A. B. Goodman Law Firm, Ltd.

Attorney & Counselor at Law

AVERY GOODMAN, ESQ.
419 Canyon Avenue Suite 300
Ft. Collins, CO 80521
Phone: 1-970-482-2186
Fax: 1-303-474-3745

July 15, 2005

Mr. Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: Request for Rulemaking – Appeal of Erroneous and/or Corrupt NASD decisions to an Administrative Judge

Dear Mr. Katz:

I am a lawyer, with 20 years of experience, who has served as both an arbitrator and an attorney in various courts, as well as within the arbitration forum run by the National Association of Securities Dealers ("NASD"), which is a self-regulatory organization, given broad authority to regulate the affairs of its membership and their customers.

The Securities and Exchange Commission ("SEC") has approved numerous rules for the purpose of governing NASD. Some of these rules govern the operation of the arbitration forum, which is a sub-operation that purports to oversee mandatory arbitration between member brokerage firms, and the general public. Over the years, unfortunately, the SEC and others have assumed that, because those rules are in writing, that the NASD will adhere to them. Unfortunately, the governing officials of NASD are involved in conflicts of interest, involving member brokerage firms. These conflicts cause many written rules to be ignored. ***NASD has been involved in incidents, which can be characterized as nothing less than institutionalized bias against customer claims.***

My experience shows that the NASD refuses to remove arbitrators when this negatively affects the interest of an NASD member firm. NASD Director, George Friedman, and NASD President Linda Feinberg, both serve at the pleasure of a Board of Governors, elected by the same securities brokerage firms who are involved in NASD arbitration cases. Ultimate decision making, on critical issues, such as arbitrator disqualification, should not be subject to this type of indirect control by the securities brokerage firms. It is critically important that Administrative Judges of the SEC be granted authority to overrule erroneous and/or corrupt decisions. The attached amendment to Rule 10308 gives them that authority.

Here are some examples, from my own law practice, showing what appears to be intentional or reckless disregard for the written Code that the SEC has enacted to govern NASD. Before I begin, it should be noted that, according to the written NASD Rule 10308(f), "In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer." However, as we will see, NASD ignores its written rules.

I represented the claimant ("Claimant") in Gillespie v. Wachovia Securities, Inc., (NASD Case No. 03-08495). NASD Code of Arbitration Procedure, Section 10308(b)(1)(A)(ii) provides that the Director shall appoint an arbitration panel composed of

one non-public ("industry") arbitrator and two "public" arbitrators, unless the parties agree to a different panel composition. When a new case is opened, NASD generates a list of 10 potential so-called "public" arbitrators and another list of 5 potential non-public ("industry") arbitrators. The parties are allowed to disqualify as many people, on the lists, as they choose. However, if the parties disqualify so many arbitrators that there aren't enough to create an agreed panel of three, NASD Code of Arbitration Procedure, Section 10308(c)(4)(B), permits the NASD to unilaterally appoint additional arbitrators. The parties are only allowed to disqualify these additional NASD appointees if good cause can be shown.

In the Gillespie case, the parties could not agree on the second of the two "public" arbitrators. Therefore, the NASD appointed an additional arbitrator. The NASD appointee, however, was a lawyer who represents securities brokerage firms, in cases brought against them, by public customers. In spite of this, he was designated on the NASD's "list of neutrals" as a so-called "public arbitrator." Beyond his own activity in representing securities firms, he admitted that his law firm represents the Respondent, Wachovia Securities, Inc. ("Wachovia").

As the lawyer for the Claimant, I strongly objected to the classification of a known securities industry defense lawyer as a so-called "public" arbitrator. I also filed a motion to disqualify him. He was clearly an industry-affiliated person and his law firm represented the defendant, Wachovia. The defense, however, vigorously opposed the objection and resisted the motion to disqualify. NASD responded by overruling our objection, refusing to reclassify the securities industry defense lawyer as an industry affiliated arbitrator, and denying our motion to disqualify.

NASD Code of Arbitration Procedure, Rule 10308(c)(5)(A), states: "The Director shall appoint as the chairperson the "public" arbitrator who is the most highly ranked by the parties…" This securities industry defense lawyer was an NASD appointee arbitrator. Therefore, he was never ranked by the parties. In spite of that, he was appointed to the position of "Panel Chairman."

