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November 20, 2006

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: SR-NASD-2005-079

Dear Ms. Morris:

I am writing in response to the proposal by NASD Dispute Resolution, Inc. ("NASD") to change rule 10322, which deals with the issuance of subpoenas in NASD arbitrations. I believe that the proposed rule change is unwise.

I am a defense attorney whose practice is devoted to the representation of registered representatives and broker-dealers in arbitrations before the NASD and the NYSE. I have been engaged in this field, both as an in-house attorney and as a sole practitioner, since late 1997. In all of the years that I have been engaged in this practice, I can recall only one or two instances in which a party ignored the current rule, which permits a litigant to sign and serve a subpoena, if state law so permits, so long as the subpoena is on notice to all parties.

In contrast, there have been many occasions in my practice that I can recall where a party has abused the discovery process by not producing relevant documents, such as account statements and trade confirmations for accounts at other firms. As things now stand, one of my only protections against such abuse is the ability to obtain those documents, directly from the firm which carried the account, through the service of a subpoena. The proposed rule change, though, will provide a litigant who is trying to bury evidence such as this with another opportunity to block discovery.

Also, it is often the case that I learn of the need to serve a subpoena only after I have already served other subpoenas. Some Panels may get tired of counsel making seriatim requests and may deny the issuance of a subpoena for no valid reason, other than a desire not to have to spend more of their time on discovery. This would be a terrible reason for a litigant not to receive otherwise relevant discovery.

Another problem that may arise is with respect to the inability of the NASD staff to process timely all of the paperwork received in connection with subpoena requests. Any litigant who practices in this forum can recall instances in which there have been inordinate delays in having the NASD forward papers to the Panel for review. This proposal will only add to the

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paperwork which the NASD staff must forward to the Panel, and I have grave concerns that even more paperwork will be delayed.

On the other hand, to the extent that the SEC or the NASD believes that the process is being abused on occasion, then the original proposal, which would have permitted a litigant to sign and serve a subpoena, so long as there was prior notice to all sides that a subpoena was to be issued, would have been sufficient to cure such abuses, as the notice period would have given ample time for the objecting party to seek relief from the Panel. Abuses in the process can also be prevented by training Panels so that they understand that they can impose sanctions on parties who act in contravention of the rules.

Finally, if the NASD and SEC are still convinced that more control over the process is needed, then a middle ground would be to permit the continued service of subpoenas by counsel of record upon NASD member firms/registered representatives only, and to require subpoenas addressed to all others to be signed by the Panel.

Sincerely,

A handwritten signature in black ink that reads "Alan Broderson". The signature is written in a cursive style with a large, prominent initial "A".

Alan S. Broderson