Exhibit 1

(1)

Arbitrator's Manual

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"Equity is justice in that it goes beyond the written law. And it is equitable to prefer arbitration to the law court, for the arbitrator keeps equity in view, whereas the judge looks only to the law, and the reason why arbitrators were appointed was that equity might prevail."

p. 19

- Domke on Aristotle

This manual has been compiled by members of the Securities Industry Conference on Arbitration (SICA) as a guide for arbitrators. It is designed to supplement and explain the Uniform Code of Arbitration (UCA or Code) as developed by SICA. The procedures and policies contained in this manual may be altered by the arbitrators and should not be used to restrict a panel's discretion. Significant differences between the Uniform Code and the procedures of the SROs will be highlighted in this manual. Arbitrators should always consult the rules of the arbitration forum in which they are serving.

The Changing Role of Arbitration in Securities Controversies

Arbitration, a quick, fair, and relatively inexpensive method of dispute resolution, has long been used in the securities industry. Its success can be attributed to civic-minded individuals who are willing to devote their energies to the impartial resolution of controversies. The United States Supreme Court has rendered landmark decisions favoring arbitration and held that pre-dispute contracts to arbitrate securities claims under the Exchange Act of 1934, the Racketeer Influenced and Corrupt Organizations Act (RICO), and the Securities Act of 1933 are enforceable. Since arbitration is the primary means of resolving disputes in the securities industry, the public perception of its fairness is of paramount importance. Arbitrators appointed to resolve securities controversies must continue to meet the challenge of maintaining fair and orderly arbitration proceedings.

The Challenge for a Self-Regulatory Organization Arbitrator

The key to an effective arbitration system is having capable, fair, and impartial arbitrators who hear and decide cases conscientiously. Arbitrators should realize that they are viewed by parties in an arbitration proceeding much as a judge would be viewed in a court of law. In some ways, arbitrators have greater power than a judge (e.g., except for limited reasons, arbitration decisions cannot be overturned). Arbitrators must be fair and impartial and must also appear to be fair and impartial. A careless remark or gesture may give parties the unwarranted impression that they are not receiving justice. In arbitration, even more than in court, not only must justice be done, but justice must also be seen to be done.

p. 25, 83

Duty to Disclose Conflicts

All arbitrators must submit biographical information on an arbitrator profile form to the self-regulatory organization (SRO). This information will be sent to the parties to use in the arbitrator selection process, such as determining whether to challenge arbitrators.

It is extremely important that the profile be completed accurately and updated periodically. In addition to completing the profile, arbitrators should become familiar with the Uniform Code of Arbitration

(Uniform Code), the arbitration rules of each SRO, and the ABA/AAA Code of Ethics for arbitrators. (See Appendix A - AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes.)
When contacted by SRO staff regarding possible service as an arbitrator, the potential arbitrator should ascertain if any conflicts exist immediately after the staff discloses the following information regarding the case:

1 names of the parties,
2 names of lawyers or agents representing the parties,
3 names of any potential witnesses disclosed by the parties, and
4 the nature of the case.

All arbitrators in securities controversies must qualify as impartial, neutral arbitrators. If the arbitrator does not believe a conflict exists, but rather some association with the parties, counsel, and/or witnesses may be questioned, the arbitrator must disclose the association. When in doubt, disclosure should be the rule. The staff will inform the parties of any facts disclosed by the arbitrators. Such disclosures must be repeated on the record at the beginning of the hearing. The arbitrator should disclose any circumstances that might hinder the rendering of an objective determination

The obligation to disclose circumstances that might give rise to a conflict or appearance of conflict is a continuing obligation. It includes any information that may surface during the hearing itself. The Code of Ethics sets forth in detail the obligation of an arbitrator to disclose information. (See Appendix A - AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes.)

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.1 The United States Supreme Court, in setting aside an arbitration award, stated: p. 85, 83

"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."2

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.

Ethical Responsibilities

The arbitrator's position on an issue constitutes a possible conflict not readily apparent. For example, if the arbitrator is an attorney, he or she may have firm ideas on an issue involved in a dispute. An arbitrator asked to serve on a panel must disclose this information to the Director of Arbitration (Director) so that it may be disclosed to the parties, or decide not to accept the appointment.

It is best to avoid social contacts with parties except as part of a large group (e.g., Bar Association dinner, etc.).

In the last analysis, arbitrators must realize that they are deciding issues of great importance to the parties involved. All parties must, to the fullest extent possible, feel that a fair decision has been rendered.

Challenges to an Arbitrator

The Uniform Code grants a party the right to challenge an arbitrator peremptorily or for cause. Parties do not have to give reasons for their peremptory challenge. Generally, parties will rely on information contained in the profiles and disclosures made by arbitrators when challenging for cause. Pursuant to the Code, an arbitrator is required to disclose any direct or indirect financial or personal interest in the outcome of the arbitration as well as any existing or past financial, business, professional, family, or

social relationships that are likely to affect impartiality. Persons requested to serve as arbitrators should disclose any such relationships that they have with any party or its counsel, or with any individual whom they have been told or have reason to believe will be a witness. They should also disclose any such relationship involving members of their families or their current or former employers, partners, or business associates. Arbitrators should make reasonable efforts to identify relationships required to be disclosed. Parties are requested to advise the Director if they are aware of any similar relationships involving a party or counsel or a potential witness.

A challenge for cause to a particular arbitrator will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative. The following, though not exhaustive, are examples of circumstances where a challenge for cause would be granted. Arbitrators should consult the procedures of the SRO in which they are serving for specific guidance on disclosures and challenges.

Opinion and Bias

1. Arbitrator has a firm opinion or belief as to the subject of an action for which she/he is an arbitrator.
2. Arbitrator has a personal bias toward a party.

Business or Personal Relationships

1. Arbitrator is or was related by blood or marriage to any party, its attorneys, or witnesses.
2. Arbitrator is or was guardian or ward, conservator or conservatee, employer or employee, principal or agent, or debtor or creditor of either a party or an officer of a corporation which is a party. Arbitrator is the parent, spouse, or child of one who is related as above described.
3. Arbitrator is or was a member of any party's family, a business partner, vendor, customer, or client of any party, a surety or guarantor of the obligations of any party, is currently a creditor or shareholder of any corporate party, or has any business relationship with any party.

Previous or Current Involvement

1. Arbitrator is adverse to a party, its attorneys, or witnesses, or has complained against or been accused by any of them in another action, instituted or resolved during the past five (5) years
2. Arbitrator or any member, shareholder, or associate of, or of counsel to his or her law firm has been in the relation of attorney and client with, or adverse to, any party within three (3) years of the filing of the arbitration claim.
3 The arbitrator is currently a party to or the subject of a complaint, arbitration, or litigation involving a securities investment.

Financial Interest

Arbitrator knows that she/he has, individually or as a fiduciary, or her/his spouse or minor child residing in her/his household has a financial interest in the subject matter in controversy or in a party to the arbitration proceeding, or any other interest that could be substantially affected by the outcome of the arbitration proceedings.

Should information regarding an arbitrator be disclosed during the course of a hearing that was not disclosed previously, a party may challenge the arbitrator for cause. The arbitrator should then consider withdrawing in accordance with Canon II of the Code of Ethics. Arbitrators should

not feel offended if they are challenged on a particular case since challenges are generally not based on the ability or competence of an arbitrator

The Party Who is Not Represented by Counsel

Arbitrators should be sensitive to a party who is not represented by counsel. This individual most likely will not be experienced in either litigation or the arbitration process and will usually need some guidance from the panel. The panel should use its judgment to determine how much guidance to provide such a party. Although the panel at all times must be careful to maintain its neutrality, it must often take an active role in such cases. The panel may at times find it helpful to:

- explain the purpose of an opening statement,
- assist the party in maintaining proper focus during the hearing,
- remind the party that cross examination should consist of specific questions, or ensure that the party has had an opportunity to present all evidence.

All efforts to assist a party should be balanced against the need to remain impartial

Representation by Counsel

Parties need not be represented by an attorney in arbitration. They may choose to appear pro se (on their own) or be represented by a person who is not an attorney, such as a business associate, friend, or relative. The attorney-client privilege does not attach to communications between a party and a non-attorney representative. The Uniform Code grants parties the absolute right to representation by counsel at any stage of the proceeding. If a party decides during the course of a hearing that he or she wants to obtain legal representation, an adjournment should be granted to permit counsel to appear. Parties sometimes decide to change counsel during the course of a proceeding. Generally, the arbitrators should permit such changes.

Prehearing Motions

Although arbitration is an informal process, a variety of matters may be the subject of prehearing motions, such as the appropriateness of arbitration, hearing locale, and postponements

Motions Regarding the Appropriateness of Arbitration

Any party may challenge the appropriateness of arbitration. A party may request that the arbitrators dismiss the arbitration and refer the parties to their remedies at law. One type of case that may be appropriate for such a dismissal is a case in which claims are asserted against parties who have not agreed to arbitrate. Since such parties may not agree to participate in arbitration, a referral to legal remedies may avoid multiple proceedings and ultimately conserve legal resources

Motions to Dismiss Because of the Passage of Time

The Uniform Code contains an eligibility provision, which states that no dispute, claim, or controversy can be submitted to arbitration if six (6) years have elapsed from the occurrence or event giving rise to the claim. This time period may be extended by court proceedings. The arbitrators should also be aware that a statute of limitations may preclude the awarding of damages even though the claim is eligible for submission to arbitration.

Motions to Sever or Consolidate Claims or Parties

The Uniform Code provides that the Director may determine preliminarily whether to join, consolidate, or sever various arbitration matters. All final determinations with respect to joinder,

consolidation, or severance are made by the arbitration panel. When deciding such motions, arbitrators should consider commonality of time, parties, transactions, issues, or prejudice to any party. Each motion should be decided on its own merits.

The Uniform Code provides that persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any questions of law or fact common to all these claimants will arise in the same action. Persons also may be joined as respondents if there is asserted against them jointly or severally any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any questions of law or fact common to all respondents will arise in the action.

Motions to Change the Location of the Hearing
The Director determines the time and place of the initial hearing. Arbitrators decide the time and place of subsequent hearings. The general policy in cases involving customers is to conduct the hearing wherever the customer resided when the dispute arose or in the nearest major city. Parties may argue, however, that a case should be heard at another location based on the location of witnesses and documents and the convenience of the parties. Arbitrators always have the authority to change the location of a hearing.

Motions to Bar a Responding Party from Presenting Any Facts or Defenses
The Uniform Code provides that any responding party who pleads only a general denial, who fails to specify all available defenses, or who fails to answer, may, upon written objection, be barred from presenting any facts or defenses at the time of the hearing. All parties should be given an opportunity to respond to such an application before the arbitrators bar the presentation of facts and defenses. Arbitrators should review the case history carefully when considering such a request. The prejudice to a party who has not received a timely answer should be weighed against the prejudice to a party who will be precluded from asserting any facts and/or defenses at the hearing.

Application to Postpone the Hearing
Arbitrators may, in their discretion, postpone any hearing(s) either on their own initiative or at the request of any party to the arbitration. The Uniform Code states that any party requesting a postponement, after the arbitrators have been appointed, shall deposit a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. The Director or the arbitrators may waive the deposit of the adjournment fee. If the arbitrators do not grant the postponement, the deposit is returned. If the postponement is granted, the arbitrators may assess the fee in the final award. Arbitrators may, upon receiving a third request consented to by all parties, dismiss the arbitration without prejudice to the claimant filing a new claim.

A party may request that the arbitrators postpone a hearing for a variety of reasons, such as the sudden inability of a necessary party, counsel, or material witness to appear. In deciding whether to grant a postponement, the arbitrators should consider the following:

- fairness to the parties,
- the consent or objection of the opposing party,
- the merits of the request,
- previous postponements,
- the burden placed on the panel, and
- the ability to conduct a productive hearing.

While the Uniform Code does not limit the number of times the arbitrators may postpone a hearing, they should be mindful that one of the goals of arbitration is to provide a speedy method for resolving disputes. Federal and state arbitration statutes permit parties to move to vacate arbitration awards by alleging that arbitrators exceeded their authority by refusing to grant a postponement. Nevertheless, in a majority of those cases, the courts have upheld the arbitrators' award. Cases do exist, however, in which the courts vacated an award when the

arbitrators' refusal to adjourn was found to be unreasonable.

Accommodations for Ill, Infirm, or Elderly Parties and Witnesses
Arbitrators have the authority to make accommodations for ill, infirm or elderly parties and witnesses For example, hearings may be expedited; accommodations regarding the manner or scheduling of testimony may be made; and depositions of witnesses may be permitted

It is the responsibility of the party, witness, or the attorney for the party or witness who is ill, infirm or elderly to bring the situation to the attention of the arbitrators. Once notified, every effort should be made to accommodate that party or witness.

Important to hearing efficiency and fairness, arbitrators must act quickly to prevent abuse or disruption of the process. When arbitrators are determining the reasonableness of requested postponements or adjournments, they should be mindful of the health and age of a party or key witness among the facts or circumstances under consideration.

Prehearing Conference

The Uniform Code provides that the parties shall cooperate in the voluntary exchange of documents and information to expedite the arbitration. The staff will monitor compliance with the rule and will schedule a prehearing conference to resolve remaining issues. Once a prehearing conference has been scheduled, an SRO staff member or an arbitrator or arbitrators will be appointed to help resolve the discovery issues as well as any remaining questions

An arbitrator appointed to preside at a prehearing conference is authorized by the Uniform Code to act at that time on behalf of the entire panel in issuing subpoenas, directing appearances, ordering the production of documents and information, setting deadlines, and issuing any other order that may serve to expedite the process and permit any party to develop its case fully. This includes the ability to issue orders for the production of witnesses for depositions. An order to depose a witness should normally be limited to preserving the testimony of ill or dying witnesses, or persons who are unable to travel long distances for a hearing and cannot otherwise be required to attend the hearing, as well as to expedite large or complex cases. Balanced against this ability, however, is a traditional reservation about the use of depositions in arbitration. Parties can agree to depose a witness without asking for permission from the arbitrator(s).

The effective use of discovery tools such as depositions rests in the careful exercise of judgment by the arbitrators Care should be taken to avoid unnecessary expense or burdens to the parties and to avoid unnecessary delay. It is appropriate for arbitrators to consider whether the witness will be able to appear at the arbitration hearing, the necessity of preserving the witness's testimony, and other factors that bear on the efficiency and fairness of the proceeding. Once a deposition is ordered by the arbitrator(s) or agreed to by the parties, the deposition or excerpts therefrom may be offered into evidence by any party. If the offered portion of the deposition includes an objection to testimony by a party, the arbitrator(s) must rule on the objection.

Prehearing conferences to resolve discovery disputes are becoming more numerous and time consuming. The same issues repeatedly arise. The following documents frequently have been produced by parties or ordered produced by arbitrators, where relevant, in other cases. This list is neither exhaustive nor are all of the documents necessary to every case. Consideration should be given to the type of controversy and the issues involved in a particular case. Before ordering that a party produce a particular document, the arbitrator(s) should weigh a party's ability to fully develop his/her case against the reasonableness of the burden to produce the document. The arbitrator(s) may limit, as appropriate, the time periods of the documents covered by the order to the relevant time periods in the case The arbitrator(s) may request that the full panel be convened to decide prehearing issues. Some arbitrators desire to make these decisions with the benefit of the expertise of their colleagues who will be rendering the final decision.

A. Customer Cases

From the Firm

1. Forms RE-3, U-4, and U-5 of registered representatives (RRs).
2. Relevant parts of Compliance Manual.
3. Client agreements and opening account documents.
4. RR's holding pages for customer and/or product.
5. Commission run of RRs.
6. Correspondence with regulators.
7. Exception reports (i.e., activity concentration printouts).
8. Order tickets.
9. Marketing materials
10. Other customer complaints of a similar nature.
11. Redacted copy of holding pages of other customers in the same product.
12. Any analysis or account reconciliation prepared by the firm
13. Notes or recordings made by the firm.

From Customers

1. Income tax returns (can be limited to Form 1040 pages 1 and 2 and Schedules D and E).
2. Customer copy of account statements.
3. Statements for accounts at other brokers.
4. Any analysis or account reconciliations prepared by the customer.
5. Notes or recordings made by the customer.
6. Correspondence by claimant with the brokerage firm or financial consultant.

In October 1999, FINRA made available a Discovery Guide (Guide) for use in customer cases. The Guide was the result of a consensus reached by a multi-partisan task force convened by FINRA. Although the Guide is not incorporated into the Code, it does provide expanded guidance to the parties and the arbitrators, and is aimed at expediting the arbitration process.

The Discovery Guide, which includes Document Production Lists, provides to parties in FINRA arbitrations guidance on which documents they should exchange without arbitrator or staff intervention, and guidance to arbitrators in determining which documents customers and member firms or associated persons are presumptively required to produce in customer arbitrations. The Discovery Guide also discusses additional discovery requests, information requests, depositions, admissibility of evidence, and the use of sanctions.

The Discovery Guide is not intended for use in simplified arbitration proceedings. However, the arbitrator may, in his or her discretion, choose to use relevant portions of the Discovery Guide in a manner consistent with the expedited nature of simplified proceedings.

B. Employment Cases

From Employer

1. Personnel records.
2. Employee manual.
3. Commission runs.
4. Branch profit and loss (raiding cases).
5. Employment contracts.
6. Forms RE-3, U-4, and U-5
7. Bonus paid to registered representative in same title/group.

From Employee

1. Tax returns
2. Employment contracts/arrangements with new firm
3. Appointment calendars/notebooks, etc.

Arbitrators presiding at prehearing conferences, or when called on to decide discovery disputes, should always give consideration to the arguments put forth by both sides, as well as the relevancy of the documents or information. They should not simply grant a request for the production of a document because it is listed above nor deny the request because it is not listed.
If a party objects to document production on grounds of privacy or confidentiality, the arbitrator(s) may suggest a stipulation between the parties that the document(s) in question will not be disclosed and/or not used in any manner outside of the arbitration of the particular case or issue a confidentiality order.

Ideally, the parties will agree on the form and content of any confidentiality order. In some instances, however, the parties will not agree what is or is not confidential. When deliberating contested requests for confidentiality orders, the arbitrator(s) should bear in mind that the party asserting/requesting confidentiality has the burden of establishing that the documents or information in question are entitled to confidential treatment. Arbitrators should not automatically designate all discovery as confidential. When the party requesting confidentiality has met the burden of establishing the need for confidentiality of certain documents or information, the arbitrator(s) should strive to accomplish the confidentiality sought in the least restrictive manner possible.

In considering questions about confidentiality, the arbitrator may consider such factors as:

1. Is the information so personal that disclosure would constitute an unwarranted invasion of personal privacy (e.g., an individual's social security number, tax return, or medical information)?
2. Is there a real threat of injury attendant to disclosure of the information?
3. Is the information proprietary containing confidential business plans and procedures or a trade secret?
4. Are there essential competing interests at stake that require confidential treatment of certain portions of the proceedings?
5. Is the information already public (e.g., has it previously been published or produced without confidentiality) or is it already in the public domain?
6. Would a confidentiality order be against the public interest in disclosure?
7. Are there first amendment or other issues which might be raised by restrictions on the ability of parties to comment freely upon matters in which they are involved?
8. Would a confidentiality order impair the ability of counsel to represent other clients?

