹¹ 17 CFR 200.30-3(a)(12).