NASD did not respond to numerous "appeals", within the organization, by which I sought to reverse this obviously erroneous ruling. I eventually started a letter writing campaign and threatened various high NASD officials with the prospect of media exposure. At this time, NASD was embroiled in a hotly contested federal litigation against the California Judicial Council. The State of California was attempting to strengthen the rules against the exact type of arbitrator conflicts of interest that I am describing here. A few weeks after I began my letter writing campaign, the referenced arbitrator abruptly decided to "recuse" himself. Instead of recusing himself, right away, however, he waited a long time, but finally wrote, in his order of recusal, that there might be an "appearance of impropriety." By the time of the recusal, however, the man had already caused serious damage to the Claimant's case. He had issued a discovery order that significantly delayed the Claimant's right to receive certain critical documents. This increased the difficulty of handling the case, and benefited the recused arbitrator's client, Wachovia. Eventually, after his replacement, the Claimant prevailed at the final hearing.

Another instance of misconduct occurred in Mommi v. Prudential Securities, Inc. & Wachovia Securities, Inc. (NASD Case No. 04-01236). Mommi is a case involving, among other complaints, serious allegations that the Respondents failed to adequately supervise one of their brokers. A former branch manager was appointed to the position of "industry" arbitrator. The NASD Dispute Resolution Arbitrator's Reference Guide lists the grounds for mandatory disqualification for service as an arbitrator on page 18. In pertinent part, the Guide provides:

"**Criteria for Temporary Disqualification** (Temporary Disqualification will result in temporary declination as to new applicants and a status of "inactive" as to already enrolled arbitrators.):
Pending Actions: Arbitrator is the subject of, or is a party to, a pending investment-related civil action or arbitration claim initiated by a customer;…
Subject of Claims or Complaints: Arbitrator is the subject of, or is a party to, three (3) or more claims or complaints (reportable on Form U-4) within the last ten (10) years regardless of outcome…"

The arbitrator, again a unilateral appointee of NASD, had been both a branch manager and supervisor, with control person responsibility and legal liability for the actions of several brokers. These brokers were sued for the same type of misconduct alleged in the Mommi case. Specifically, the appointee arbitrator truthfully stated in his disclosure:

"I held the position of Branch Manager for 18 years, during which time I was involved in law suits and arbitrations, as Corporate Representative or *as the Manager who failed to supervise*…" (Emphasis Added)

The NASD Arbitrator's Manual provides guidance on the topic of conflicts of interest, and the appearance of impropriety. The Manual states:

The Appearance of Bias
"Aside from an actual conflict of interest, even an appearance of conflict might render a decision suspect. It cannot be emphasized enough that arbitrators must be free in fact and in appearance from all bias and prejudice. The United States Supreme Court, in setting aside an arbitration award, stated:
"This rule of arbitration rests on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." *Commonwealth Coatings v. Continental Casualty Co.*, 393 U.S. 145, 150; rehear. denied, 393 U.S. 1112 (1968)
Clearly, it is in the best interests of the individual arbitrator and of the entire arbitration process that arbitrators "bend over backwards" to avoid any appearance of bias."

As we have already seen, however, NASD's written rules have little effect on its actions. The appointee arbitrator was, by his own admission, a potential party or, at least, "subject" to financial loss in many different cases, over a period of 18 years, and many of those cases involved allegations of failure to supervise. Obviously, he could not, by definition, be an "unbiased neutral." His service would not only have the appearance of impropriety, but, more than that, it would be an overt violation of the NASD's own rules governing the qualification of arbitrators. There is a strong likelihood that an arbitrator, with this type of background, would be biased against customer claims, especially claims, like Mommi, where a key element is "failure to supervise." I filed a motion to disqualify him. The respondents, however, vigorously resisted the disqualification. NASD's Director of Arbitration denied the motion to disqualify the arbitrator.

I have made many inquiries with NASD, asking for additional information about this arbitrator. According to NASD Code of Arbitration Procedure, Section 10313(b), a party

may make inquiry as to further information about the background of a replacement arbitrator. The arbitrator in question had replaced a previous arbitrator. In spite of three repeated information requests, to various NASD offices, including their office of legal counsel, over a period of two months, the NASD failed and, thus, refused to disclose (1) the number of "failure to supervise" claims against this arbitrator, (2) the names of the brokers he was supposed to be supervising, (3) the names of the claimants and respondents for each case, and (4) the names of the attorney's involved. To date, over 4 months have passed since the first information request. The NASD has still not provided any of the information that was requested.