In addition, the arbitrator should, to the fullest extent possible, encourage the parties to:

1. mutually exchange documents and information,
2. enter into stipulations,
3. agree to the joint submission of premarked exhibits,
4. narrow the issues in dispute,
5. identify witnesses and the subject of their testimony, and
6. identify documents to be used at the hearing.

The arbitrator should consider whether briefs or legal memoranda on an issue are desirable and, if so, establish a schedule for their submission. In addition, the parties may ask the arbitrator if telephone or affidavit testimony will be allowed at the hearing.
The arbitrator may also consider other issues raised by the parties, such as consolidation, severance, or the location of the hearing. The arbitrator may refer these or any other issues raised to the full panel for resolution.

If the prehearing conference is based on written submissions, the arbitrator may request additional information from the parties. The arbitrator should communicate his or her request to the staff, which

will notify the parties. If the prehearing conference is to be conducted by telephone, the arbitrator will be advised by the staff of the date and specific time scheduled for the conference. Prior to the conference, the staff will provide the arbitrator with any written submissions pertaining to the preliminary issues/disputes to be resolved. The arbitrator should be fully familiar with all submissions before the prehearing conference begins.

On completion of the prehearing conference, the arbitrator should advise the staff of his or her decision on the preliminary issues, the stipulations, and any other matters. The staff will record the results of the prehearing conference and submit it for signature to the arbitrator and/or the parties where appropriate.

Arbitrators' Power to Issue Orders

An arbitrator may be requested to issue a subpoena directing the appearance of a witness and/or the production of documents. This request will be communicated to the arbitrator with the subpoena and any other relevant materials.

The arbitrators may also direct the appearance of a member or an employee of any member firm of an SRO and direct that a member or member firm produce any documents in its possession or control. Accordingly, arbitrators may consider using an Order of Production or Appearance in lieu of a subpoena if the party being directed to produce is a member or person associated with a member. Failure to honor an order of an arbitrator may subject a member or person associated with a member to disciplinary action.

The arbitrator should read all the materials supplied as well as the pleadings in the case before executing the subpoena. The arbitrator should consider the propriety and relevance of the materials requested as well as the timeliness of the subpoena request. It is the obligation of the party requesting a subpoena to serve it in accordance with the law. The person on whom the subpoena is served must have a reasonable opportunity to comply with or contest the subpoena.

An arbitrator may decline to issue a subpoena that he or she feels is inappropriate or which may unreasonably delay the hearing.

Subsequent to the issuance of a subpoena or order for the production of documents or information, the arbitrator(s) may be advised that the party to which the order was directed has not complied with its terms. Arbitrators have wide discretion in addressing such noncompliance. For example, the arbitrator (s) may draw an adverse inference against any party who did not comply with the order; assess adjournment fees, forum fees, or other costs and expenses, including attorneys' fees, caused by noncompliance; initiate a disciplinary referral in the instance of noncompliance by a member firm or associated person of a member firm; or take other appropriate action to expedite the proceedings or assist any party to develop fully its case. In extraordinary cases the arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful or intentional failure to comply with an order of the arbitrators, if lesser sanctions have proven ineffective. Prudent use of the discovery procedures is designed to reduce the prejudice to parties unable to obtain voluntary production of documents and information without imposing undue costs. Arbitrators should generally not allow parties to reargue the merits of the original order when resolving such compliance disputes.

Before the Hearing

The staff will send the pleadings to the arbitrators upon appointment to a particular case. The arbitrator is required to read the pleadings thoroughly before the hearing begins. While reading the pleadings, the arbitrator should look for any potential conflicts. Arbitrators should know that attorneys are often retained by parties shortly before a hearing commences, creating last-minute conflicts for the arbitrators. Such conflicts should be disclosed immediately.

Arbitrators should not make independent factual investigations. The arbitration case belongs to the parties, and the parties should present the facts as they wish. Nothing, however, prohibits an arbitrator

from reading the text of a rule, statute, or legal citation referred to in a party's pleading (e g , if the complaint charges a violation of a suitability rule, the arbitrator may read the rule).

When in doubt about an issue, legal or otherwise, arbitrators should request briefs from the parties. If cases are cited in a party's motion or brief, and the arbitrators wish to read the full court opinions, the arbitrators should ask the parties to supply copies, and if necessary, the arbitrators may look up the cited authorities themselves Arbitrators generally should review only those materials presented by the parties to the arbitrator.

In those limited instances where an arbitrator believes that independent research is appropriate, as described above, the arbitrator should disclose the nature of that research to the parties. By doing so, the arbitrator makes the parties aware of the matters being considered by the arbitrator and the parties may respond accordingly.

The Code of Ethics requires that arbitrators keep confidential all matters relating to the arbitration proceedings and decision. However, the Code of Ethics also states that "an arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon."

If the arbitrator has definite ideas about how a case should proceed, he or she should bring these thoughts to the attention of the staff. For example, a member of a panel may be quite familiar with an area of controversy and request specific documentation from the parties through the staff.

The arbitrators should not directly communicate with the parties or permit the parties to directly communicate with them. At least twenty (20) calendar days prior to the first scheduled hearing date, all parties are to serve on each other copies of documents in their possession that they intend to present at the hearing and are to identify witnesses they intend to call. However, parties need not serve copies of documents or reveal identities of witnesses, which are used for cross examination or rebuttal purposes. At a party's request, arbitrators may exclude from the hearing any documents not exchanged or witnesses not identified.

The parties, by agreement, or the arbitrators may shorten or lengthen the prehearing exchange deadlines

Upon a party's request to exclude documents not exchanged or identified, or witnesses not identified, arbitrators should be guided by concepts of fairness in determining whether to exclude the evidence offered or the witness presented or identified. If the documents, which were not exchanged or identified in accordance with the twenty (20)-day rule, are either voluminous or significant, the arbitrators may adjourn the hearing to afford the disadvantaged party a fair opportunity to examine and evaluate the documents. Arbitrators should consider assessing the noncomplying party with costs and expenses that arose because of the postponement.

At the Hearing

The Uniform Code gives the Director the power to appoint the Chair, unless all parties agree upon a Chair. The Chair holds a key position in the conduct of the arbitration and directs the proceeding. An arbitrator who does not desire to perform this function should decline the appointment.

At the beginning of the hearing, the arbitrators, the parties, and witnesses will be sworn. The panel should ensure that a verbatim record of the proceeding is kept.

The Chair will be provided by the staff with a written opening statement that should be read into the record after the panel has been sworn. This statement acknowledges that the arbitrators have read all the pleadings submitted by the parties and outlines the manner in which the hearing should proceed. Among the items mentioned is the order in which the parties may make opening and closing statements and present evidence. At the conclusion of the hearing, the parties are instructed to leave together and are advised that they will be informed of the arbitrators' decision in writing. This procedure

is a guide that should be used by the Chair. However, it may be modified to accommodate special circumstances that arise during a particular hearing

The Chair should remember that all arbitrators share an equal status. The Chair should neither make, nor appear to make, unilateral rulings on key issues. It is incumbent on the other arbitrators to call any occurrence of this nature to the Chair's attention (See Executive Sessions.)

Each arbitrator should carefully consider requests made by the parties. Arbitrators should be guided by the concepts of fairness in determining what evidence or testimony should be admitted. When in doubt, rulings are more appropriately made on the side of allowing rather than restricting evidence. The panel is not bound by the Rules of Evidence. (See Admissibility of Evidence) Each case must be judged solely on the written and testimonial evidence. Each arbitrator has a right to question witnesses. While it is certainly proper for an arbitrator to ask questions, every effort should be made to avoid taking over a hearing or becoming an advocate. Parties and their attorneys should be permitted to try their own cases. Generally, arbitrators should refrain from questioning a witness until both parties have finished their examination.

Arbitrators must always conduct the entire hearing in a neutral fashion. They should avoid comments or body language that indicate a preference for either side. Care should be exercised, particularly when questioning a witness, so that the arbitrator does not indicate disbelief. Grimaces, frowns, or hand signals should all be avoided. Casual conversations with parties or counsel should be held to a minimum. The arbitrators should strive to conduct themselves appropriately. All parties should be given a fair opportunity to present their case. p. 25

During a hearing, a party may object to an arbitrator's continued participation. The objection may arise after a new disclosure is made by an arbitrator or if a party does not feel it is receiving a fair hearing. When considering such an objection the arbitrator should refer to the guidance under the Code of Ethics for Arbitrators. (See Appendix A, Code of Ethics for Arbitrators in Commercial Disputes, Canon II, Section [E] [1] and [2].)

Occasionally, a counsel may require tactful handling. Some attorneys refuse or are unable to adapt to the informality of the arbitration process and believe that they must employ legal technicalities that are routinely used in court. If the case is to move expeditiously, the Chair may be required to interrupt an attorney attempting such formalities, explain the proper procedure, and remind counsel that he or she is in an arbitration proceeding. If the conduct of the attorney continues, the Chair should become more forceful.

Some counsel become attuned to the system and try to use the informality to their advantage. Very often, their questions are too leading and, at times, the attorney actually testifies. Some attorneys use the informality to respond to arguments or to make gratuitous statements. In these situations, the Chair should intervene and bring the offending practice to a halt even if the opposing party does not object.

Some attorneys think that the more often a statement is made, the truer it becomes. The Chair, however, should discourage needless repetition.

The Chair should maintain decorum at all times. Shouting, profanity, or gratuitous remarks should be stopped. If a hearing becomes heated, the Chair should intervene or, if necessary, call a recess.

Sometimes, a witness will become nervous or anxious. In such an instance, the Chair might attempt to calm the witness.

Function of the Arbitration Staff

The Director will assign a staff member to every case. The responsibility of the staff is to advise the panel concerning arbitration procedures. The staff members are not advocates, nor do they research legal issues. Staff members are on call and may be present to see that the sessions run smoothly and all rules are properly observed. If, for instance, a witness is not sworn, this will be called to the attention

of the Chair. At the conclusion of the hearing, but before the parties leave, the attending staff will remind the arbitrators of any remaining open items (e g , admission of certain evidence previously marked for identification, party requests for additional evidence, outstanding motions, etc) The staff member acts as advisor on procedures under the Uniform Code. In deciding a case, however, the staff member's opinion should not be sought or accepted, and, at the discretion of the arbitrators, the staff member may be asked to leave the room. The decision must be made solely by the arbitrators.

Arbitrators should not discuss any matter at issue in the presence of the parties. At any time, the arbitrators may call for executive sessions in order to discuss a matter in private. The mechanism for calling an executive session should be determined by the arbitrators before the hearing begins. All executive sessions are off the record. In an executive session, the arbitrators should try to reach a consensus When the hearing reconvenes, the Chair announces the decision but need not state the rationale for the decision. The arbitrators should avoid any conflict or dissension in the presence of the parties. The staff member participates in executive sessions only as a procedural advisor to the panel, at the discretion of the arbitrators. All decisions are made solely by the panel.

Hints for the Chair

Although the Chair casts one vote in all matters, the Chair controls the arbitration proceeding, and his or her approach will determine the hearing's effectiveness.

Areas in which the Chair should make special efforts include:

1. becoming familiar with all matters that may be presented,
2. discussing with the staff what motions will be presented,
3. making an effort to determine the length of the proceeding,
4. reading into the record all agreed-upon dates and times for future sessions,
5. ensuring that all witnesses are sworn, and
6. ensuring that the record is complete.

The Chair should be prepared to:

1. tell counsel to dispense with repetitive and irrelevant matters,
2. where appropriate, instruct a witness to answer only the questions asked and not ramble,
3. advise counsel that they should have sufficient copies of all exhibits,
4. encourage parties to agree on the introduction of documents as joint exhibits, and
5. speed up a line of questioning when possible.

Quite often, counsel may attempt to present a lengthy foundation for the obvious or pursue a line of questioning that is not relevant. The Chair may intervene and attempt to focus the proceeding on the issues. Overall, the Chair directs the entire arbitration proceeding; failure to do so effectively may extend proceedings.

Admissibility of Evidence

The strict rules of evidence applied in a court of law are not usually used in arbitration This does not mean that the arbitrators should accept everything presented to them. The evidence should relate to the case. For example, no party should be allowed to introduce evidence of any settlement offer that it made or received. The parties should be given an opportunity to object or comment on anything that is presented to the panel. The key consideration is fairness.

While the Federal Rules of Evidence do not as a general matter govern the conduct of arbitration proceedings, the rules of evidence do, however, often provide good, practical guidance on what evidence is probative. The collective experience and judgment of the bar drawn upon in the formulation of these rules is useful in making particular determinations, but generally arbitration proceedings should be more informal and should permit more liberal introduction of evidence than would be permitted in court.

Under the SRO arbitration rules, all parties are required to exchange documents they intend to present at the hearing and identify all witnesses who will be used in their direct case. This must occur twenty (20) calendar days prior to the first scheduled hearing session, unless extended or shortened by the arbitrator(s) or by agreement of the parties. Arbitrator(s) may bar from use documents not exchanged or witnesses not identified in accordance with this rule. In granting such a motion, arbitrators should consider whether the information was known or available by the day it was required to be exchanged. Again, the arbitrator's duty in deciding this issue is to ensure that all parties are treated fairly.

A common problem is the attempt by a party to present testimony by deposition or affidavit. The first question the panel should ask is, "Why isn't the witness present?" If the witness is properly served with a subpoena, the witness should be at the hearing, unless he or she has a reasonable excuse. Another question the arbitrator should ask is, "Was the opposing party afforded an opportunity to question the witness?" If not, the panel should take this into consideration when deciding whether to accept written testimony or the weight to be given to it.

Although most arbitration claims present questions of fact that the panel will be able to decide on the evidence, some parties may rely on a specific law or statute. Generally, the party who has raised a legal issue will offer the panel a brief setting forth the law or statute and how it applies to the facts of the case. The arbitrators may encourage such a party to cover the issues orally. If the brief is accepted, the other party should be afforded an opportunity to respond. The arbitrators may also request that the parties submit briefs on any issue when the arbitrators feel a brief will assist them in deciding the case.

Attendance of Witnesses at the Hearing

Arbitrators will always have the authority under the Uniform Code to determine who may attend the hearing. Parties must be allowed to attend the hearing. A corporate party may designate a representative as it may choose, whether or not that representative is going to be a fact witness.

Sometimes there is disagreement among the parties as to whether an expert witness should be permitted to attend. Arbitrators should consider that expert witnesses often serve an important role in assisting parties and their counsel in the presentation of their cases, and may also be asked to testify about what has been said at the hearing, in addition to facts known to them prior to the hearing. Absent persuasive reasons to the contrary, there is a presumption that expert witnesses, as opposed to fact witnesses, should be permitted to attend the entire proceedings.

Absent persuasive reasons to the contrary, and subject to the discretion of the arbitrators, the investor party should be permitted to designate one individual to attend the hearing, as there are many instances where an investor wishes to have a spouse, son or daughter, accountant, or other fact witness attend. These people can provide added support to the investor party, and can also provide valuable assistance when hearing the testimony of fact witnesses.

Designations should be made before the hearings start.

Deliberations

Prior to the close of the hearing, the arbitrators may request that the parties state specifically the relief/damages they are seeking if not made clear by the pleadings. The arbitrators may also request that the parties present specific calculations of the damages to assist them in their deliberations.

Immediately after the close of the hearing, the arbitrators usually remain in the hearing room either to begin deliberations or set a date for deliberation. Unlike jurors, the panel members are not restricted from discussing the case among themselves. Generally, arbitrators do not attempt to judge the dispute until all the evidence is received. All arbitrators should take part in the deliberations. p. 25

Usually the Chair asks one member of the panel to begin discussion of the case, expressing his or her individual views. The Chair should ask the panelists first to discuss liability without mentioning specific damages. The panelists should discuss differences openly. The arbitrators may wish to review the transcript or recording of the hearing and their notes as well as the evidence.

Arbitrators should keep in mind that the parties expect to be advised of the final decision within thirty (30) business days after the close of the hearing.

The panel may consider breaking the decision into separate awards on each individual claim. Where more than one theory is set forth as a basis for the relief sought, the arbitrators may differ as to these bases for liability. As long as the arbitrators agree on liability, they need not be unanimous on the theory of liability.

Arbitrators are not strictly bound by case precedent or statutory law. Rather, they are guided in their analysis by the underlying policies of the law and are given wide latitude in their interpretation of legal concepts. On the other hand, if an arbitrator manifestly disregards the law, an award may be vacated. (See The Arbitrators' Award) p. 19

A. Compensatory/Actual Damages
The recovery of compensatory damages is the primary reason a party brings a claim. An award of compensatory damages may include the party's actual dollar loss and any other damages. Claimants will generally state a figure in the statement of claim of what they consider to be actual damages. Claimants have a duty to prove those damages. All claims for damages should be supported by evidence. The arbitrators may consider the concept of mitigation, where appropriate.

B. Punitive Damages
Arbitrators may consider punitive damages as a remedy. Generally, in court proceedings, punitive damages consist of compensation in excess of actual damages and are awarded as a form of punishment against the wrongdoer. If punitive damages are awarded, the arbitrators should clearly specify what portion of the award is intended as punitive damages.

C. Injunctive Relief
Parties may request injunctive relief when they are seeking a specific action or relief from a specific action. For example, an introducing firm may request injunctive relief to enjoin a clearing firm from ceasing to clear its trades. The SROs vary in their approach to injunctive relief issues. Arbitrators should consult the procedures of the SRO in which they are serving.

D. Interest
Arbitrators have the power to award interest and to determine the proper date from which interest is to accrue. Some state statutes specify legal rates of interest that may be used for guidance when awarding interest.

Unless otherwise specified by the arbitrators in the award, all awards shall bear interest from the date of the award: (i) if not paid within thirty (30) days of receipt, (ii) if the award is the subject of a motion to vacate that is denied.

E. Attorneys' Fees
Attorneys' fees are frequently requested in arbitration. Arbitrators have the authority to consider awarding attorneys' fees, but the procedure varies from state to state. It is appropriate for the arbitrators to request the parties to brief this issue.

F. Forum Fees
Some SROs subsidize the arbitration forums they sponsor. In order to defray part of the costs, the arbitrators are empowered to assess forum fees as set forth in the rules. When a party files a Claim, Counterclaim, Third-Party Claim, or Cross-Claim, that party is required to remit a nonrefundable filing fee in addition to a hearing session deposit based upon the fee schedule in the Uniform Code. The Director may temporarily waive the fee or deposit. The total fee is

determined by the number of hearing sessions. The arbitrator(s) may assess in the final award a fee waived by the Director

When it is clear that multiple hearing sessions are required, the arbitrator(s) should consider requiring the parties to deposit interim forum fees for additional hearing sessions that have been held or are scheduled

Forum fees may be assessed for prehearing conferences conducted with the parties and an arbitrator. Should a case settle or withdraw subsequent to the commencement of the first hearing session, including a prehearing conference with an arbitrator, the arbitrator(s) may assess forum fees and costs. The assessment should be based on hearing sessions held or scheduled within eight (8) business days after the sponsoring organization receives notice that the matter has been settled or withdrawn.

