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April 11, 2007

VIA EMAIL: rule-comments@sec.gov

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090.

**Re: Consolidation of the Member Firm Regulatory Functions  
SR-NASD-2007-023  
Supplement to Comment dated April 8, 2007**

Dear Ms. Morris:

This letter is written to supplement the information contained in my letter dated April 8, 2007. On this date, the Securities and Exchange Commission provided me with additional records in response to my Freedom of Information Act request dated August 5, 2006. Those records, primarily consisting of copies of minutes of meetings of the Securities Industry Conference on Arbitration ("SICA") further substantiate my prior comments upon the purported reports, studies and/or surveys discussed by the NASD Dispute Resolution ("NASD") in its response to comments of the "Public Members" of SICA.

**III. The Tidwell Report**

On January 13, 2003, Professor Michael Perino spoke before SICA. The minutes reflected his comments as follows:

Mr. Perino indicated that the ... other study is the Tidwell study that surveyed forum users' perceptions of the arbitration process.

The problem with that study is that someone under the auspices of NASD developed it. An independent approach is needed. ...

...

Mr. Eppenstein asked whether the SEC requested the (Perino) report before or after the filing of its amicus brief. Mr. Perino said that his report was to be issued by mid-November, after the amicus brief was filed.

**V. Securities Arbitration Fairness "Survey"**

The minutes of SICA meetings reflect steady degradation of alleged "independent research." After considering use of the Consumer Federation of America or RAND, SICA opted to draft its own "survey," where the NASD and NYSE are cover all costs. SICA meeting minutes from January 13, 2003 to October 22, 2003, reveal the following:

Professor Katsoris initiated a further discussion of the possibility of sponsoring independent research on SRO arbitrations. ...Various options were discussed, including the Consumer Federation of America, the ABA Litigation Section (planning a survey), RAND, and the group working with Kaiser on current perceptions of their ADR system. Pros and cons of different groups, the problem of funding, and the possible structuring of a survey, were discussed.

Mr. Friedman (NASD) and Mr. Clemente (NYSE) agreed to look at options. Perhaps SICA could commission the survey, and SROs could fund it. Messrs. Clemente and Friedman agreed to provide a status report at the April SICA meeting.

....

Mr. Friedman reported that NASD has one proposal from an outside vendor that has done previous work for NASD. The cost was over \$100,000. NASD has also asked Lew Maltby (President of the Workplace Rights Project), who appeared at our January 2003 meeting, to submit a bid for conducting the survey. Mr. Maltby is in the process of preparing his bid, which is due April 30th. After a brief discussion, the Conference coalesced around some key issues: 1) the survey should be conducted under SICA's auspices; 2) the survey should be paid for by NASD and NYSE; 3) to ensure that the results are perceived to be truly independent, editorial control over the final questions should repose in SICA. ...

....

Mr. Friedman and Mr. Clemente reported that NASD and NYSE are evaluating their options. They will provide an update at the October SICA meeting.

....

George Friedman stated that the NASD is looking at proposals to do research on fairness of SRO arbitrations, and was told the California Dispute Resolution Institute had a meeting in Sacramento with various

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ADR providers to discuss a California survey. Bob Clemente said they are looking to a study in California of all forms of arbitration, hoping to put to rest some of the clichés that have existed about arbitration being valuable for one party only.

It is illuminating that, before the "survey" has been conducted, the NYSE is already "hoping to put to rest some of the clichés that have existed about arbitration being valuable for one party only" vis-à-vis learning the results of the "survey" and making any corrections necessary to improve "fairness" of the arbitration process. Further, SICA, when stating, "to ensure that the results are perceived to be truly independent, editorial control over the final questions should repose in SICA," confused "editorial control" with professional analysis of the responses to the final questions.

At the SICA meeting on January 16, 2004, "George Friedman (NASD) stated that it would not be appropriate for SROs to drive the process of collecting information on the fairness of SRO arbitrations."

#### **VIII. Conclusion**

Comments by the "Public Members" of SICA reveal the public's perception that the mandatory securities arbitration process is unfair. The response by the NASD does nothing to dispel that perception. The NASD's flawed use of reports, studies and surveys is disingenuous, at best.

Please communicate with me in the event that further information is desired.

Very truly yours,

LES GREENBERG

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