In addition to the former branch manager, NASD claimed it appointed two so-called "public" arbitrators. One of these, however, is a former stockbroker. NASD Code of Arbitration Procedure Section 10308(a)(4) defines an industry arbitrator as a person who is "…retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A)." The activities, listed in that section, include working as a stockbroker. This second industry arbitrator sold securities for a major brokerage firm, for a total of 7 years, from 1985 to 1992. By the time he was appointed to the Mommi arbitration panel, he had only been out of the industry for a total of 12 years. His total work history is about 23 years. Except for being a former stockbroker, this particular man has no overt conflicts of interest, and is otherwise well qualified to serve as an industry arbitrator. I filed a motion to reclassify him as such. Respondent vigorously opposed reclassification. If this second arbitrator's status had been corrected to list him as industry affiliated, the former branch manager (who should have been disqualified on the merits of his background) would have been excluded from the panel, on a de facto basis. The reason is that the former stockbroker was appointed prior to the former branch manager. However, in the face of opposition from the Respondents, NASD refused to correctly designate the former stockbroker as an industry arbitrator. Instead, the NASD Director alleged, in a written letter denying the motion, that 7 years of working as a stockbroker, did not amount to a "substantial" part of a 21 to 23 year work history.

The interweaving, and interdependence, of NASD's staffers, with the NASD membership, is a recipe for erroneous decision-making, and outright corruption. Arbitration cases, administered by NASD, are essentially lawsuits against NASD members. Because the brokerage firms being "sued" are indirectly appointing the NASD officials, those appointees cannot be counted on to administer the system impartially. Obviously, brokerage firms do NOT want to lose cases, but they DO want to insulate themselves against money awards to former customers.

People who are burdened with conflicts of interest should not be making important legal decisions which can be directly affected by their conflicts. Yet, under the current system, that is exactly the way things are done. NASD officials have the last word, barring an expensive and time consuming sidetrack to a civil court of law. Sidetracking, of course, means incurring thousands of dollars of additional expenses, and accepting that a large amount of time and money, spent on the initial arbitration action, was simply wasted. Higher costs and greater delay effectively destroy any benefit the contract to arbitrate might have otherwise had.

In short, ***the word of a person beholden to one side, or another, should not be the "last word."*** That's why an amendment, like the one attached to this letter, transferring final authority over the critical issue of arbitrator qualification, is so important. The SEC's administrative judges, generally speaking, are neutral parties. NASD staff members, by definition, are not neutral.

I enclose a copy of my proposed amendment to the NASD Code of Arbitration Procedure section 10308. If enacted, this small change will go a long way toward reforming the system. The amendment is in the form of a proposed federal register notice, for your consideration.

Please place the attached notice in the Federal Register. After solicitation of comments, please approve the change.

Very truly yours,

Avery B. Goodman
ABG/wp

Enclosure – Proposed New Rule

File No. _____
Consists of 13 Pages

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

_____

Pursuant to Rule 23a-1 of the Securities & Exchange Act of 1934

Proposed Rule Change

By

A. B. GOODMAN LAW FIRM, LTD.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 23a-1 of the Securities Exchange Act of 1934 ("Act"), A. B. Goodman Law Firm, Ltd., is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NASD Rules 10308 to remove authority for the Director of Arbitration ("Director") to determine issues concerning removal of arbitrators. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

10308. Selection of Arbitrators

(a) Definitions

…

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) Disqualification By Director <u>or Administrative Judge</u>

After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice. <u>If the Director refuses to remove, or reclassify (as either a public or non-public arbitrator), an arbitrator for cause, upon petition by the claimant, an administrative judge of the SEC, appointed pursuant to 5 USC 3105, shall review the matter on an expedited basis, and shall determine whether or not to order removal or</u>

reclassification of the arbitrator. He shall send a copy of his decision, directly to the parties, and also to the Director. The right to have a review by an administrative judge of the SEC shall be retroactive.

(2) Removal by Director or Administrative Judge

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed. If the Director refuses to remove an arbitrator for failure to disclose, upon petition by the claimant, an administrative judge of the SEC, appointed pursuant to 5 USC 3105, shall review the matter on an expedited basis, and shall determine whether or not to order removal of the arbitrator. He shall send a copy of his decision, directly to the parties, and also to the Director. The right to have a review by an administrative judge of the SEC shall be retroactive.

(3) Standards for Deciding Challenges for Cause

The Director or Administrative Judge will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

2. Proponent's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change:

(a) Purpose

The Code of Arbitration Procedure ("Code") presently provides sole authority to the Director of Arbitration to determine whether or not to remove an arbitrator for cause. The Director is appointed by the NASD Board of Governors, and the Board is elected by the membership. Claimants neither have input into the appointment of the Director nor in his career advancement to other positions. They may rightly perceive his decision as unfair or biased. This amendment cures the problem by allowing a claimant to petition to an administrative judge of the SEC if the claimant feels that the Director is acting in a biased manner in refusing to remove a particular arbitrator for cause.