The arbitrators may also assess an adjournment fee when a party's request for a postponement has been granted, thereby necessitating rescheduling the hearing.

For all of these issues, the arbitrator(s) should refer to the schedule of fees.

In addition to administrative expenses, the parties may request that the arbitrators direct reimbursement for certain expenses such as:

1 the expenses of a witness,
2. the cost associated with producing documents, and
3 the cost of transcribing the record.

It is within the panel's discretion to decide which party, if any, shall pay these fees and expenses. The panel may use the same basis as it did in determining compensatory damages.

The Arbitrators' Award

An arbitrators' award is final and usually not subject to review by the courts unless it can be shown that fraud, corruption, or misconduct occurred in procuring the award. Other grounds for setting aside an award include partiality by an arbitrator or certain specific technical errors. In addition, an award may also be vacated when an arbitrator manifestly disregards the law.

Occasionally, a party will not appear at the arbitration hearing. It is advisable in such cases for the arbitrator to make sure that the nonattending party received due notice of the arbitration hearing and did, in fact, enter into an arbitration agreement. The party in attendance still has the obligation of presenting and proving his or her case, and the arbitrator may consider any pleadings submitted by the nonattending party. In any event, despite the nonattendance of a party, the arbitrator may proceed and render an award provided the nonattending party received adequate notice of the hearing.

Once a decision is made, the staff member reduces the award to writing. Under present law, an arbitrator is not required to give a reason for the decision 3 The award should reflect: p. 30

1 the names of the parties,
2. the date the claim was filed and the award rendered,
3. the name(s) of counsel, if any,
4. a summary of the issues, including the type(s) of any security or product in controversy,
5. the amount of the claim or other relief requested and the amount awarded and against whom the award is made,
6. the number and dates of hearing sessions including the location of the hearing,
7. any other matters decided by the arbitrators, such as jurisdictional issues, and,
8. the names of the arbitrator(s) and the signatures of the arbitrator(s) concurring in the award.

These awards and any report or opinion of the arbitrators shall be made publicly available in accordance with the policies of the sponsoring SRO.

The Uniform Code requires that all awards be paid within 30 days of receipt. Each SRO is considering adopting this rule. In addition, one SRO has adopted a rule requiring the payment of awards within 20 days of its receipt or, a deposit of the amount of the award in escrow. Arbitrators should be familiar with these rules as adopted by the SROs.

Post-Award Procedure

All post-award procedures should be conducted only under the auspices of the sponsoring SRO. If an arbitrator is contacted directly by a party, he or she should consult with the SRO. A party should not contact an arbitrator under any circumstances. Similarly, if an arbitrator is threatened by a party with a lawsuit, the sponsoring SRO should be contacted immediately.

A. Direct Appeal to the Arbitrator(s)

Generally, the arbitrators' authority ends when an award is rendered. Some state arbitration statutes and the Uniform Arbitration Act permit the arbitrators to modify an award. Such modification may correct errors of form such as miscalculation of figures or mistakes in description. The arbitrators may not, however, re-examine the grounds for the award nor may they substantively change their decision.

B. Appeal to a Court of Law

A party may seek to clarify, modify, or vacate an award through the courts. Arbitrators should know that current law does not include newly discovered evidence as grounds for vacating an arbitration award.

1. Grounds for Review

The grounds on which an award may be challenged are usually limited to arbitrator partiality or misconduct; prejudicial conduct of hearing; imperfections, ambiguities, or mistakes on the face of the award; corruption or fraud by the arbitrator; unreasonable refusal to hear evidence or postpone the hearing; and manifest disregard of the law.

A respondent who has not participated in the arbitration may also challenge the award on the basis of the invalidity of the arbitration agreement or the expiration of the statute of limitations or lack of notice of the proceedings.

2. Arbitrator Testimony and Depositions

An arbitrator may not be called on to testify or produce evidence in a proceeding to impeach the award. If an arbitrator is requested to file an affidavit or is served with any form of notice to testify, the SRO should be called immediately. The SRO will provide legal counsel for an arbitrator in any action resulting from the arbitrator's duties.

3. Arbitrator Immunity

Arbitrators are quasi-judicial officers and, as such, enjoy a high degree of immunity. Arbitrators are generally exempt from civil liability for failure to exercise care or skill. They are not immune from liability when the activities constitute misconduct for which punishment is expressly provided by law. An example of such misconduct is bribery, for which both civil and criminal liability may exist. The arbitrator is also not immune from liability for fraud or corruption.

Confidentiality of Arbitration Proceedings

Arbitrators must consider all aspects of an arbitration to be confidential. Records of the arbitration hearing should not be provided by the arbitrators to nonparties. Awards in customer cases are

available to the public under the rules of each SRO. An arbitrator should not distribute awards. This confidentiality provision applies only to the arbitrators; it does not apply to the parties. Nothing in this provision should be interpreted as either imposing a blanket of confidentiality on the parties to the arbitration or preventing the arbitrators from entering a confidentiality order as to certain documents and information exchanged between the parties in the course of the arbitration and in accordance with the provisions set forth in the "Prehearing Conference" section of this manual. Absent an agreement or order to the contrary, parties are generally free to disclose details of their own proceeding as they see fit.

Disciplinary Referrals

During the course of an arbitration proceedings, the arbitrator(s) may infer that a rule or statute has been violated. In such cases the arbitrator(s) may refer the matter for disciplinary action at the SRO.

A disciplinary referral may also be made if a member firm or associated person refuses to comply with an order of production or appearance issued by the arbitrators. Such referral can be initiated during a proceeding or at the conclusion of a proceeding. In either case, the referral should be reduced to writing either by the arbitrator(s) or by the arbitration department staff subject to the arbitrator(s) review. The referral should be specific regarding the noncompliance.

Finally, the staff will refer for disciplinary action a refusal by a member firm or associated person to comply with the terms of an arbitration award. The referral will be made after the expiration of the statutory period in which a motion to vacate can be raised.

Reference Books and Periodicals

Alternative Dispute Resolution Reports
Published by the Bureau of National Affairs

Arbitrating Securities Disputes
C. Edward Fletcher
Published by the Practicing Law Institute

Broker Dealer Regulation
David Lipton
Published by Clark Boardman Company, Ltd.

Domke on Commercial Arbitration
Gabrielo M. Wilner
Published by Clark Boardman Callahan

Securities Arbitration Commentator
Richard P. Ryder, Editor and Publisher

Securities Arbitration Practice and Forms
Reece Bader
Published by Matthew Bender

Securities Arbitration Procedure Manual
David Robbins
Published by Lexis Law Publishing

Securities Arbitration, Procedures, Strategies, Cases
Philip J. Hoblin
Published by the New York Institute of Finance

Web Resources

FINRA Dispute Resolution

New York Stock Exchange, Inc.

North American Securities Administrators Association

Public Investors Arbitration Bar Association

Securities Industry Association

U.S. Securities and Exchange Commission Office of Investor Education and Assistance

Appendix A

AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes

Exhibit 2

The Neutral Corner - August 2002

*Note that this issue of The Neutral Corner is being published only via the Web

NASD Seeks Exemption from California Arbitration Rules

On July 22, 2002, NASD and the New York Stock Exchange (NYSE) filed suit against the California Judicial Council and its members in the United States District Court for the Northern District of California. Both self-regulatory organizations (SROs) are seeking a declaration that they are exempt from the California arbitrator disclosure standards that were implemented in that state on July 1, 2002

NASD and NYSE contend that the new California rules cannot be applied to SRO arbitration programs or their arbitrators because the programs already operate under extensive federal oversight. In addition, there are conflicts between the new California standards and the NASD and NYSE arbitration disclosure rules. The Securities and Exchange Commission (SEC), which approves SRO arbitration rules, including those relating to arbitrator disclosure, and provides regular oversight inspections of NASD and NYSE arbitration programs, wrote a letter in support of the exemption.

> **NASD Dispute Resolution President Linda D. Fienberg commented on the effect of the new California arbitration rules as follows: "If self-regulatory organizations...were required to implement the California rules, investors and other parties would be saddled with higher costs, a less efficient and streamlined process, and a much smaller arbitrator roster from which to select the panelists who will decide their cases." See the July 22, 2002 NASD Press Release.**

On July 1, 2002, NASD postponed the appointment of arbitrators to new arbitration cases in California because of the state's new arbitration rules. However, the new rules do not affect arbitrators appointed to California cases before July 1, 2002, and NASD continues to accept and process California case filings. In addition, the rules do not apply to arbitration cases outside California.

Since new arbitrator appointments have been postponed, NASD announced practice tips to help California parties deal with the delay in their cases, while the exemption issue is pending in court For example, NASD urges investors who believe they have disputes with their brokers not to delay the filing of their cases with an SRO forum because there are substantive statutes of limitations that specify the amount of time investors have between the time a dispute arises and the time a claim is required to be filed.

For pending California arbitrations, NASD advises that parties can agree to have their cases heard in non-California locations such as Las Vegas or Reno, Nevada; Phoenix, Arizona; Portland, Oregon; or Seattle, Washington. Parties also can agree to have California arbitrators or arbitrators from these states hear and decide the controversy. The parties will not be charged for any arbitrator travel or related expenses. NASD also encourages parties to mediate their California cases and has waived its administrative mediation fees and requested its mediators to offer their services at a reduced rate during this time frame.

For additional information, including whom you should contact to discuss the above, read the July 29, 2002 "Notice to Parties in California Arbitration Matters".

Messages from the Editor

Mediation Advocacy Seminar
On October 21, 2002, NASD Dispute Resolution will conduct this program at the Sheraton San Diego Hotel and Marina prior to the NASD Fall Securities Conference on October 22 and 23, 2002.

The pre-conference program is designed to improve the mediation advocacy skills and knowledge of those who practice or expect to participate in securities mediations.

San Juan, Puerto Rico
NASD Dispute Resolution is in the process of recruiting arbitrators and mediators to resolve cases in this recently established hearing location.

Please consult our Web site for more information on arbitrator and mediator qualifications and the application processes

NASD Adds Spanish Language Material to Its Dispute Resolution Web Site
On July 10, 2002, NASD announced that its Dispute Resolution division had enhanced its Web site by providing information in Spanish. The Web site now provides links to important investor information in Spanish, as well as links to translated documents providing overviews of the dispute resolution process for parties and arbitrators.

Editor's Note
In addition to your comments, feedback, or questions on the material presented in this publication and other arbitration and mediation issues, The Neutral Corner invites readers to submit articles on important issues of law and procedure relating to mediation, arbitration, or other alternative dispute resolution processes Please send your article to Tom Wynn, Editor, The Neutral Corner, NASD Dispute Resolution, 125 Broad Street, 36th Floor, NY, NY 10004. Call the Editor at (212) 858-4392 for editorial guidelines.

Arbitration Statistics Through the End of July 2002

Filings through July

2002: 4,387
2001: 3,952
2000: 3,162

Close-outs through July

2002: 3,560
2001: 3,276
2000: 3,084

Additional statistics

Decorum

By Tom Wynn, Editor-In-Chief

This article describes the arbitrator's duty and authority to maintain decorum during hearings. It also suggests available measures to help control the hearing and ensure the finality of arbitrator decisions.

Duties

Canon I of the Code of Ethics for Arbitrators in Commercial Disputes (Code of Ethics) provides that arbitrators should uphold the integrity and fairness of the arbitration process. To help ensure process fairness, Canon I explains that arbitrators should make reasonable efforts to prevent harassment of any hearing participant, or any other abuse or disruption of the hearings; and they should make this effort throughout a proceeding.

Canon IV of the Code of Ethics provides that arbitrators should conduct fair and diligent hearings. Canon IV makes it clear that fairness starts with exemplary arbitrator conduct when it states that arbitrators should treat all parties in a fair, even-handed manner, and act with courtesy and patience in dealing with parties, lawyers, and witnesses

In most cases the parties and their representatives conduct themselves properly during the evidentiary hearings However, there are times when tempers flare, and statements or other conduct become disorderly. Misconduct can take many forms, including witness or party harassment, uncalled for interruptions, vulgar language, name-calling, or rude gestures.

Although arbitrators are ethically obligated to treat everyone fairly, they should not permit improper demeanor, whether it is aimed at a party, representative, or a witness. All hearing participants, including the presiding arbitrators, have a right to expect everyone to act in a reasonable fashion during the entire proceeding. At the outset of the first evidentiary hearing, the Chairperson reads the Hearing Procedure Script (Hearing Script).

The Hearing Script includes a statement titled "Expected Conduct" that reminds all participants to conduct themselves properly during the hearings. You can review the Hearing Script in the Arbitrator's Reference Guide.

Powers

When misconduct occurs, the Chairperson and the other arbitrators should act quickly to diffuse the situation and maintain decorum. Ordinarily, this can be accomplished by means of neutrally-delivered statements that convey the importance of process fairness, and zero tolerance for abusive conduct. The comments may be accompanied by a 'time-out'--where everyone can absorb this important message and calm down--off the hearing record.

However, if the statements and breaks do not succeed in eliminating the abuse or disruptions, arbitrators are authorized to take a number of actions to help ensure fair proceedings. NASD Rule 10324 provides arbitrators with full discretion to act appropriately to enforce their orders, whether the orders relate to the misconduct of a hearing participant, or the production of documents or witnesses.

For example, arbitrators may assess a variety of costs and expenses under NASD Rules 10332 or 10205. In addition, if an NASD member firm or a person associated with a member firm does not comply with an arbitrator order, the panel may refer the non-compliance to NASD's Enforcement Department for appropriate action after the case concludes. To view appropriate regulatory action, read the article titled "National Adjudicatory Council Affirms Sanctions" in the June 2002 edition of The Neutral Corner.

NASD Rule 10305 authorizes arbitrators to dismiss the proceeding "without prejudice" to any party's existing right to resubmit the claim or defense at this or another forum. If the arbitrators believe that a party's non-compliance is material and intentional, and lesser sanctions have not been effective, NASD Rule 10305 also authorizes them to dismiss claims, defenses, or the proceeding "with prejudice"--meaning with no right to resubmit the claim or defense at any time and at any forum. Review "Arbitrators' Power to Issue Orders" in The Arbitrator's Manual.

If counsel is the cause of serious disruptions or abuse, the panel cannot sanction counsel because an agreement to represent a party is not an agreement to submit to these arbitrator powers. However, the panel is not powerless to act under these circumstances. The panel can take any of the preceding actions against the party represented by the offending counsel. In other words, if the panel orders counsel to refrain from disruptive conduct, and the conduct continues, it may hold the client responsible for counsel's demeanor and take appropriate actions against the client.

D. 23

As stated earlier, these actions/sanctions may include an assessment of postponement fees if counsel's actions cause postponements or an assessment of appropriate forum fees, attorneys' fees, or other expenses and costs in the award. If the arbitrators determine that the attorney's conduct is extraordinarily disruptive, they can dismiss a claim or a defense "with prejudice" provided his/her non-compliance is significant, intentional, and lesser actions have not achieved compliance.

Lastly, if the represented party is an NASD member firm or an associated person, arbitrators also can refer these industry clients to NASD Enforcement for appropriate discipline because of their counsel's non-compliance with the order to refrain from disruptive conduct

For more on proper advocacy, read the article titled "Advocacy With Civility: A Prescription For Success" by Constantine N. Katsoris, in the January 2001 edition of The Neutral Corner. Also, see The "Top Ten" Standards Of Good Practice At Arbitration Hearings.

Finality

Arbitrators should always use executive sessions to discuss and decide what may be needed to secure proper demeanor. In addition, before they determine to take action against any hearing participant for non-compliance with their order to refrain from abusive or disruptive conduct, they should make a record.

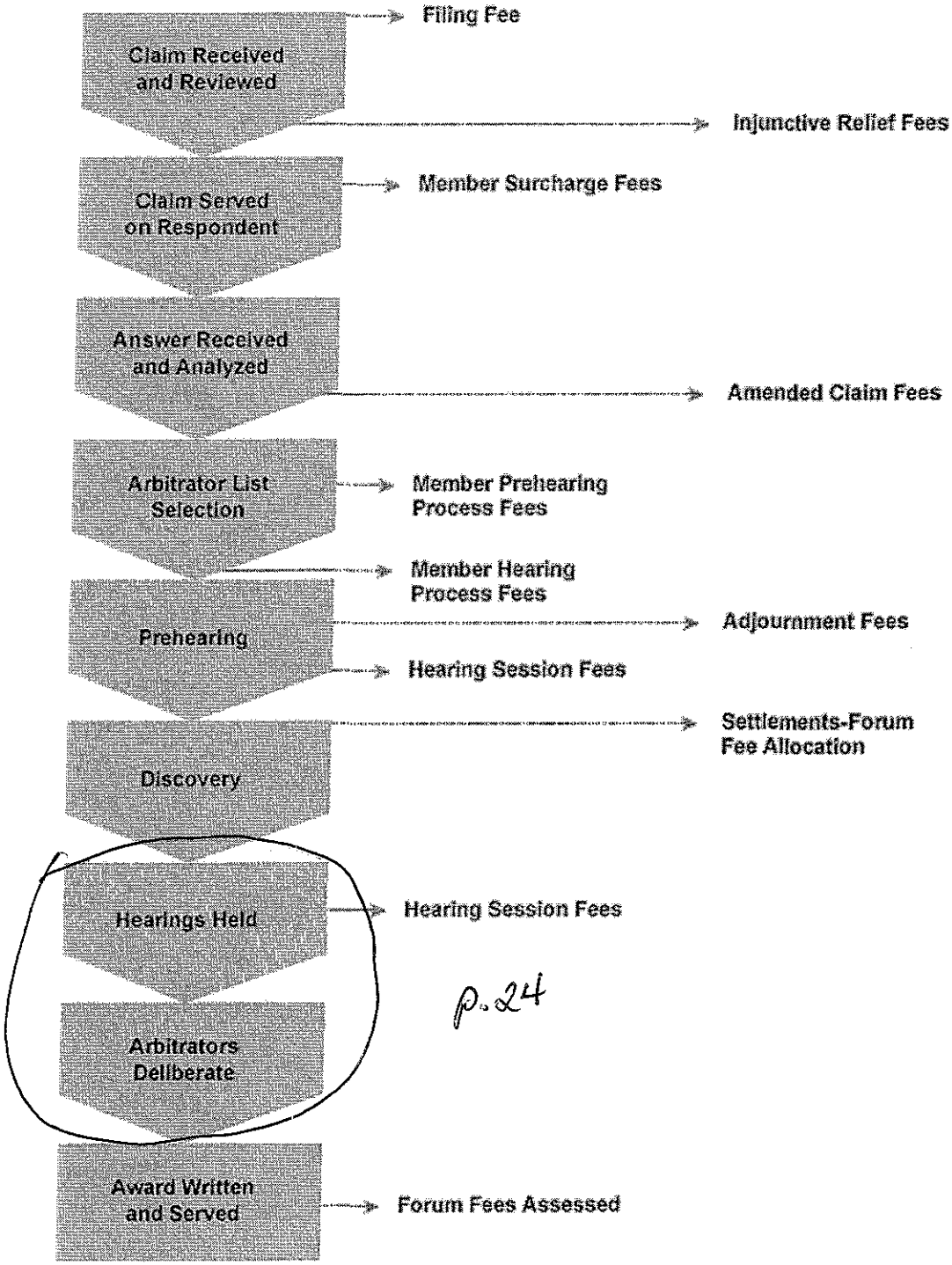
The record at the hearing should include: a description of the misconduct; prior panel warnings to curb the misconduct; and the possible consequences of the misconduct if it persists. If the arbitrators ultimately determine that particular actions or sanctions are appropriate and should be taken to obtain participant compliance with their order, the hearing record also should include these panel decisions and the underlying reasoning

Exhibit 3

(3)

Arbitration Case Flow

Please click on the boxes and fees below for description of each step in the arbitration process and a description of the associated fees



p. 24

Information on the mediation process.

Exhibit 4

(4)

Linda D. Fienberg
President, Dispute Resolution
Executive Vice President and Chief Hearing Officer, Regulatory Policy and Oversight

NASD

May 11, 2006

[redacted]

Re: NASD Arbitration Case Number: [redacted]
[redacted] v. [redacted] Inc., [redacted]

Dear Mr. [redacted]

Thank you for your March 22 letter in which you expressed concerns with the results of your arbitration award and with the conduct of one of the arbitrators. You wrote that you witnessed one of the attorneys engaged in conversation with one of the arbitrators that you did not hear. Let me assure you that we regard any complaint concerning an arbitrator as a serious matter and will review your concern.

All NASD arbitrators are cautioned to be very careful about their communications because of the appearance that can be conveyed. This extends to the most innocent, including the normal courtesies that people extend to each other; "Good morning", "How was your drive", etc While this type of conversation is not related to the hearings or the subject of the arbitration, the witnessing party doesn't know and could assume an impropriety.

You also wrote that you were dissatisfied with the award in your case and the decisions made by the arbitrators during the hearings. Arbitration panels make determinations based on the pleadings, testimony, and evidence presented. Your attorney had the opportunity to present evidence, cross-examine witnesses and make arguments to the panel advocating your case The panel for your case made determinations based on those parameters. One of the decisions made was to dismiss one of the parties from the balance of the case. This decision was made pursuant to Rule 10305 of the NASD Code of Arbitration Procedure ("the Code").

P. 27

P. 26

1735 K Street, NW
Washington, DC
20006-1506

tel 202 728 8407
fax 202 728 8833
www.nasd.com

NASD Dispute Resolution staff does not have the authority to alter or review the determinations of an arbitration panel. Pursuant to Rule 10330 of the Code specifically states that, "unless the applicable law directs otherwise, all awards are deemed final and are not subject to review or appeal " If you wish to challenge the award, you must do so in a court of competent jurisdiction pursuant to either state or federal law. There are time limitations for pursuing this course of action, so I urge you to consult with legal counsel regarding any rights or remedies available to you.

I regret your dissatisfaction with the outcome of your arbitration matter. NASD Dispute Resolution welcomes comments from participants in the forum and uses those comments to improve the dispute resolution process we provide.

Very truly yours,

Linda D. Fienberg

Exhibit 5

(5)

10305. Dismissal of Proceedings

(a) At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to their judicial remedies, or to any dispute resolution forum agreed to by the parties, without prejudice to any claims or defenses available to any party.

(b) The arbitrators may dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.

(c) The arbitrators shall at the joint request of all the parties dismiss the proceedings.

P. 27

Amended by SR-NASD-97-34 eff. Aug. 6, 1997; SEC Rel. No. 34-38907 (8/14/97).

<< Previous Next >>

Exhibit 6

(6)

Linda D. Fienberg
President, Dispute Resolution
Executive Vice President and Chief Hearing Officer, Regulatory Policy and Oversight

NASD

August 2, 2006

[redacted]

Re: NASD Arbitration Number [redacted]
[redacted] v. [redacted] Inc., and [redacted]

Dear Mr. [redacted]

Thank you for your June 7 follow up letter concerning the above captioned matter. In your letter, you ask about NASD's review into your allegations of arbitrator misconduct. You also reiterate a number of concerns expressed in your initial March 22 letter.

NASD regards any complaint concerning an arbitrator as a serious matter and NASD staff investigates all concerns regarding alleged arbitrator misconduct. After a thorough review, NASD staff makes recommendations concerning appropriate action, including counseling for the arbitrator up to removal from NASD's roster. As a matter of practice, however, NASD will not inform parties of the outcome of such investigations.

Our prior May 11 letter responds to the other issues raised in your correspondence. Please feel free of course to write to me with any new questions or concerns. P. 28

I regret that you are dissatisfied with your experience in the NASD Arbitration forum. NASD welcomes comments from participants in the forum and uses those comments to improve the dispute resolution process we provide.

Very truly yours,

Linda D. Fienberg

1735 K Street, NW
Washington, DC
20006-1506
tel 202 728 8407
fax 202 728 8833
www.nasd.com

Exhibit 7

(7)

[redacted]
[redacted] (Answering machine)
[redacted] (Mobile phone)

August 10, 2006

Mr Todd Saltzman
c/o NASD
165 Broadway
27th Floor
New York, NY 10006

RE:

Dear Mr. Saltzman:

The purpose of this letter is to formally request a written explanation as to how the decision in my above-mentioned NASD arbitration case was arrived at. In light of the testimony given, I am having a hard time understanding the outcome. I can be reached at the above address. I have also sent opposing counsel a copy of this request.

Sincerely yours,

[redacted]

cc: [redacted]

Exhibit 8

NASD Dispute Resolution
www.nasd.com
Midwest Region
55 West Monroe Street • Suite 2600 • Chicago, IL • 60603 • 312-899-4440 • Fax 312-236-9239

NASD

8

September 22, 2006

[redacted]

Subject: NASD Dispute Resolution Arbitration Number [redacted] v. [redacted] Incorporated and

Dear Mr [redacted]

The Panel, after reviewing all submissions in connection with [redacted]s Motion for a Reasoned Award, has issued the enclosed Order dated September 20, 2006.

Please contact me should you have any questions

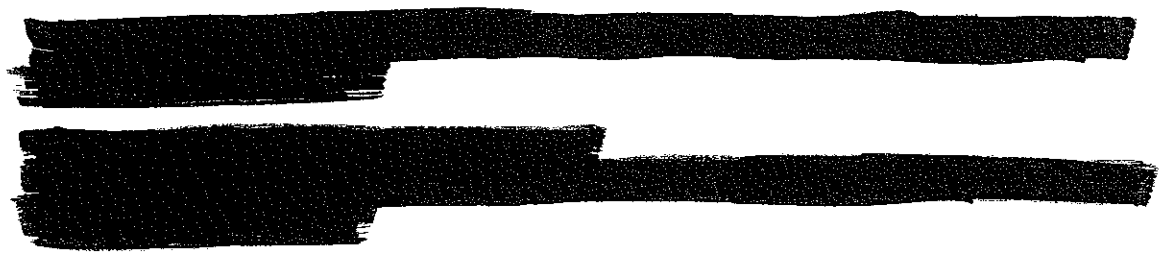
Very truly yours,

Patrick Walsh
Case Administrator
312-899-4449 Fax: 301-527-4855

PW:PW:LC58I
idr:06/06
Enclosures

CC:
[redacted]

RECIPIENTS:
[redacted]



NASD Dispute Resolution

ORDER

Case Number: [redacted]

Case Name: [redacted]

Issues Addressed: (ie., name of motion or request, by which party)
Motion to reopen the Arbitration - Released Award - 8/24/06 p. 33

Pre-Hearing Conference Held?: Yes (No) (circle one)

Date/Time:

Participating in the conference were:

Chairperson: _____

Panelist: _____

Panelist: _____

Claimant's Representative: _____

#1 Respondent's Representative: _____

#2 Respondent's Representative: _____

NASD Dispute Resolution Staff: _____

Decided by: Chairperson (Panel) (circle one)

Rulings[1]**:**

After considering the pleadings submitted by the parties (and oral arguments, if pre-hearing conference held), the Panel/Chairperson rules as follows:

1. Motion Denied p. 30

[1] If more space is needed, add additional pages.

2. _____

3. _____

If the parties settle this matter prior to the hearing, the forum fees for this pre-hearing conference (or discovery-related motion decided without a pre-hearing conference) are assessed as follows:

____ % to Claimant(s), jointly and severally
____ % to Respondent(s), jointly and severally
____ % assessed to _____
____ % assessed to _____
____ % assessed to _____
____ % assessed to _____

X [redacted] Date: 7/20/06

Chairperson,
On behalf of the Arbitration Panel

NASD Dispute Resolution
www.nasd.com

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NASD

8

September 22, 2006

[redacted]

Subject: NASD Dispute Resolution Arbitration Number [redacted] v. [redacted] Incorporated and

Dear Mr [redacted]

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Please contact me should you have any questions

Very truly yours,

Patrick Walsh
Case Administrator
312-899-4449 Fax: 301-527-4855

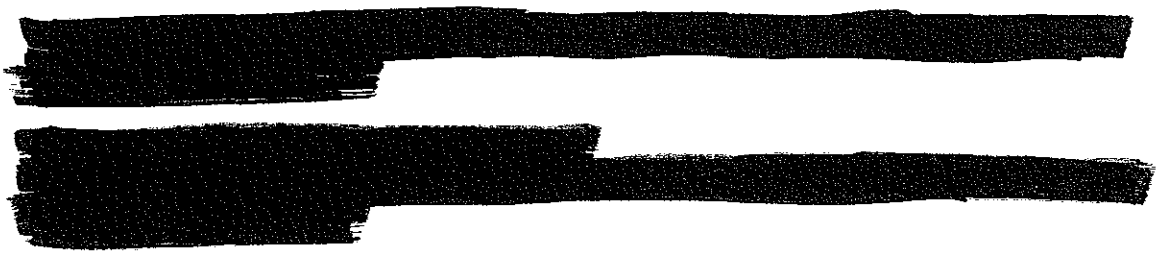
PW:PW:LC58I
idr:06/06
Enclosures

CC:

[redacted]

RECIPIENTS:

[redacted]



NASD Dispute Resolution

ORDER

Case Number: [redacted]

Case Name: [redacted]

Issues Addressed: (ie., name of motion or request, by which party)

Motion to reopen the Arbitration - Reasoned Award - 8/24/06 p. 33

Pre-Hearing Conference Held?: Yes (No) (circle one)

Date/Time:

Participating in the conference were:

Chairperson: _____

Panelist: _____

Panelist: _____

Claimant's Representative: _____

#1 Respondent's Representative: _____

#2 Respondent's Representative: _____

NASD Dispute Resolution Staff: _____

Decided by: Chairperson (Panel) (circle one)

Rulings[1]**:**

After considering the pleadings submitted by the parties (and oral arguments, if pre-hearing conference held), the Panel/Chairperson rules as follows:

1. Motion Denied p. 30

[1] If more space is needed, add additional pages.

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If the parties settle this matter prior to the hearing, the forum fees for this pre-hearing conference (or discovery-related motion decided without a pre-hearing conference) are assessed as follows:

____ % to Claimant(s), jointly and severally
____ % to Respondent(s), jointly and severally
____ % assessed to _____
____ % assessed to _____
____ % assessed to _____
____ % assessed to _____

X [redacted]
Chairperson,
On behalf of the Arbitration Panel

Date: 7/20/04

Exhibit 9

(9)

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

[redacted]

v.

[redacted]

Respondents

[redacted] Inc.,

and [redacted]

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

[redacted] ("**Claimant**") was represented by [redacted]

[redacted] Inc. [redacted]) and [redacted]), hereinafter collectively referred to as ("**Respondents**") were represented by [redacted]

CASE INFORMATION

The Statement of Claim was filed on or about January 10, 2004. The Submission Agreement of Claimant was signed on or about January 9, 2004.

The Statement of Answer was filed jointly by Respondents, [redacted] Inc., and [redacted] on or about March 5, 2004. The Submission Agreement of Respondent, [redacted], Inc., was signed on or about February 20, 2004. The Submission Agreement of Respondent, [redacted], was signed on or about March 15, 2004.

Respondents filed a Motion to Stay on or about June 4, 2004. Claimant filed a Response in Objection to Respondents' Motion to Stay on or about June 22, 2004. Respondents filed a Reply in Support of their Motion to Stay on or about July 12, 2004.

Respondents filed a Motion and Supporting Memorandum to Dismiss, and in the Alternative, Motion to Stay on or about November 30, 2004. Claimant filed a Response in Objection to Respondents' Motion to Dismiss on or about December 15, 2004. Respondents' filed a Reply Memorandum in Support of their Motion to Dismiss on or about December 27, 2004.

Claimant filed a Motion to Strike Respondents' Response and Grant an Award to Claimant on or about June 17, 2005. Respondents filed a Memorandum in Opposition to Claimant's Motion to Strike on or about June 29, 2005.

Respondents filed a Motion for Summary Judgment on or about July 18, 2005. Claimant filed a Memorandum in Response and Objection to Respondents' Motion for Summary Judgment on or about August 16, 2005. Respondents filed a Memorandum in Support of their Motion for Summary Judgment on or about September 9, 2005.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of fiduciary duty; violation of [redacted] Revised Statute [redacted]; violation of [redacted]; violation of Section 10b-5 of the 1934 Securities Exchange Act; violation of NASD "Know Your Customer Rule"; control person liability; breach of contract and negligence. Claimant asserted that he opened a line of credit with another investor for a limited liability company, [redacted], of which both individuals were members. Claimant alleged that both of the individuals were required to open securities accounts of $300,000 and then pledge those accounts to [redacted] through a Financial Assets Security Agreement ("Security Agreement"), in August 1997, as security for the line of credit granted to Glencoe. After that line of credit was repaid, Claimant alleged that Respondents fraudulently induced him to execute a new Security Agreement, in January 1999, which required him to maintain 115% of the outstanding loan to Glencoe. Claimant asserted that Respondents violated the terms of the 1999 Security Agreement by allowing the other individual to make withdrawals without prior written permission and by without allowing Claimant to do the same. Claimant stated that as a result of the withdrawals and the market downturn, the aggregate value of the securities accounts fell below the 115% requirement and that Claimant was solely forced to add the additional deposits to make of the difference. After which, Claimant asked for the account to be liquidated and as a result he suffered losses. A31

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state a claim upon which relief could be granted; the damages allegedly suffered by Claimant were not proximately caused by any act attributable to [redacted], Claimant's failure to investigate and lack of diligence bar any recovery or damages herein; Claimant's claims, in whole or in part, are time barred; Claimant's claims are barred by the principles of laches, waiver, estoppel and ratification; Claimant lacked standing to assert the claims set forth in the Statement of Claim because Respondents did not owe any fiduciary duties in connection wit the 1997 and 1999 Security Agreements; Claimant failed to exercise due diligence and care and otherwise acted in a negligent and reckless manner with respect to the transactions alleged to form the basis of the claims against Respondents and did not rely upon any alleged false or misleading statements or omissions allegedly made by [redacted] or [redacted] and Respondents are not liable because at all times they acted in good faith and did not directly or

indirectly know of, induce, or in any way participate in the acts, or acts constituting the purported causes of action alleged in the Statement of Claim.

RELIEF REQUESTED

Claimant requested an award of [redacted] in compensatory damages, plus costs, attorneys' fees, interest and any other relief the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that the panel order the expungement of this matter from the CRD records of [redacted].

OTHER ISSUES CONSIDERED & DECIDED

On or about February 2, 2005, the panel denied Respondents' Motion to Stay.

On or about February 24, 2005, the panel denied Respondents' Motion to Dismiss, and in the Alternative, Motion to Stay.

On or about October 13, 2005, the panel denied Respondents' Motion for Summary Judgment.

At the close of Claimant's case-in-chief, Respondents orally made a Motion for a Directed Verdict. The panel granted the Motion for a Directed Verdict as to Respondent, [redacted], and dismissed all claims asserted against [redacted] with prejudice. The panel denied the Motion for a Directed Verdict for all claims asserted against Respondent, [redacted].

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are denied and dismissed with prejudice in their entirety;

2. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, [redacted]'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to

Pg 32

Members 99-09 and 99-54, Respondent [redacted], must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and

4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= $ 375

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is [redacted], Inc.

Member surcharge	= $ 2,250
Pre-hearing process fee	= $ 750
Hearing process fee	= $ 4,000

Adjournment Fees

Adjournments granted during these proceedings:

July 25-28, 2005 - Adjournment requested by all parties (Fee assessed 50% to Claimant and 50% to Respondents, jointly and severally)	= $ 1,200

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on a discovery-related motion on the papers by the panel x $600

Respondents submitted one (1) discovery-related motion (Motion to Preclude)			= $ 600
Two (2) Pre-hearing sessions with the Chairperson x $ 450			= $ 900
Pre-hearing conference:	July 6, 2005	2 sessions	
Three (3) Pre-hearing sessions with Panel x $ 1,200			= $ 3,600
Pre-hearing conferences:	June 4, 2004	1 session	
	February 11, 2005	1 session	
	October 10, 2005	1 session	
Four (4) Hearing sessions with Panel x $ 1,200			= $ 4,800
Hearing Dates:	December 15, 2005	2 sessions	
	December 16, 2005	2 sessions	
Total Forum Fees			= $ 9,900

The Arbitration Panel has assessed $ 4,950 of the forum fees to [redacted]

The Arbitration Panel has assessed $ 4,950 of the forum fees to [redacted] Inc.

FEE SUMMARY

Claimant, [redacted], is liable for:

Initial Filing Fee	= $ 375
Adjournment Fee	= $ 600
Forum Fees	= $ 4,950
Total Fees	= $ 5,925
Less payments	= $ 1,575
Balance Due NASD Dispute Resolution	= $ 4,350

NASD Dispute Resolution
Arbitration No. [redacted]
Award Page 6 of 6

Respondent, [redacted] Inc , is liable for:

Member Fees	= $ 7,000
Forum Fees	= $ 4,950
Total Fees	= $ 11,950
Less payments	= $ 7,000
Balance Due NASD Dispute Resolution	= $ 4,950

Respondents, [redacted], Inc. and [redacted], are jointly and severally liable for:

Adjournment Fees	= $ 600
Total Fees	= $ 600
Less payments	= $ 600
Balance Due NASD Dispute Resolution	= $ 0

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

[redacted] - Public Arbitrator, Presiding Chair
[redacted] - Public Arbitrator
[redacted] - Non-Public Arbitrator

Concurring Arbitrators:

[redacted], Esq.
Public Arbitrator, Presiding Chair — Signature Date

[redacted]
Public Arbitrator — Signature Date

[redacted]
Non-Public Arbitrator — Signature Date

1/9/06
Date of Service (NASD use only)

Exhibit 10

(10)

Arbitration Process

Arbitration is a method of having a dispute between two or more parties resolved by impartial persons who are knowledgeable in securities industry disputes. Those persons are called arbitrators. Arbitration of disputes with broker/dealers has long been used as an alternative to the courts because it is devised as a prompt and inexpensive means of resolving complicated issues. There are certain laws governing the conduct of an arbitration proceeding th must be considered by those planning to use arbitration to resolve the dispute. Most importantly, perhaps, is the fact that an arbitration award is final and binding, subject to review by a court only on a very limited basis. Parties should recognize, too, that in choosing arbitration as a means of resolving a dispute, they generally give up their right to pursue the matter through the courts

p. 34

Although most business in the securities industry is completed without a problem, disputes and controversies will occasionally arise. Such disputes and controversies can be resolved by impartial arbitration at one of the organizatic listed in the services directory. Arbitrations are conducted in accordance with the Uniform Code of Arbitration (Unifor Code or UCA) as developed by the Securities Industry Conference on Arbitration (SICA) and the rules of the sponsoring organization where the claim is filed

There are some differences among the rules of the sponsoring organizations, such as, the time to serve and file answers to claims, who may serve as public arbitrators, arbitrator selection methods, service of award methods, the availability of prior awards, and whether your name will be made publicly available. Any questions regarding arbitrati may be addressed to the Directors of Arbitration or their staff at the sponsoring organizations Significant differences between the Uniform Code and the procedures of the self-regulatory organizations (SROs) will be highlighted in this guide.