Background and Discussion

In order to protect the integrity of the process and to ensure the impartiality of arbitrators, Rule 10308(d) requires that arbitrators may be disqualified for cause. The standard for circumstances that would be considered "for cause" would be the same as before, but, instead of giving sole discretion to the Director to decide issues of disqualification of arbitrators, a neutral party, in the form of a qualified judge of administrative claims, holding a standing general appointment, under 5 USC 3010 will have ultimate authority to make that decision. This will protect claimants from bias.

The strong appearance of impropriety, which exists under the old rule, is completely done away with. This is important because the composition of a panel will often determine the outcome of a case. Where the Director refuses to disqualify an arbitrator the claimant feels is not qualified to serve, the result will be resort to the civil court system, but only after both parties have gone to the time and expense of conducting

the final hearing. This greatly magnifies the costs by requiring the retrial of cases, upon rejection of the results of arbitration.[1]

3. Proponent's Statement on Comments on the Proposed Rule Change Received from NASD Members, Participants, or Others

Written comments were neither solicited nor received.

4. Extension of Time Period for Commission Action

A. B. Goodman Law Firm, Ltd. does not consent at this time to an extension of the time period for Commission action specified in the Act.

5. Basis for Summary Effectiveness or for Accelerated Effectiveness

Not applicable.

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

Not applicable.

9. Exhibits

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

---

[1] In Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145 (1968), which vacated an award because of an arbitrator's failure to disclose a business relationship with one of the parties, Justices White and Marshall noted in their concurring opinion: "The arbitration process functions best when an amicable and trusting atmosphere is preserved and there is voluntary compliance with the decree, without need for judicial enforcement. This end is best served by establishing an atmosphere of frankness at the outset, through disclosure by the arbitrator of any financial transactions which he has had or is negotiating with either of the parties. In many cases the arbitrator might believe the business relationship to be so insubstantial that to make a point of revealing it would suggest he is indeed easily swayed, and perhaps a partisan of that party. But if the law requires the disclosure, no such imputation can arise. And it is far better that the relationship be disclosed at the outset, when the parties are free to reject the arbitrator or accept him with knowledge of the relationship and continuing faith in his objectivity, than to have the relationship come to light after the arbitration, when a suspicious or disgruntled party can seize on it as a pretext for invalidating the award. The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality. That role is best consigned to the parties, who are the architects of their own arbitration process, and are far better informed of the prevailing ethical standards and reputations within their business." 393 U.S. at 151 (footnote omitted).

Pursuant to the requirements of the Securities Exchange Act of 1934, A. B. Goodman Law Firm, Ltd. has duly caused this filing to be signed by a person authorized thereto.

A.B. GOODMAN LAW FIRM, LTD.

BY:_____

President

Date: June 22, 2005

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. ____ ; File No. _____)

Re: Notice of Filing of Proposed Rule Change by A. B. Goodman Law Firm, Ltd. Relating to the Authority of the NASD Director of Arbitration to Remove Arbitrators for Cause

Pursuant to Section 23a-1 of the Securities Exchange Act of 1934 ("Act")[2] and Rule notice is hereby given that on _____ A. B. Goodman Law Firm, Ltd. 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 A. B. Goodman Law Firm, Ltd. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. PROPONENT'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

A. B. GOODMAN LAW FIRM, LTD. is proposing to amend NASD Rules 10308 to provide authority to administrative judges of the Securities & Exchange Commission (judges) to remove arbitrators for cause in the event that the Director of NASD Arbitration (Director) refuses to do so. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

10000. CODE OF ARBITRATION PROCEDURE

* * *

10308. Selection of Arbitrators

(a) - (c) Unchanged.

[2] 15 U.S.C. 78s(b)(1).

10308. Selection of Arbitrators

(a) Definitions

…

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) Disqualification By Director *or Administrative Judge*

After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice. *If the Director refuses to remove, or reclassify (as either a public or non-public arbitrator), an arbitrator for cause, upon petition by the claimant, an administrative judge of the SEC, appointed pursuant to 5 USC 3105, shall review the matter on an expedited basis, and shall determine whether or not to order removal or reclassification of the arbitrator. He shall send a copy of his decision, directly to the parties, and also to the Director. The right to have a review by an administrative judge of the SEC shall be retroactive.*

(2) Removal by Director *or Administrative Judge*

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed. *If the Director refuses to remove an arbitrator for failure to*

disclose, upon petition by the claimant, an administrative judge of the SEC, appointed pursuant to 5 USC 3105, shall review the matter on an expedited basis, and shall determine whether or not to order removal of the arbitrator. He shall send a copy of his decision, directly to the parties, and also to the Director. The right to have a review by an administrative judge of the SEC shall be retroactive.