In addition to initiating an arbitration, investors may file their complaints with the appropriate regulatory authorities, such as the Securities and Exchange Commission (SEC), state securities commissions, or one of the SROs listed in the Services Directory, when they believe there has been fraud or that other investors may be at risk The regulatory agencies may then investigate the complaint and, if warranted, censure, fine, or suspend a wrongdoer. These agencies normally do not recover investor's losses which can be done through arbitration

Investors wishing to file a regulatory complaint with FINRA may do so through the Investor Complaint Center. Throu the Investor Complaint Center, investors and others can immediately alert FINRA to any potentially fraudulent or suspicious activities by brokerage firms or brokers. Investors may also notify FINRA's Office of the Whistleblower if they have evidence of or material information about, potentially illegal or unethical activity. The Office of the Whistleblower was established to expedite the review of high-risk tips by FINRA senior staff to ensure a rapid respor for tips believed to have merit.

Exhibit 11

Tour of the Dispute Resolution Process

Business in the securities industry for the most part is conducted fairly, efficiently, and in a manner that satisfies everyone involved. Occasionally, however, disputes or problems arise. For example, you may disagree with how you broker handled a transaction. If you cannot resolve the matter yourself, there are effective alternative dispute resolut mechanisms, which usually result in a swift conclusion without the inconvenience and expense of a court "battle."

Dispute resolution methods, including mediation and arbitration, are non-judicial processes for settling disputes between two or more parties. In mediation, an impartial person, called a mediator, assists the parties in reaching the own solution by helping to diffuse emotions and keeping the parties focused on the issues. In arbitration, an impartia judge, called an arbitrator, hears all sides of the issue, studies the evidence, and then decides how the matter shoul be resolved. The arbitrator's decision is final.

Report Problems to Management

Despite precautions taken to invest safely and intelligently, it is still possible for a dispute to occur. Mediation and arbitration are important methods of dispute resolution that have been used successfully by the securities industry a others, but they generally should not be your first steps. Whether it is a discrepancy that has just arisen, or a disagreement that has escalated into a full-fledged dispute, the first course of action should be to report the matter t your broker's manager. Often, management has the authority and insight to take steps that will rectify the problem quickly and easily. If it is just a misunderstanding, management intervention may be enough to put the transaction b on course.

If the brokerage firm's management does not resolve the complaint within a reasonable period, you may want to see legal advice. Even if you choose arbitration and/or mediation over a lawsuit to resolve the dispute, an attorney can provide you with valuable instruction and advice, and can help weigh the advantages and disadvantages of each method. Although not required, you have the right to have an attorney in mediation and arbitration. Keep in mind tha most cases, an experienced attorney will represent the brokerage firm.

Mediation

Before entering into arbitration or litigation, consider mediation--a natural first step in the dispute resolution process. Mediation is an informal process in which a trained and impartial mediator facilitates negotiations between disputing parties, helping them to find their own mutually acceptable resolution. What distinguishes mediation from other form of dispute resolution--principally, arbitration and litigation--is that the mediator does not impose the solution, but rath helps make it possible for you and the other party to form and accept a solution yourselves.

Mediation is not structured rigidly. The actual process varies from case to case, depending largely on the mediator's "style" and the frames of mind of those involved. In some cases, you and the other party might meet to discuss the issues face-to-face, with the mediator there to help you remain focused and calm. In other cases, the mediator migh hold **private caucuses** with each of you separately, and would then carry messages--offers, counter offers, questio demands, and proposals--back and forth between you. Often, the mediation process consists of a combination of bo methods, plus any other technique the mediator feels is useful in moving the negotiation forward.

The mediator's role is to guide you and the other party toward your own solution by helping you to define the issues clearly and understand each other's position. Unlike an arbitrator or a judge, the mediator has no authority to decide the settlement or even compel you to settle. The mediator's "key to success" is to focus everyone involved on the re issues of settling--or the consequences of not settling. While the mediator may referee the negotiations--defining the terms and rules of where, when, and how negotiations will occur--he or she never determines the outcome of the settlement itself.

The mediator also serves as an agent and mirror of reality. With the help of the mediator, disputants often see things they initially did not want to see (like the weaknesses of their own case and the strengths of the other party's case) c they get a clearer view of matters previously distorted by anger and emotion. Since securities industry mediators are knowledgeable in the areas of controversy, they can often give each side an expert, but unbiased, view of the strengths and weaknesses of the case overall

Historically, business disputes submitted to professional mediation services have had a settlement rate of about 80 percent. Mediation experts attribute this to the parties' complete control over the process, costs, and outcome. If you feel good about the process, you will likely approach it with enthusiasm and good intentions. Approximately eight out ten cases settle within a few weeks to a few months of the formal agreement to mediate--when everyone approache the mediation table in earnest.

You may consider mediation successful even when the dispute does not settle fully in the mediation process. Sometimes parts of a dispute settle in mediation, leaving fewer or less severe differences to be settled in arbitration litigation--translating into huge savings of time and money for everyone involved. Generally, the mediation process improves communications, helps to narrow the issues involved, clears up misunderstandings, diffuses emotion, and defines areas of agreement so that future dispute resolution efforts, especially in arbitration, can become more efficient, effective, and more likely to produce settlement down the road.

Arbitration

When it seems that other efforts to resolve your dispute are not working, it is then time to decide whether you will file claim to arbitrate. Even if you choose, or are required to use, arbitration rather than a lawsuit as a means of resolvin your dispute, you should consider hiring an attorney who will provide valuable instruction and advice.

Arbitrators are people from all walks of life and all parts of the country. After being trained and approved, they serve arbitrators when selected to hear a case. Some arbitrators work in the securities industry; others may be teachers, homemakers, investors, business people, medical professionals, or lawyers. What is most important is that arbitrator are impartial to the particular case and sufficiently knowledgeable in the area of controversy. Potential arbitrators submit personal profiles to FINRA; the profiles detail their knowledge of the securities industry and investment concerns. If accepted, their names and backgrounds go into a pool from which arbitrators are selected for any given case. Arbitrators do not work for FINRA, though they receive an honorarium from FINRA in recognition of their servic

Caution. When deciding whether to arbitrate, bear in mind that if your broker or brokerage firm goes out of business declares bankruptcy, you might not be able to recover your money-even if the arbitrator or a court rules in your favor **Over 80 percent of all unpaid awards involve a firm or individual that is no longer in business.**

(That is one of the reasons why it is so important to investigate the disciplinary history of your broker or brokerage fir before you invest. For tips on how to do this, please read the SEC publication entitled Check Out Your Broker locate on the SEC Investor Education Web site. Through FINRA's BrokerCheck Program, investors, and others, can find ou background information about brokers and brokerage firms.)

An April 11, 2003 General Accounting Office Report (GAO-03-162R PDF *1.6 MB*) on securities arbitration confirmed that the most frequent reason an arbitration award goes unpaid is that the firm or individual respondent is out of business.

Deciding Whether to File a Claim

Firms and individual respondents who remain in the business generally pay arbitration awards entered against them and information about unpaid awards should not discourage you from pursuing an arbitration case against most potential respondents. If you already have a dispute with your broker, and file an arbitration claim, FINRA will let you know once you have filed a claim if any of the respondents in your case is out of business. In those cases where the member firm is out of business, you have the option of pursuing claims against it in court (FINRA Code of Arbitration Procedure Rule 12202). If the firm or individual respondent does not file a response to your claim, you may pursue your claim using the default proceedings of FINRA Code of Arbitration Procedure Rule 12801. To help you decide whether to pursue a claim, we suggest that you consult with an attorney.

FINRA also provides dispute resolution services for several exchanges through contracted agreements. If you did business with a firm that is not a FINRA member, but is a member of one of these exchanges, that firm may be required to arbitrate disputes at your election. Background information on non-FINRA member firms will need to be obtained from the relevant exchange.

In addition to initiating an arbitration, investors may also want to consider filing a complaint with FINRA's Investor Complaint Center. Through the Investor Complaint Center, investors and others can immediately alert FINRA to any potentially fraudulent or suspicious activities by brokerage firms or brokers. Investors may also notify FINRA's Office the Whistleblower if they have evidence of or material information about, potentially illegal or unethical activity. The Office of the Whistleblower was established to expedite the review of high-risk tips by FINRA senior staff to ensure a rapid response for tips believed to have merit. Investors may also file their complaints with the appropriate regulatory authorities, such as the Securities and Exchange Commission (SEC), state securities commissions, or one of the se regulatory organizations (SROs) listed in the SRO Directory. The regulator may then investigate the complaint and, i warranted, censure, fine, or suspend a wrongdoer. An investigation normally does not recover investor's losses whic can be done through arbitration.

Filing a Claim

Arbitration starts with your Statement of Claim, a description of what happened, written in your own words. You shou tell the story clearly, concisely, accurately, honestly, completely, and in sufficient detail so that someone reading it w understand what happened, what monetary damages you are seeking and why you feel you are entitled to receive a favorable decision. Remember that the respondents--that is, the broker or firm with whom you have a dispute--will us the Statement of Claim to prepare their case and you, as the claimant, should be prepared to prove each part of it.

The Submission Agreement is the document that shows you have presently selected arbitration as your means of solving a dispute. The arbitration process cannot begin without it. The Submission Agreement is also your agreemer to be bound by the decision of the arbitrators.

FINRA charges a filing fee for handling the arbitration. A portion of the filing fee is non-refundable. You should check with FINRA or the Code of Arbitration Procedure for current fees before you submit your claim. A calculator to assist parties in determining required fees is available.

Your claim is served on the respondent, who is given time to provide an answer. After the respondent is served, both parties are then responsible for providing--or serving--copies of all other documents, pleadings, correspondence, etc directly to the other parties and for providing additional copies of any documents to FINRA for its record and for the arbitrators. Keep in mind that the respondent may also file a claim against a third party, or may file a counter claim against you.

Arbitration Hearings

If your claim is for $25,000 or less, it is considered a "small claim" and usually, a single public arbitrator will render a decision solely by reading the written statements and supporting materials submitted by each party. However, as a public customer, you may request an in-person hearing where you appear and present live testimony instead of having the arbitrator render a decision based on the written submissions of the parties.

In cases where the claim is for more than $25,000, or if you request an in-person hearing, the hearing will be scheduled as soon as possible. Hearings are conducted in sessions of up to four hours, usually with two sessions per day, though not necessarily on successive days. It is not possible to determine exactly how many sessions it will take to hear your case.

It is your responsibility to prepare yourself for the arbitration hearing. You must arrange for any witnesses and/or evidence to be available for presentation at the hearing. You must inform the other party of the witnesses you will have and provide copies of anything you plan to use at the hearing as evidence at least 20 calendar days before the start the hearing. You will also need to bring to the hearing enough copies of each item for each arbitrator and one for the files of FINRA. It is important to be well organized and to have outlined and practiced what you want to say. Arbitrators appreciate cases that are concise and well focused, free from repetitive and irrelevant information.

The parties will select their arbitrator choice(s) from three computer-generated random lists based on Arbitrator disclosure information provided by FINRA. Each separately represented party may strike up to four of the arbitrators from each list for any reason (FINRA Code of Arbitration Rule 12404). The arbitrators conduct each hearing in the manner they think will be the most effective in permitting the full and fair presentation of the evidence and arguments the parties. The process will usually proceed as follows:

1. The arbitrators and the witnesses are sworn in.
2. Each party has an opportunity to make a brief opening statement.
3. The claimant presents facts to the arbitrators, including documents and live or written testimony
4. The respondent presents his or her case in the same manner as the claimant.
5. Then, any counter claims are presented in the same way.
6. Parties may provide rebuttal evidence.
7. Parties may make closing statements or summations of the testimony

You must be prepared to **demonstrate proof** of your claim. Your witnesses will be subject to cross-examination by the other party, and to questioning by the arbitrators. You will be able to **cross examine** any witnesses for the other party. You will also be able to object to any evidence presented by the other party before the arbitrators receive it. The arbitrators will examine the documents to determine if they will be admitted into evidence

Decision and Awards

The decision is made after all parties complete their presentations and the arbitrators close the record. In cases where there is an arbitration panel, the outcome is based on agreement by a majority of the panel. Arbitrators will endeavor to make a final decision within 30 days after they close the record. They are not required to write opinions or provide

reasons for their decision. You may request an opinion, but you should make that request in writing before the heari date.

You will receive a written document called the "award" (i.e., the "decision") which contains the decision of the arbitrators, usually by first class U.S. mail or facsimile. All parties are notified at the same time. Arbitration decisions are also made public. If you are the claimant and the decision or award is made in your favor, you can expect to be paid within 30 days of the time that the other party is notified of the decision. The other party will pay you directly, usually by sending you a check in the amount specified by the arbitrator. Brokers and FINRA member firms must pa arbitration awards within 30 days of receipt, unless a motion to vacate is filed in court. Additional information about what to do if a broker goes out of business, or you have not heard from the brokerage firm is available

Decisions made in FINRA arbitrations are **final**. Arbitrators cannot reconsider their decisions, once issued, even if n evidence surfaces later. You may certainly challenge the outcome of an arbitration in a court of law, but these cases are successful only under rare circumstances. The courts generally uphold arbitration decisions. p. 34

Case Results

Most arbitration cases end with a settlement between the parties either through direct negotiation or through mediati In recent years, parties agreed on a resolution in about 60 percent of all cases. Other cases are withdrawn or closed before the process begins. For example, more than 5,345 investor cases closed in 2007. Arbitrators decided the outcome in 1,133 of those cases and in 4,185 cases (79 percent of the cases) were resolved without an arbitrator's decision. See the FINRA Dispute Resolution Statistics.

FINRA aggressively pursues disciplinary action against all active firms or individual brokers that do not promptly fulfi their obligations. (See FINRA's guidance entitled "What If I Don't Get Paid?")

Exhibit 12

- **10325. Determination of Arbitrators**

All rulings and determinations of the panel shall be by a majority of the arbitrators

- **10326. Record of Proceedings**

(a) A verbatim record by stenographic reporter or a tape, digital, or other recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

(b) A verbatim record of mediation conducted pursuant to the Rule 10400 Series shall not be kept

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Amended by SR-NASD-2006-102 eff Aug. 23, 2006
Amended by SR-NASD-95-25 eff Aug 1 1995
Amended eff. May 10, 1989.

- **10327. Oaths of the Arbitrators and Witnesses**

Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators All testimony shall be under oath or affirmation.

- **10328. Amendments**

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Rule 10314(b). The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 10314(b)

(b) If a new or amended pleading increases the amount in dispute, all filing fees, hearing session deposits, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.

(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

Amended by SR-NASD-2001-21 eff Nov. 19 2001.
Amended eff Oct 1 1984 and Apr 26 1991

Selected Notice to Members: 01-70

- **10329. Reopening of Hearings**

Where permitted by applicable law, the hearings may be reopened by the arbitrators on their own motion or at the discretion of the arbitrators upon application of a party at any time before the award is rendered

- **10330. Awards**

(a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by applicable law Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the applicable law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal

(c) The Director will serve a copy of the award on each party, or the representative of the party. The Director will serve the award by using any method available and convenient to the parties and the Director, and that is reasonably expected to cause the award to be delivered to all parties, or their counsel, on the same day. Methods the Director may use include, but are not limited to, registered or certified mail, hand delivery, and facsimile or other electronic transmission

(d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(e) The award shall contain the names of the parties, the name of counsel, if any, a summary of the issues, including the type(s) of any security or product, in controversy, the damages and other relief requested, the damages and other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearings, and the signatures of the arbitrators concurring in the award

(f) All awards and their contents shall be made publicly available.

(g) Fees and assessments imposed by the arbitrators under Rules 10205 and 10332 shall be paid immediately upon the receipt of the award by the parties. Payment of such fees shall not be deemed ratification of the award by the parties.

(h) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award: (1) if not paid within thirty (30) days of receipt, (2) if the award is the subject of a motion to vacate which is denied, or (3) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s)

Amended by SR-NASD-97-34 eff. Aug. 6, 1997; SEC Rel. No. 34-38907 (8/14/97).
Amended by SR-NASD-91-49 eff. Jan. 2, 1992; Oct. 1, 1993.
Amended by SR-NASD-90-62 eff. May 7, 1991.
Amended by SR-NASD-91-09 eff. Apr. 26, 1991
Amended eff. May 10, 1989

Selected Notices to Members: 93-37, 93-63, 94-54

• 10331. Incorporation by Reference

This Code shall be deemed a part of and incorporated by reference in every agreement to arbitrate under the Rules of the Association including a duly executed Submission Agreement.

Amended eff. May 7, 1991

• 10332. Schedule of Fees for Customer Disputes

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where multiple hearing sessions are required, the arbitrators may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedules below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.

Exhibit 13

(13)

Search

NASD Enforcement & Market Regulation

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Printer-Friendly

NASD Enforcement & Market Regulation

Vigorous, fair and effective enforcement of federal securities laws and regulations is at the very heart of NASD's mission. Federal law gives NASD authority to discipline securities firms and individuals in the securities industry who violate the rules. We can fine, suspend or even expel them from the industry

p. 36

NASD helps ensure the fair and orderly conduct of securities transactions by maintaining constant market surveillance on both a real-time and post-trade basis. We oversee and regulate all trading on NASDAQ and in the OTC markets, as well as trades in New York Stock Exchange- and Amex-listed securities reported to NASDAQ.

NASD also regulates trading in the corporate and municipal bond markets. In the case of corporate bonds, NASD operates the Trade Reporting and Compliance Engine (TRACE), on which virtually all corporate bond transactions are reported to the NASD within 15 minutes of execution. Almost all reported transactions are then disseminated immediately to the public. (One to two percent of transactions are subject to dissemination delays of two, four or ten business days. In addition, private securities transactions executed under Rule 144A of the Securities Act are reported to TRACE for regulatory purposes, but not disseminated.)

In 2005, NASD had 1,399 new disciplinary actions filed and set records for the number of individuals suspended or expelled from the industry (740).

At NASD, we don't simply wait for violations to occur. We are committed to looking ahead, trying to foresee and prevent problems before they can harm investors.

p. 36

Exhibit 14

(14)

[redacted]

From: <InvestorComplaints@nasd.com>
To: [redacted]
Sent: Thursday, June 01, 2006 7:01 PM
Subject: NASD Customer Complaint

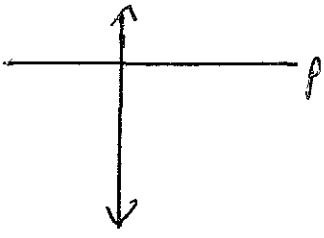
Thank you for submitting your complaint through the NASD Investor Complaint Center. Please do not respond to this e-mail. This mailbox is not monitored for incoming mail.

NASD is responsible for determining whether brokerage firms and associated persons are in compliance with the federal securities regulations and NASD Rules. If a determination is made to initiate an investigation, an NASD examiner may contact you to obtain further information or documentation about your complaint.

NASD investigations are conducted for the purpose of protecting all public investors. Information about our investor complaint program and NASD's role in investigating investor complaints is available online in our Investor Complaint Program brochure at http://www.nasdr.com/pdf-text/InvestorComplaints.pdf.

Please understand that we are not representing you individually in this matter. There is no assurance that any action will result in the return of funds or securities to you. If you feel you are entitled to monetary relief, you may wish to initiate an individual action, such as mediation or arbitration. NASD provides a forum for resolving individual disputes through NASD Dispute Resolution.

NASD REPLY



p. 39, 43

COMPLAINT

Date: 7:01:00 PM 6/1/2006

Complaint Type: Brokerage firm or broker

Account Information:

Brokerage Firm Name: [redacted] (CRD#: NotFound)

Salesperson Name: [redacted]
Business Address: [redacted]
Work Phone: [redacted]

Customer Information:

Anonymous Complaint: No
Your Name: Mr. [redacted]
Mailing Address: [redacted]
Work Phone: [redacted]
Home Phone: [redacted]

Fax: Not Provided
E-Mail Address: [redacted]
Subscribe to Investor News: No

Complaint Details:

Security Type: Stock
Security Symbol: Not Provided
Security Name: Not Provided
Activity Dates: 1/14/1999 To: 7/23/2003
Primary: Margin or margin call problems
Secondary: Unauthorized transactions
Amount in Dispute: [redacted]

Complaint Summary:

I believe my case involves the breaking of contracts, laws, rules and regulations on the part of [redacted] and its broker, [redacted], along with issues of suitability,lender liability, margin lending, and fiduciary responsibility. Briefly, my cash securities account at [redacted], which was most of my life savings, was co-pledged as collateral for a loan [redacted] made to a third party without my full knowledge and consent. Several [redacted] employees, including my broker, received commissions when this was done. When the third party was unable to repay the loan in 2003, my account was confiscated by [redacted] to repay the loan [redacted] itself had made. There are many other facets to this story. So far, I have lost [redacted] an NASD arbitration hearing. I believe biases inherent in both systems, along with a misunderstanding of all the facts that took place lead to the outcome in both cases, so I am thinking about appealing one or both decisions I am begging you to please allow me to show you what [redacted] did to me I'll wager you haven't seen many, if any, cases like this involving a reputable firm like [redacted]. Please give me the opportunity to speak with you

---

Documentation Available:

Trade Confirmation
Advertising or Marketing Materials
Monthly Account Statement
Notes of Conversations with Firm
Correspondence to and from Firm
Other loan and pledge agreements, internal [redacted] loan approval documents, and other items of interest

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Actions You Have Taken:

Have you complained to the Firm? No

Have you contacted other regulators? Yes

If yes, who? Securities and Exchange Commission (SEC)

State Regulator(s): [redacted]

Arbitration filed: Yes

If yes, what organizations: NASD

Arbitration Info:

NASD Dispute Resolution Number [redacted] The panel of arbitrators ruled against me. I am extremely upset with both their ruling and with the behavior of the arbitrators during the hearing I will explain later

Send Arbitration Info: No

[redacted]

Exhibit 15

(15)

June 12, 2006

NASD

[redacted]

Re: NASD File# [redacted]

Dear Mr. [redacted]

This is to acknowledge receipt of your correspondence regarding [redacted], and [redacted]

Due to the significant amount of time that has elapsed since the occurrence of those events outlined in your correspondence, we regret that we will be unable to undertake an investigation into your complaint from a regulatory standpoint. p. 37, 42

However, if you feel that you are entitled to any monetary relief as a result of your dispute regarding your investments, you may file a claim through the courts, arbitration or a mediation facility. NASD is one of several organizations that offer a forum for arbitrating and mediating disputes involving the securities-related activities of our members firms and their customers. You may obtain further details by visiting our web site at **www.nasdadr.com** or communicating directly with the following:

NASD Dispute Resolution
One Liberty Plaza, 27th Floor
165 Broadway
New York, NY 10006
(212) 858-4400

Thank you for bringing this matter to our attention.

Sincerely,

NASD Investor Complaint Center

Exhibit 16

(16)

Prohibited Conduct

You should be aware that certain types of conduct in the securities industry are prohibited, including the following:

1. Recommending to a customer the purchase or sale of a security that is unsuitable given the customer's age, financial situation, investment objective, and investment experience Investment in a particular type of securit may be unsuitable or the amount or frequency of transactions may be excessive and therefore unsuitable for given customer.

2. Purchasing or selling securities in a customer's account without first contacting the customer and the custome did not specifically authorize the sale or purchase, unless the broker has received from the customer written discretionary authority to effect transactions in the account or the broker was given discretion as to price and time.

p. 40, 48

3. Switching a customer from one mutual fund to another when there is no legitimate investment purpose underlying the switch.

4. Misrepresenting or failing to disclose material facts concerning an investment Examples of information that m be considered material and that should be accurately presented to customers include: the risks of investing in particular security; the charges or fees involved; company financial information; and technical or analytical information, such as bond ratings.

5. Removing funds or securities from a customer's account without the customer's prior authorization.

6. Charging a customer excessive markups, markdowns, or commissions on the purchase or sale of securities.

7. Guaranteeing customers that they will not lose money on a particular securities transaction, making specific price predictions, or agreeing to share in any losses in the customer's account.

8. Private securities transactions between a broker and a customer that may violate FINRA rules, particularly where such transactions are done without the knowledge and permission of the sales representative's firm.

9. Trading for a firm's account in preference to a customer by trading ahead of a customer limit order, absent a valid exception.

10. Failure by a market maker to display a customer limit order in its published quotes, absent a valid exception.

11. Failing to use reasonable diligence to see that a customer's order is executed at the best possible price, given prevailing market conditions.

12. Purchasing or selling a security while in possession of material, non-public information regarding an issuer.

13. Using any manipulative, deceptive, or other fraudulent device or contrivance to effect any transaction in, or induce the purchase or sale of, any security

Exhibit 17

(17)

March 13, 2007

[redacted]

Re: NASD File# [redacted]

Dear Mr. [redacted]

This letter will confirm our telephone conversation of October 30, 2006 concerning your complaint against [redacted] and [redacted]. As you know, NASD originally reviewed and closed the matter in June 2006. In July 2006 you submitted additional information in support of your complaint and contacted Robert Errico, NASD's Executive Vice President for Member Regulation, to express your displeasure with our decision not to open a regulatory investigation of your complaint. Pursuant to your conversation with Mr. Errico, we agreed to review the matter and to reassess, whether it warranted further review by NASD.

We have reviewed your original complaint, your July 20, 2006 correspondence and attachments, as well as additional explanations and documentation received on October 6, 2006 and October 19, 2006. Moreover, in addition to your conversations with Mr Errico, you have had conversations with Daniel M. Sibears, EVP & Deputy of Member Regulation I also spoke with you on several occasions about your complaint After a thorough review and reconsideration by the Departments of Member Regulation and Enforcement, NASD has determined not to further investigate this matter. Among other things, the activity occurred from four to tens year ago, NASD lacks jurisdiction over key witnesses involved in the activity, and, importantly, an assessment of the evidence does not support a prima facie case of rule violations by the securities firm or its associated persons.

P. 42, 43, 49, 62

Ordinarily we would suggest that you pursue a claim through arbitration or mediation facility or the courts if you believe you are entitled to monetary damages Since you have apparently already pursued such options, you may wish to consult with legal counsel to determine what further recourse may be available.

Sincerely,

David R. Troutner

David R. Troutner
Deputy Director
Member Regulation

cc: Daniel M. Sibears, EVP & Deputy

Exhibit 18

(18)

FINRA Sanction Guidelines

Overview

The regulatory mission of FINRA is to protect investors and strengthen market integrity through vigorous, even-handed, and cost-effective self-regulation. FINRA embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. FINRA believes that an important facet of its regulatory function is the building of public confidence in the financial markets As part of FINRA's regulatory mission, it must stand ready to discipline member firms and their associated persons by imposing sanctions when necessary and appropriate to protect investors, other member firms and associated persons, and to promote the public interest.

The National Adjudicatory Council (NAC), formerly the National Business Conduct Committee, has developed the FINRA Sanction Guidelines for use by the various bodies adjudicating disciplinary decisions, including Hearing Panels and the NAC itself (collectively, the Adjudicators), in determining appropriate remedial sanctions. FINRA has published the FINRA Sanction Guidelines so that members, associated persons, and their counsel may become more familiar with the types of disciplinary sanctions that may be applicable to various violations. FINRA staff and respondents also may use these guidelines in crafting settlements, acknowledging the broadly recognized principle that settled cases generally result in lower sanctions than fully litigated cases to provide incentives to settle.

These guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicators in imposing sanctions consistently and fairly. The guidelines recommend ranges for sanctions and suggest factors that Adjudicators may consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicators may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these guidelines.

These guidelines address some typical securities-industry violations. For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.

In order to promote consistency and uniformity in the application of these guidelines, the NAC has outlined certain General Principles Applicable to All Sanction Determinations that should be considered in connection with the imposition of sanctions in all cases. Also included is a list of Principal Considerations in Determining Sanctions, which enumerates generic aggravating or mitigating factors for all cases. Also, a number of guidelines identify potential principal considerations that are specific to the described violation.

(18)

General Principles Applicable to All Sanction Determinations

1 **Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.** The overall purposes of FINRA's disciplinary process and FINRA's responsibility in imposing sanctions are to remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry, and protecting the investing public. Toward this end, Adjudicators should design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices. Depending on the seriousness of the violations, Adjudicators should impose sanctions that are significant enough to ensure effective deterrence. When necessary to achieve this goal, Adjudicators should impose sanctions that exceed the range recommended in the applicable guideline.

When applying these principles to rule violations other than fraud and egregious violations, and in crafting appropriately remedial sanctions, Adjudicators also should consider a firm's size and available resources with a view toward ensuring that the sanctions imposed, while sufficiently remedial to achieve deterrence, are not punitive. Factors to consider in assessing whether sanctions should be proportionately reduced based on firm size could include: the amount of the firm's revenues; the financial resources of the firm; the nature of the firm's business; the number of individuals associated with the firm; the level of sales and trading activity at the firm; other entities that the firm controls, is controlled by, or is under common control with; the firm's contractual relationships; and prior disciplinary actions against the firm (see General Principle No. 2 regarding recidivists). This list is included for illustrative purposes and is not exhaustive. When reducing a monetary sanction for a firm, Adjudicators should aim to achieve a remedial sanction that is proportionately scaled to the firm's size and may reduce the sanction below the minimum level otherwise indicated in these Guidelines.

These principles apply solely to firms. Adjudicators should not consider the amount of an individual's income in assessing monetary sanctions. Individuals have the ability to claim and prove an inability to pay. (See General Principle No. 8 regarding ability to pay.)

2. **Disciplinary Sanctions Should Be More Severe for Recidivists.** An important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists beyond those outlined in these guidelines, up to and including barring registered persons and expelling firms. Adjudicators should always consider a respondent's disciplinary history in determining sanctions. Adjudicators should consider imposing more severe sanctions when a respondent's disciplinary history includes (a) past misconduct similar to that at issue; or (b) past misconduct that evidences disregard for regulatory requirements, investor protection, or commercial integrity. Even if a respondent has no history of relevant misconduct, however, the misconduct at issue may be so serious as to justify sanctions beyond the range contemplated in the guidelines, i.e., an isolated act of egregious misconduct could justify sanctions significantly above or different from those recommended in the guidelines.

Certain regulatory incidents are not relevant to the determination of sanctions. Arbitration proceedings, whether pending, settled, or litigated to conclusion, are not "disciplinary? actions. Similarly, pending investigations or the existence of ongoing regulatory proceedings prior to a final decision are not relevant

p. 43, 62

In certain cases, particularly those involving quality-of-markets issues, these guidelines recommend increasingly severe monetary sanctions for second and subsequent disciplinary actions. This escalation is consistent with the concept that repeated acts of misconduct call for increasingly severe sanctions.

3. **Adjudicators should tailor sanctions to respond to misconduct at issue.** Sanctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct. Adjudicators therefore should impose sanctions tailored to address the misconduct involved in each particular case. Section 15A of the Securities Exchange Act of 1934 and NASD Procedural Rule 8310 provide that FINRA may enforce compliance with its rules by: limitation or modification of a respondent's business activities, functions, and operations; fine; censure; suspension (of an individual from functioning in any or all capacities, or of a firm from engaging in any or all activities or functions, for a defined period or contingent on the performance of a particular act); bar (permanent expulsion of an individual from associating with a firm in any or all capacities); expulsion (of a firm from FINRA membership and, consequently, from the securities industry); or any other fitting sanction

To address the misconduct effectively in any given case, Adjudicators may design sanctions other than those specified in these guidelines. For example, to achieve deterrence and remediate misconduct, Adjudicators may impose sanctions that: (a) require a respondent firm to retain a qualified independent consultant to design and/or implement procedures for improved future compliance with regulatory requirements; (b) suspend or bar a respondent firm from engaging in a particular line of business; (c) require an individual or member firm respondent, prior to conducting future business, to disclose certain information to new and/or existing clients, including disclosure of disciplinary history; (d) require a respondent firm to implement heightened supervision of certain individuals or departments in the firm; (e) require an individual or member firm respondent to obtain a FINRA staff letter stating that a proposed communication with the public is consistent with FINRA standards prior to disseminating that communication to the public; (f) limit the number of securities in which a respondent firm may make a market; (g) limit the activities of a respondent firm or (h) require a respondent firm to institute tape recording procedures. **This list is illustrative, not exhaustive, and is included to provide examples of the types of sanctions that Adjudicators may design to address specific misconduct and to achieve deterrence. Adjudicators may craft other sanctions specifically designed to prevent the recurrence of misconduct.**

The recommended ranges in these guidelines are not absolute. The guidelines suggest, but do not mandate, the range and types of sanctions to be applied Depending on the facts and circumstances of a case and other factors, such as firm size and disciplinary history, Adjudicators may determine that no remedial purpose is served by imposing a sanction within the range recommended in the applicable guideline, i.e., that a sanction below the recommended range, or no sanction at all, is appropriate. Conversely, Adjudicators may determine that egregious misconduct requires the imposition of sanctions above or otherwise outside of a recommended range. For instance, in an egregious case, Adjudicators may consider barring an individual respondent and/or expelling a respondent member firm, regardless of whether the individual guidelines applicable to the case recommend a bar and/or expulsion or other less severe sanctions. Adjudicators must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case. In addition, whether the sanctions are within or outside of the recommended range, Adjudicators must identify the basis for the sanctions imposed.

4. **Aggregation or "batching" of violations may be appropriate for purposes of determining sanctions in disciplinary proceedings.** The range of monetary sanctions in each case may be applied in the aggregate for similar types of violations rather than per individual violation. For example, it may be appropriate to aggregate similar violations if: (a) the violative conduct was unintentional or negligent, i.e., did not involve manipulative, fraudulent, or deceptive intent; (b) the conduct did not result in injury to public investors or, in cases involving injury to the public, if restitution was made; or (c) the violations resulted from a single systemic problem or cause that has been corrected.

Depending on the facts and circumstances of a case, however, multiple violations may be treated individually such that a sanction is imposed for each violation. In addition, numerous, similar violations may warrant higher sanctions, since the existence of multiple violations may be treated as an aggravating factor.

5 **Where appropriate to remediate misconduct, Adjudicators should order restitution and/or rescission.** Restitution is a traditional remedy used to restore the status quo ante where a victim otherwise would unjustly suffer loss Adjudicators may determine that restitution is an appropriate sanction where necessary to remediate misconduct. Adjudicators may order restitution when an identifiable person, member firm, or other party has suffered a quantifiable loss as a result of a respondent's misconduct, particularly where a respondent has benefitted from the misconduct.[1] P. 43

Adjudicators should calculate orders of restitution based on the actual amount of the loss sustained by a person, member firm, or other party, as demonstrated by the evidence. Orders of restitution may exceed the amount of the respondent's ill-gotten gain. Restitution orders must include a description of the Adjudicator's method of calculation.

When a member firm has compensated a customer or other party for losses caused by an individual respondent's misconduct, Adjudicators may order that the individual respondent pay restitution to the firm.

Where appropriate, Adjudicators may order that a respondent offer rescission to an injured party.

6. **Where appropriate to remediate misconduct, Adjudicators should consider a respondent's ill-**

gotten gain when determining the amount of a fine. In cases in which the record demonstrates that the respondent obtained a financial benefit from his or her misconduct, where appropriate to remediate misconduct, Adjudicators may require the disgorgement of such ill-gotten gain by fining away the amount of some or all of the financial benefit derived, directly or indirectly. "Financial benefit" includes any commissions, concessions, revenues, profits, gains, compensation, income, fees, other remuneration, or other benefits received by the respondent, directly or indirectly, as a result of the misconduct [2]

7. **Where appropriate, Adjudicators should require a respondent to requalify in any or all capacities.** The remedial purpose of disciplinary sanctions may be served by requiring an individual respondent to requalify by examination as a condition of continued employment in the securities industry. Such a sanction may be imposed when Adjudicators find that a respondent's actions have demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry.

8. **When raised by a respondent, Adjudicators are required to consider ability to pay in connection with the imposition, reduction, or waiver of a fine or restitution.** Adjudicators are required to consider a respondent's bona fide inability to pay when imposing a fine or ordering restitution. The burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof.[3] If a respondent does not raise the issue of inability to pay during the initial consideration of a matter before "trial-level" Adjudicators, Adjudicators considering the matter on appeal generally will presume the issue of inability to pay to have been waived (unless the inability to pay is alleged to have resulted from a subsequent change in circumstances). Adjudicators should require respondents who raise the issue of inability to pay to document their financial status through the use of standard documents that can be provided by FINRA staff. Proof of inability to pay need not result in a reduction or waiver of a fine, restitution, or disgorgement order, but could instead result in the imposition of an installment payment plan or another alternate payment option. In cases in which Adjudicators modify a monetary sanction based on a bona fide inability to pay, the written decision should so indicate. Although Adjudicators must consider a respondent's bona fide inability to pay when the issue is raised by a respondent, monetary sanctions imposed on member firms need not be related to or limited by the firm's required minimum net capital.