(3) Standards for Deciding Challenges for Cause

The Director *or Administrative Judge* will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

***

II. PROPONENT'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, A. B. GOODMAN LAW FIRM, LTD. has 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. A. B. GOODMAN LAW FIRM, LTD. has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Proponent's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Code of Arbitration Procedure ("Code") presently provides that the Director of Arbitration shall have sole discretionary authority to remove an arbitrator for cause. The proposed rule change would amend the Code to eliminate this, and to allow claimants to petition to an administrative judge of the SEC should they believe that the Director has erroneously failed to remove an arbitrator for cause.

Background and Discussion

In order to protect the integrity of the process and to ensure the impartiality of arbitrators, the appearance of impropriety arising out of the fact that the "judge of last resort" is beholden to the Respondents must be eliminated. An aggrieved claimant's only recourse against misconduct by the Director is to seek judicial intervention. This increases legal expenses, and could reduce confidence in the fairness and efficiency of the arbitration process. A. B. Goodman Law Firm, Ltd. believes that an alternative dispute resolution forum should be able to resolve all issues relating to an arbitration, administratively, without forcing the parties to go to civil court. As presently written, the Code does not permit any recourse after the Director's decision to improperly retain an arbitrator, no matter how egregious the circumstances. Accordingly, A. B. Goodman Law Firm, Ltd. proposes that the Code be amended to permit claimants to petition to an administrative judge of the SEC, if they feel that the Director has acted in a biased or partial manner, in refusing to remove an arbitrator for cause. A. B. Goodman Law Firm, Ltd. believes there are three major reasons for the proposed rule change:

1) The present rule is unfair to claimants. As illustrated by the letter written to the SEC in conjunction with this filing, there have been a number of instances in which the Director appears to have acted in a biased or partisan manner, in favor of member firms,

and against the interest of claimants, when ruling on a both questions of disqualification and improper classification of an arbitrator (as public or non-public). The proposed amendment provides that the Director may exercise the removal authority, but also provides a mechanism whereby a partisan decision in favor of a member firm can be brought to a neutral administrative judge.

2) The present rule is inconsistent with the concept of administered arbitration. NASD Regulation offers a system in which the parties submit their dispute to NASD Regulation for complete administration of the dispute, from filing a claim to issuance of an award. One of the key benefits of administered arbitration is the ability to have all ancillary issues relating to the arbitration – such as removal of arbitrators for cause – resolved without recourse to the courts. The present rule is inconsistent with that goal because it forces the parties to challenge the unfairness of the Director's rulings after the fact. Meanwhile, the Director is likely to be biased in favor of industry members, because they indirectly control his appointment and influence his salary and possible career advancement within the NASD organization. Where the Director has erroneously refused to disqualify an arbitrator for cause shown, a party must resort to the civil court system, but only after having conducted a full hearing on the merits. This is extremely inefficient, wasteful method of resolving the issues, and it raises the delay involved in resolving cases, as well as the total outlay of attorney's fees, costs and other expenses.

3) The present rule invites delay and administrative disruption. The present rule invites delays in the process, while parties wrestle with the issue of for-cause challenges to sitting arbitrators, and perhaps seek judicial intervention to award either a jury trial, or specific performance of the arbitration contract, from outside the system. In the NASD

Regulation forum, there have been situations in which viable for-cause challenges were raised, but the Director has refused to disqualify or reclassify arbitrators who clearly should have been disqualified or reclassified. In contrast, if claimants are able to petition a neutral administrative judge, where they feel that the Director has issued a biased decision, the case would proceed smoothly and efficiently, without the likelihood of a court challenge after the final award is made.

(b) Statutory Basis

A. B. GOODMAN LAW FIRM, LTD. believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's 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 A. B. GOODMAN LAW FIRM, LTD. believes that the proposed rule change will protect the public interest by providing a procedure, free of bias and prejudice, to remove an arbitrator for sufficient cause shown

(c) Proponent's Statement on Burden on Competition

A. B. GOODMAN LAW FIRM, LTD. 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, as amended.

(d) Proponent'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 date of 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 such 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. 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the A. B. GOODMAN LAW FIRM, LTD.

All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).