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[1] Other avenues, such as arbitration, are available to injured customers as a means to redress grievances.

[2] While restitution is an appropriate method of depriving a respondent of his or her ill-gotten gain, where appropriate to remediate misconduct, the amount of some or all of the respondent's ill-gotten gain also may be used to determine the amount of a disciplinary fine. Certain guidelines specifically recommend that Adjudicators consider adding the amount of a respondent's financial benefit to the amount of the fine. These guidelines are singled out because they involve violations in which financial benefit occurs most frequently. These specific references should not be read to imply that it is less important or desirable to fine away ill-gotten gain in other instances. The concept of fining away ill-gotten gain is important and, if appropriate to remediate misconduct, may be considered in all cases whether or not the concept is specifically referenced in the applicable guideline.general principles applicable to all sanction determinations.

[3] See *In re Toney L. Reed*, Exchange Act Rel. No. 37572 (August 14, 1996), wherein the Securities and Exchange Commission directed NASD to consider financial ability to pay when ordering restitution. In these guidelines, the NAC has explained its understanding of the Commission's directives to FINRA based on the *Reed* decision and other Commission decisions.

Exhibit 19

(19)

Securities and Exchange Commission
Division of Enforcement

Enforcement Manual

Office of Chief Counsel

*January 13, 2010**

* *Includes conforming revisions as of March 3, 2010*

- the volume of evidence that the staff must collect and review, such as trading records, corporate documents, and e-mail correspondence

- the level of analysis required for complex data and evidence, such as auditor workpapers, bluesheets, or financial data

- the number and locations of witnesses and the scheduling of testimony

- travel requirements

- timelines for writing internal memoranda, evaluation of the case by pertinent SEC Offices and Divisions, and the Commission's consideration of recommendations from Enforcement

- coordination with and timing considerations of other state and federal authorities

For investigations ranked in the top three, Associate and Assistant Directors should consider assigning a minimum of two permanent staff attorneys to ensure that there is continuity on the investigation in the event of absences or staff transitions. In addition, the assignment of at least two attorneys may contribute to a collaborative approach that improves the quality of the investigation and promotes accountability. Additional attorneys may be assigned depending on the phase of the investigation.

2.1.2 Targeted Reviews of Investigations and Status Updates

Introduction:

Associate Directors or Regional Directors should perform periodic case reviews three to four times per year, using HUB data reports to target certain types of investigations with the objective of moving the investigations toward resolution. The types of investigations targeted include: 1) investigations that will reach the six-month point within the next quarter; 2) investigations open two years or more without enforcement action; 3) investigations in which there has been no recorded activity for six months; 4) cases expected to be filed in the coming quarter; and 5) top ten cases (see Section 2.1.1). Identified action items for specific cases should be documented.

In addition to the staff's continuing entry of information into the Hub (including, for example, adding the names of new staff assigned to the investigation and removing the names of staff no longer assigned), the status of the information should be checked and a narrative update should be entered into the Hub periodically. Periodic reviews and updates will allow senior management (Associate Director level and higher) to assess the progress of an investigation and evaluate whether the investigation continues to be an appropriate allocation of resources.

Basics:

- The assigned staff should review the investigation and update the status of an ongoing investigation periodically.

- The narrative update on the Hub system should be included in the "Current Summary" narrative box under the "Nature/Substance of Case" tab for their investigation.

- The narrative in the Hub should explain any changes in the original analysis contained in the case opening narrative regarding whether the investigation is an appropriate use of resources. In particular, the assigned staff should keep in mind whether the conduct is still within the statute of limitations period.

- The narrative should note the stage of the investigation and any major events or milestones that have occurred. For example, the staff might note that they are taking testimony, that they are conducting settlement negotiations, or that a potential defendant has been indicted

- Any inaccurate or out-of-date information should be corrected.

Exception:

An update is not required if an investigation is open, but is inactive because a civil action, administrative proceeding, or other event in progress, and the collection of information under the investigation has ceased. However, if an investigation is ongoing despite the filing of a civil action or the institution of an administrative proceeding (for example, if the investigation is ongoing as to persons not named in the action), then the staff should continue to update the status of the ongoing portion of the investigation.

2.2 Complaints, Tips, and Referrals

2.2.1 Complaints and Tips From the Public

Public complaints and tips are primarily received through the Division's e-mail address (enforcement@sec.gov), the SEC's online web form (*http://www.sec.gov/complaint.shtml*), or through contact with staff at any of the SEC's offices. The vast majority of complaints and tips received by the Division are in electronic form and the Division encourages the public to communicate with it through electronic media. Every complaint is carefully reviewed by Division staff for apparent reliability, detail and potential violations of the federal securities laws. After review, the complaint or tip generally is processed according to the guidelines below

Guidelines for Processing of Public Complaints and Tips:

- Complaints that appear to be serious and substantial are usually forwarded to staff in the home office or the appropriate regional office for more detailed review, and may result in the opening of a MUI.

- Complaints that relate to an existing MUI or investigation are generally forwarded to the staff assigned to the existing matter.

- Complaints that involve the specific expertise of another Division or Office within the SEC are typically forwarded to staff in that particular Division or Office for further analysis.

- Complaints that fall within the jurisdiction of another federal or state agency are forwarded to the SEC contact at that agency.

- Complaints that relate to the private financial affairs of an investor or a discrete investor group are usually forwarded to the Office of Investor Education and Advocacy ("OIEA"). Comments or questions about agency practice or the federal securities laws are also forwarded to OIEA.

2.2.2 Other Referrals

2.2.2.1 Referrals from FinCEN or Referrals Involving Bank Secrecy Act Material

The Bank Secrecy Act ("BSA"):

The BSA is a tool that the U.S. government uses to fight money laundering and drug trafficking. Enacted in 1970 and amended by the USA PATRIOT Act, it is designed to prevent financial institutions, including broker-dealers, from being used as vehicles through which criminals hide the transfer of illegally obtained funds. The recordkeeping and reporting requirements of the BSA create a paper trail for federal, state and local law enforcement to investigate the movement of funds in money laundering and other illegal schemes. The BSA is codified at 31 U.S.C. Section 5311, *et seq.* The regulations implementing the BSA are located at 31 C.F.R. Part 103.

For the SEC, the primary mechanism for enforcing compliance by brokers and dealers with the requirements of the BSA is Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-8. Under Rule 17a-8, every registered broker or dealer must comply with the reporting, recordkeeping and record retention provisions of 31 C.F.R. Part 103. In the investment company context, the registered "funds" must comply with Rule 38a-1 of the Investment Company Act of 1940 ("Investment Company Act"). Rule 38a-1 states that funds must adopt and implement written policies and procedures reasonably designed to prevent violation of the "Federal Securities Laws." As defined in the Investment Company Act, "Federal Securities Laws" include the BSA.

2.2.2.5 Referrals from Self-Regulatory Organizations

p.45

The Basics of Receiving Referrals from Self-Regulatory Organizations:

The Division's Office of Market Surveillance ("OMS") is the primary point of contact for trading-related referrals by domestic self-regulatory organizations ("SROs"). Each equity and option exchange is responsible for monitoring its own markets and enforcing exchange rules and regulations and the federal securities laws. If the SRO discovers potentially violative conduct and believes that it has jurisdiction, it will conduct its own investigation. If the SRO determines that it does not have jurisdiction, it will refer the potential violations to the SEC via the SRO Market Surveillance Referral System. OMS reviews all SRO referrals and in consultation with senior staff in Enforcement opens MUIs and distributes the cases to the appropriate staff in the regional and home offices.

Considerations:

- Assigned staff should discuss information received from SROs with OMS.
- Consider ongoing consultation with SROs, as appropriate.

Further Information:

If the referring SRO continues with a parallel investigation, please refer to the policy on parallel investigations in Section 3.1.4 of the Manual.

2.3 Matters Under Inquiry ("MUIs") and Investigations

2.3.1 Opening a MUI

Introduction:

The purpose of the procedures and policies for the review and approval of new MUIs is to help ensure efficient allocation of resources.

Opening a MUI requires that the staff assigned to a MUI (at the Assistant Director level and below) first conduct preliminary analyses to determine: 1) whether the facts underlying the MUI show that there is potential to address conduct that violates the federal securities laws; and 2) whether the assignment of a MUI to a particular office will be the best use of resources for the Division as a whole. If the preliminary analyses indicate that a MUI should be opened, then the staff should follow the procedures below for opening a MUI within the internal system and seeking approval of the assigned Associate Director or Regional Director. Prior to any other considerations, the staff should consult the Name Relationship Search Index ("NRSI") and the Hub for related investigations. If a related investigation is found, the staff assigned to that investigation should be consulted.

Manual for information relating to parallel investigations, the grand jury secrecy rule, and other concerns when cooperating with criminal authorities.

Considerations:

- In determining whether to make an informal referral to criminal law enforcement authorities, the staff may consider, among other things, the egregiousness of the conduct, whether recidivism is a factor, and whether the involvement of criminal authorities will provide additional meaningful protection to investors.

- In determining whether to make an informal referral to federal, state, or foreign criminal authorities, the staff may also consider jurisdictional factors, such as where the conduct occurred or the domicile of the possible violators.

5.6.2 Informal Referrals to Self-Regulatory Organizations

P. 72

Basics:

In the course of conducting an inquiry or investigation, the staff may determine that it would be appropriate to refer the matter, or certain conduct, informally to one or more SROs. In particular, if an inquiry or investigation concerns matters over which SROs have enforcement authority (*e.g.*, financial industry standards, rules and requirements related to securities trading and brokerage), staff should evaluate whether to contact the SRO about the matter and assess whether it would be appropriate for the SRO to consider investigating the matter in lieu of, or in addition to, an SEC Enforcement investigation. Because SROs may impose disciplinary or remedial sanctions against their members or associated individuals, staff generally should make an effort to apprise the SRO about conduct that may violate the rules of the SRO. Internally, staff generally should consult with OMS and the Division of Trading and Markets in evaluating potential informal referrals to SROs.

If there is a matter or conduct that appears to warrant an informal referral, staff generally should follow the procedures below:

- Assigned staff should consult initially with their direct supervisors, as well as OMS and the Division of Trading and Markets, as appropriate

- Assigned staff must obtain approval at the Associate Director or Regional Director level to refer the matter or conduct informally

- Once given approval, assigned staff, along with their supervisors, may notify the appropriate liaison at the SRO to discuss the matter or conduct, and a possible informal referral.

- Staff then may invite the SRO to make an access request (see Section 5.1 of the Manual regarding access requests). When the access request has been approved,

staff may share documents from the investigative file. Staff may not forward documents to the SRO prior to the approval of the access request.

- After an informal referral to an SRO is made, staff should maintain periodic communication with the SRO concerning the status of the SRO inquiry or investigation and periodically assess whether any or additional SEC Enforcement measures should be taken

Considerations:

- Staff should evaluate whether an informal referral is warranted in the early stages of an inquiry or investigation. As the investigation progresses, the staff should periodically review the record to determine whether a new or additional informal referral may be appropriate.

- Staff should make efforts to continue communicating with SRO staff throughout the SRO's inquiry or investigation to determine whether SEC staff and SRO staff are investigating the same conduct, and so that SEC staff is aware of any determination by the SRO not to pursue an investigation or certain avenues of investigation.

Further information:

- Staff should refer any questions about making an informal referral to an SRO to supervisors and/or OMS.

- For guidance regarding receiving referrals *from* an SRO, see Section 2.2.2.5 of the Manual.

5.6.3 Informal Referrals to the Public Company Accounting Oversight Board

Basics:

In certain instances, Enforcement staff may refer matters informally regarding auditor misconduct to the PCAOB, which is authorized, under Section 105 of the Sarbanes-Oxley Act, to conduct investigations, and impose disciplinary or remedial sanctions against registered public accounting firms and their associated persons. If there is a matter that may be appropriate for referral, assigned staff generally should follow the procedures below:

- Assigned staff should consult initially with their supervisors.

- Assigned staff should then get approval at or above the Associate Director or Regional Director level to refer the matter informally.

- Assigned staff then should discuss the matter with the Chief Accountant of Enforcement, and secure his or her approval for making the referral.

Exhibit 20

(10)

Office of the Ombudsman

FINRA created the Office of the Ombudsman in response to a recommendation made by the FINRA Select Committee on Structure and Governance that an independent office be established to receive and address concerns and complaints, whether anonymous or not, from any source (within or outside of FINRA) concerning the operations, enforcement, or other activities of FINRA.

Contacting the Ombudsman

You can call the Office of the Ombudsman at (240) 386-6270 or toll-free at (888) 700-0028, weekdays from 9 a.m. - 5 p.m. (Eastern Time). If you call outside of normal business hours, you may leave a confidential voice mail message and someone will return your call as soon as possible.

If you prefer, you can write the Office of the Ombudsman at:

FINRA Ombudsman
P.O. Box 9492
Gaithersburg, MD 20898-9492

Alternatively, you may send an email message to the Office of the Ombudsman.

The International Ombudsman Association Code of Ethics

The ombudsman, as a designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to his/her attention unless given permission to do otherwise. The only exceptions, at the sole discretion of the ombudsman, are where there appears to be imminent threat of serious harm.

The ombudsman must take all reasonable steps to protect any records and files pertaining to confidential discussions from inspection by all other persons, including management.

The ombudsman should not testify in any formal judicial or administrative hearing about concerns brought to his/her attention.

When making recommendations, the ombudsman has the responsibility to suggest actions or policies that will be equitable to all parties.

The International Ombudsman Association Standard of Practice

- We adhere to The Ombudsman Association Code of Ethics.
- We base our practice on confidentiality.
- We assert that there is a privilege with respect to communications with the Ombudsman and we resist testifying in any formal process inside or outside the organization.
- We exercise discretion whether to act upon a concern of an individual contacting the Office.
- An ombudsman may initiate action on a problem he or she perceives directly.
- We are designated neutrals and remain independent of ordinary line and staff structures. We serve no additional role (within the organization where we serve as an ombudsman) that would compromise our neutrality.

p. 48

- We remain an informal and off-the-record resource. In the event that an ombudsman accepts a request to conduct a formal investigation, a memo should be written to file noting this action as an exception to the ombudsman role. Such investigations should not be considered privileged.
- We foster communication about the philosophy of the function of the ombudsman's office with the people we serve.
- We provide feedback on trends, issues, policies and practices without breaching confidentiality or anonymity. We identify new problems and we provide support for responsible systems change.
- We keep professionally current and competent by pursuing continuing education and training relevant to the Ombudsman profession.
- We will endeavor to be worthy of the trust placed in us.

What is an Ombudsman?

A resource for your issues, concerns, or problems

In essence, an ombudsman's role is to act as an impartial, confidential, and independent source of assistance in the resolution of an organization's challenges and those of the customers the organization serves. To provide that assistance, the Office enjoys the full support and confidence of FINRA's top management and the Audit Committee of the Board of Governors. The ombudsman has the authority to look into any situation, to review any pertinent documents, and to meet with and discuss the situation with anyone having knowledge of the matter before him

The Office was not created to replace the already existing FINRA programs of adjudication, Dispute Resolution, Internal Review, and other internal processes. In fact, where established procedures currently exist regarding the application of rules, policies, procedures, or interpretations, the Ombudsman will direct the complaint to the appropriate office, department, or organization. The Ombudsman will attempt to assist you in identifying several options for resolving your concern, even if the Ombudsman's Office does not become directly involved in the matter.

How can the Ombudsman help?

If you have a problem that involves FINRA, the Ombudsman is available to help you in a variety of ways by:

- listening to complaints, concerns, problems, and issues;
- helping you candidly identify, understand, and discuss your concerns, and explore and evaluate available options;
- clarifying decisions, policies, and practices;

- referring callers to the appropriate resources;
- creating access to the appropriate information and opening the channels of communication;
- acting as an alternate channel of communication to management;
- identifying actions and policies that ensure established policies and practices are functioning properly and equitably; and
- taking objective action to resolve matters that fall outside the established forums and procedures.

p. 18

How does the Ombudsman operate?

- **Confidential**
  Confidentiality is the cornerstone of our practice—your identity, and the matters you bring to our attention, are completely protected. When you contact our office, you can expect to talk to someone who will listen attentively to your concerns. The Ombudsman, as a designated neutral party, has the mandate of maintaining strict confidentiality concerning matters that are brought to our attention unless given explicit permission to do otherwise. All conversations between you and the Office of the Ombudsman are considered confidential, with the exception of matters where there appears to be an imminent threat of physical harm.

- **Neutral**
  As a neutral party, the Ombudsman does not take sides on any issues brought to its attention, but considers the interests and concerns of all parties to a situation, with the objective of achieving fair outcomes. While the Ombudsman may serve as a mediator when requested, the Ombudsman does not arbitrate, adjudicate, testify, or participate in any formal grievance process. Neutrality is the object of the Ombudsman and carrying out that role demands fairness, objectivity, impartiality, and even-handedness despite personal preferences.

  The Ombudsman may serve in the role of an informal third party and conduct shuttle diplomacy to resolve a problem. The Ombudsman may negotiate settlements in disputes and make recommendations for changes or the initiation of new policies, rules, and administrative processes as appropriate. This is achieved by bringing issues to the attention of those with authority to address these concerns. Our primary objective is to be an advocate for fair processes and fair administration

- **Informal**
  The Office of the Ombudsman will assist in matters you would like to explore "off the record." The Office is not part of FINRA's management structure and therefore does not make policy, make management decisions, or conduct formal investigations.

  When you contact our office, you can expect to talk to someone who will listen attentively to your concerns, assist you in clarifying your issues and/or concerns, and help you develop options

- **Independent**
  The Ombudsman functions independent of line management. Its reporting relationship is with the highest authority in the company. It reports directly to the Audit Committee of the Board of Governors. It provides information on the development of trends resulting from complaints and immediately informs them of any matter that may potentially have a significant adverse affect of FINRA. Accordingly, notice to the Ombudsman is not considered notice to FINRA.

- **An Alternate Communication Channel**
  If you wish to relay a concern to management and do not want to be identified as the source, the Ombudsman will do it for you.

The staff of the FINRA Ombudsman Office are members of The Ombudsman Association and adhere to The Ombudsman's Association Code of Ethics and Standards of Practice

When can I use the Ombudsman?

Anytime. Contact the Ombudsman anytime you want to discuss a concern that you wish to keep private until even after you understand all the options or choices available to you.

Who may contact the Ombudsman?

Anyone with a complaint or concern regarding FINRA. This includes investors, securities industry professionals, FINRA employees, and any business that or individual who interacts with FINRA.

What types of problems does the Ombudsman handle?

Any concerns or complaints about the operations, enforcement, or other activities of FINRA, or its staff members. If you're not sure that your problems fit in this category, give us a call to find out.

If I complain to the Ombudsman, who will find out about it?

Your consultation with the Ombudsman is confidential. In fact, your complaint or concern may be made anonymously, if you prefer.

Is the Ombudsman a person or a department?

The Ombudsman is an individual who is appointed to this Office. The Ombudsman will direct his staff in carrying out the responsibilities of the Office of the Ombudsman.

Does the Ombudsman have authority to solve every problem?

No, that is not the purpose of this Office. FINRA already has many programs and procedures in place for solving problems, resolving disputes, handling complaints, and addressing concerns. The Ombudsman will help you identify the right avenue, make sure it's available to you, and help you use it most effectively.

What if my complaint is about one of the programs or procedures that is already handling my problem and I cannot get a response?

In that case, the Ombudsman will consider the steps necessary to ensure that the structure and procedures of the existing forums are operating properly, appropriately, and equitably. However, we do not have the authority to overturn decisions made in these forums.

Is that the only time the Ombudsman will get involved directly?

No. The Ombudsman will act to resolve any matter that falls outside the established forums. Additionally, the Ombudsman will be actively involved in helping you evaluate your options for resolving the matter and making sure that you are fully informed.

Exhibit 21

Author cites Wall Street Journal article dated Feb. 2, 2010 entitled “Morgan Keegan Must Pay Investor” by Suzanne Barlyn at
http://online.wsj.com/article/SB10001424052748703791504575079352196437286.html?KEYWORDS=%22morgan+keegan+must+pay+investor%22

Exhibit 22

22

Industry Professionals > Enforcement

Adjudication

FINRA employs a fair system for disciplining firms and individuals who break the rules. We may take disciplinary action through a settlement, or issue a formal complaint. If a complaint is issued, the case is heard before a panel which is chaired by a professional hearing officer and includes two industry representatives. P. 54

At the hearing, the parties present evidence for the Hearing Panel to evaluate in determining whether a firm or individual has engaged in conduct that violates FINRA rules, the federal securities laws, or SEC regulations. The Hearing Panel also considers previous court, SEC, and FINRA's National Adjudicatory Council (NAC) decisions to determine whether violations occurred. The Hearing Panel uses the FINRA Sanction Guidelines to determine appropriate sanctions, and issues a written decision explaining the reasons for its ruling. P. 55 P. 56

A firm or individual has the right to appeal a Hearing Panel decision to the NAC, a body that is equally balanced between individuals who are in the securities business and nonindustry representatives. Unless FINRA's Board of Governors decides to review the NAC's decision, that decision is FINRA's final action in the matter. A firm or individual can appeal FINRA's action to the SEC and then to a federal court. P. 54

Office of Hearing Officers (OHO)

Disciplinary Decisions | Redacted Decisions | Disciplinary Orders | Expedited Decisions | Respondent's Guide | Respondent's FAQ

National Adjudicatory Council (NAC)

Disciplinary Decisions | Redacted Decisions | Membership Decisions | Attorney Disqualification Rulings | Statutory Disqualification Process | Statutory Disqualification Decisions | NAC Committee

Exhibit 23

23

Dave Freibert

From: "U.S. Securities and Exchange Commission" <oiea@sec.gov>
To: [redacted]
Sent: Thursday, May 04, 2006 10:03 AM
Subject: SEC Response - File [redacted]

Dear Mr. [redacted]

Thank you for your phone call. As requested, below is the text of the letter I sent you on April 6, 2006.

Again, thank you for contacting us

Sincerely,

Steven G. Johnston
Special Counsel
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

April 6, 2006
Office Of Investor Direct Dial (202) 551-6551
Education Fax (202) 942-9634
And Assistance E-Mail help@sec.gov
www.sec.gov

[redacted]

Dear Mr [redacted]

Thank you for writing to us about your NASD arbitration.

Your complaint is important to the SEC because investor complaints can alert us to possible securities fraud or abuse and often serve as the first indicators of wrongdoing. Our office keeps a database of information about the complaints we receive. This database allows us to track whether a troubling situation may be developing about a particular issue, company, broker, stock, or other securities product. The information you have provided will be reflected in our database

Please be aware that the SEC cannot act on behalf of individual investors in any arbitration proceeding and cannot overturn or change an arbitrator's decision. Only a federal or state court of competent jurisdiction has the power to review an arbitrator's decision - but typically only in limited circumstances. If you decide to challenge the arbitration decision in federal court, the Federal Arbitration Act requires you to act quickly: you must appeal within three months of the date the arbitrator filed or delivered the decision. Some states may have arbitration statutes that require you to file an appeal in even less time.

We appreciate hearing your concerns about the fairness and efficiency of the arbitration process. While the SEC cannot help you with your appeal, we do oversee the arbitration programs conducted by self-regulatory organizations, such as NASD-DR Your views can help us make sure that the process runs

more smoothly and fairly.

Once again, thank you for your letter. If you have any questions, please contact me.

Sincerely,

Steven G. Johnston
Special Counsel

Exhibit 24

(24)

JIM BUNNING
KENTUCKY

COMMITTEES:
FINANCE
[illegible]Y AND NATURAL RESOURCES
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET

United States Senate

WASHINGTON, DC 20510

WASHINGTON OFFICE:
316 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-4343

MAIN KENTUCKY OFFICE:
1717 DIXIE HIGHWAY, SUITE 220
FORT WRIGHT, KY 41011
(859) 341-2602

August 1, 2006

[redacted]

Dear Mr. [redacted]

It is my understanding that you spoke to several members of my Fort Wright, Kentucky staff regarding your dealings with the Securities and Exchange Commission. Additionally, you sent a letter describing the problems you have experienced.

In an effort to be of assistance to you, I contacted the Securities and Exchange Commission and forwarded your complaint to that agency. I specifically asked that they address the issue of the two year time limit versus the six year time limit regarding investigations as they relate to your situation. As you know, it would not be appropriate for a United States Senator to ask that they waive their rules and regulations, review their files or participate in any investigation or arbitration. However, as soon as I receive a reply from the SEC, I will be sure to let you know.

Best personal regards,

Jim Bunning

JIM BUNNING
United States Senator

JB: cb

HAZARD OFFICE:
601 MAIN STREET
SUITE 2
HAZARD, KY 41701
(606) 435-2390

HOPKINSVILLE OFFICE:
1100 SOUTH MAIN STREET
SUITE 12
HOPKINSVILLE, KY 42240
(270) 885-1212

LEXINGTON OFFICE:
771 CORPORATE DRIVE
SUITE 105
LEXINGTON, KY 40503
(859) 219-2239

LOUISVILLE OFFICE:
600 DR MARTIN LUTHER KING JR. PLACE
ROOM 1072B
LOUISVILLE, KY 40202
(502) 582-5341

OWENSBORO OFFICE:
423 FREDERICA STREET
ROOM 305
OWENSBORO, KY 42301
(270) 689-9085

Toll-Free 1-800-283-8983
http://bunning.senate.gov

(24)

JIM BUNNING
KENTUCKY

COMMITTEES:
FINANCE
ENERGY AND NATURAL RESOURCES
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET

United States Senate

WASHINGTON, DC 20510

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316 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-4343

MAIN KENTUCKY OFFICE:
1717 DIXIE HIGHWAY, SUITE 220
FORT WRIGHT, KY 41011
(859) 341-2602

August 17, 2006

[redacted]

Dear Mr. [redacted]

Today I was contacted by the Securities and Exchange Commission. Their representative, Mr. Steve Johnston, advised that he had all of your information and would be giving you a call to explain the differences between the legalities of the statute of limitations and the rules and regulations for arbitration.

I realize that this matter has been a complicated and difficult one for you, but hopefully Mr. Johnston will be able to provide you with a more detailed clarification as it relates to your situation.

Best personal regards,

Jim

JIM BUNNING
United States Senator

JB: cb

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HAZARD, KY 41701
(606) 435-2390

HOPKINSVILLE OFFICE:
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ROOM 305
OWENSBORO, KY 42301
(270) 689-9085

Toll-Free 1-800-283-8983
http://bunning.senate.gov

Exhibit 25

1-202-551-6349

25

[redacted]

From: "U.S. Securities and Exchange Commission" <oiea@sec gov>
To: [redacted]
Sent: Tuesday, October 17, 2006 1:43 PM

Dear Mr [redacted]

Below please find a copy of our previous letter to you.

Jack Hardy

September 28, 2006
Office Of Investor Direct Dial (202) 551-6551
Education Fax (202) 942-9634
And Assistance E-Mail help@sec.gov
www.sec.gov

[redacted]

[redacted]

Dear Mr [redacted]

Thank you for your letter and for taking the time to alert us to your concerns.

We will carefully consider your request for an investigation. But at this point, our office can do nothing further to help you. This is because the SEC generally conducts its investigations on a confidential basis and neither confirms nor denies the existence of an investigation until we bring charges against someone involved. We cannot provide you with updates on the status of your complaint or of any pending SEC investigation. We know this policy can be frustrating, but it protects the integrity and effectiveness of our investigative process and preserves the privacy of the individuals and entities involved. I've attached a flyer that describes our policy more fully.

Once again, thank you for writing to us.

Sincerely,

Steven G. Johnston
Special Counsel

Enclosure: Information About SEC Investigations

Information About SEC Investigations

Each year, thousands of investors ask the Securities and Exchange Commission to investigate the activities of other investors, financial professionals, corporations, brokerage firms, investment companies, stock exchanges, and others. These complaints generally suggest some impropriety or misconduct and sometimes make a plea to the SEC for direct assistance in resolving a grievance.

The SEC has the authority to investigate whether violations of the federal securities laws have occurred, and we make every effort to evaluate promptly and thoroughly the information provided by investors. But we cannot investigate every investor complaint. While many investor complaints do lead to full investigations and, if appropriate, to enforcement actions, we cannot guarantee that our review will lead to further investigation or that the SEC will take any legal action.

We also cannot provide you with updates on the status of your complaint or your request for an investigation. The SEC generally conducts investigations confidentially for two main reasons. First, we can conduct investigations more effectively if they are not announced publicly. For instance, important documents and evidence can be destroyed quickly if people hear of an investigation. Second, we keep our investigations confidential to protect the reputations of companies and individuals if we find no wrongdoing or decide we cannot bring a successful action against them. The SEC will not typically confirm or deny the existence of an investigation unless, and until, it becomes a matter of public record as the result of a court action or administrative proceeding.

When there is proof that someone has violated the securities laws, the sanctions may include financial penalties, orders to surrender profits, cease and desist orders, or an injunction by a court to prevent further violations. The SEC may also bar individuals from working for a securities firm, investment adviser, or investment company. We can also ask a federal court to bar individuals from being officers and directors of publicly held companies. In some situations, we may refer a case to the Department of Justice for possible criminal prosecution.

The SEC publishes news releases about its lawsuits and administrative actions, and the news media often report on them. You can read and download the SEC's "Enforcement Actions" on our website at www.sec.gov/divisions/enforce/enforceactions.shtml. Or you can obtain hard copies by contacting us at:

Office of Public Reference
100 F Street, N.E.
Washington, DC 20549-0102
Phone: (202) 551-8090
Fax: (202) 777-1027
E-mail: publicinfo@sec.gov

Exhibit 26

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INVESTOR EDUCATION
AND ASSISTANCE

MAY 23 2007

[redacted]

Mr. [redacted]

Dear Mr. [redacted]

Thank you for your May 8, 2007 letter to SEC Chairman Christopher Cox regarding your complaint against [redacted]. Your letter has been referred to me for a response.

Please refer to Mr. Johnston's earlier correspondence regarding arbitration and the SEC confidentiality policy with respect to investigations. P. 63

If you have any other comments or questions, please do not hesitate to contact Steven Johnston, an attorney on my staff, at (202) 551-6349.

Sincerely,

Jack Hardy
Branch Chief

Exhibit 27

(27)

MITCH McCONNELL
KENTUCKY

361–A RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510–1702
(202) 224–2541

United States Senate

REPUBLICAN LEADER

COMMITTEES:
AGRICULTURE
APPROPRIATIONS
RULES AND ADMINISTRATION

December 1, 2008

[redacted]

Dear Mr [redacted]

Thank you for contacting my office with your experiences with your former broker and lender. I appreciate you sharing your concerns with my staff members, Patrick Foster and Fred Karem, Jr., and with me, although I am sorry to learn of the circumstances that prompted you to contact me.

After reviewing your letter of November 21, 2008, I have written to the Securities and Exchange Commission to share your experiences and your request for a meeting and to request a response. I have requested that the SEC respond both to you and to my office

Again, thank you for contacting me. Please do not hesitate to contact me should you have any further concerns.

Sincerely,

Mitch McConnell

MITCH McCONNELL
UNITED STATES SENATOR

MM/klc

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771 CORPORATE DRIVE
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LEXINGTON, KY 40503
(859) 224–8286

300 SOUTH MAIN
SUITE 310
LONDON, KY 40741
(606) 864–2026

601 WEST BROADWAY
SUITE 630
LOUISVILLE, KY 40202
(502) 582–6304

PROFESSIONAL ARTS BUILDING
2320 BROADWAY
SUITE 100
PADUCAH, KY 42001
(270) 442–4554

Exhibit 28

MITCH McCONNELL
KENTUCKY

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United States Senate

REPUBLICAN LEADER

COMMITTEES:
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APPROPRIATIONS
RULES AND ADMINISTRATION

January 8, 2009

[redacted]

Dear Mr. [redacted]

I recently received a response from the U.S. Securities and Exchange Commission (SEC) regarding my request that they respond to your concerns that you shared with my staff and with me. In your letter of November 21, 2008, you described experiences with your former broker and lender, and requested a meeting with SEC staff.

Mr. Steven G. Johnston of the SEC Office of Investor Education and Advocacy replied that the SEC is unable to accommodate your meeting request. He relayed the SEC's policy of confidentiality, which I have enclosed for your review, and said that consistent with its policy, the Commission cannot confirm or deny the existence of an investigation, or provide updates to individuals who request investigations, unless and until it brings forward related legal action. In addition, the Commission cannot overturn arbitration or court decisions, although it can investigate and prosecute violations of federal securities laws.

I hope you find this information helpful. Mr. Johnson informed my office that if you have any further comments or concerns, you may contact him directly at the SEC Office of Investor Education and Advocacy.

Steven G. Johnston
Special Counsel
Office of Investor Ed[illegible] Advocacy
U.S. Securities a[illegible]ge Commission
(202) [illegible]1-6349

Thank you for contacting me. I hope you will also continue to keep me informed of the issues important to you.

Sincerely,

Mitch McConnell

MITCH McCONNELL
UNITED STATES SENATOR

MM/klc

Enclosure

FEDERAL BUILDING
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INFORMATION ABOUT SEC INVESTIGATIONS

Each year, thousands of investors ask the Securities and Exchange Commission to investigate the activities of other investors, financial professionals, corporations, brokerage firms, investment companies, stock exchanges, and others. These complaints generally suggest some impropriety or misconduct and sometimes make a plea to the SEC for direct assistance in resolving a grievance.

The SEC has the authority to investigate whether violations of the federal securities laws have occurred, and we make every effort to evaluate promptly and thoroughly the information provided by investors. But we cannot investigate every investor complaint. While many investor complaints do lead to full investigations and, if appropriate, to enforcement actions, we cannot guarantee that our review will lead to further investigation or that the SEC will take any legal action.

We also cannot provide you with updates on the status of your complaint or your request for an investigation. The SEC conducts investigations confidentially for two main reasons. First, we can conduct investigations more effectively if they are not announced publicly. For instance, important documents and evidence can be destroyed quickly if people hear of an investigation. Second, we keep our investigations confidential to protect the reputations of companies and individuals if we find no wrongdoing or decide we cannot bring a successful action against them. The SEC will not confirm or deny the existence of an investigation unless, and until, it becomes a matter of public record as the result of a court action or administrative proceeding.

When there is proof that someone has violated the securities laws, the sanctions may include financial penalties, orders to surrender profits, cease and desist orders, or an injunction by a court to prevent further violations. The SEC may also bar individuals from working for a securities firm, investment adviser, or investment company. We can also ask a federal court to bar individuals from being officers and directors of publicly held companies. In some situations, we may refer a case to the Department of Justice for possible criminal prosecution.

The SEC publishes news releases about its lawsuits and administrative actions, and the news media often report on them. You can read and download the SEC's "Enforcement Actions" on our website at www.sec.gov/divisions/enforce/enforceactions.shtml. Or you can obtain hard copies by reviewing "How to Request Public Documents" at http://www.sec.gov/answers/publicdocs.htm.

Or submit a written request to:
U.S. Securities and Exchange Commission
Office of Investor Education and Advocacy
100 F Street N.E.
Washington, DC 20549-021
Fax: (202) 777-1027
Phone: (202) 551-8090

Exhibit 29

Last Updated: 3/15/01

Arbitration Procedures

Although most business in the securities industry is completed without a problem, disputes and controversies will occasionally arise. Such disputes and controversies can be resolved by impartial arbitration at one of the organizations listed in the services directory. Arbitrations are conducted in accordance with the Uniform Code of Arbitration (Uniform Code or UCA) as developed by the Securities Industry Conference on Arbitration (SICA) and the rules of the sponsoring organization where the claim is filed.

There are some differences among the rules of the sponsoring organizations, such as, the time to serve and file answers to claims, who may serve as public arbitrators, arbitrator selection methods, service of award methods, the availability of prior awards, and whether your name will be made publicly available. Any questions regarding arbitration may be addressed to the Directors of Arbitration or their staff at the sponsoring organizations. Significant differences between the Uniform Code and the procedures of the self-regulatory organizations (SROs) will be highlighted in this guide.

In addition to initiating an arbitration, investors may file their complaints with the appropriate regulatory authorities, such as the Securities and Exchange Commission (SEC), state securities commissions, or one of the SROs listed in the Services Directory, when they believe there has been fraud or that other investors may be at risk. The regulatory agencies may then investigate the complaint and, if warranted, censure, fine, or suspend a wrongdoer. These agencies normally do not recover investor's losses which can be done through arbitration.

This information is designed to assist prospective parties and their attorneys by explaining arbitration procedures and is not designed to give legal advice to any party or to anyone who contemplates use of these procedures. The procedures were developed for parties who represent themselves in an arbitration proceeding as well as those represented by counsel. The information here explains the procedures set forth in the rules and answers questions regarding them but is not an interpretation of, or a substitute for, the rules. We recommend that prospective parties carefully read the rules.

Exhibit 30

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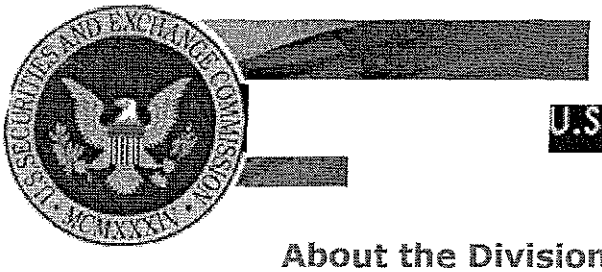

U.S. Securities and Exchange Commission

About the Division of Enforcement

The Division of Enforcement was created in August 1972 to consolidate enforcement activities that previously had been handled by the various operating divisions at the Commission's headquarters in Washington. The Commission's enforcement staff conducts investigations into possible violations of the federal securities laws, and prosecutes the Commission's civil suits in the federal courts as well as its administrative proceedings.

In civil suits, the Commission seeks injunctions, which are orders that prohibit future violations; a person who violates an injunction is subject to fines or imprisonment for contempt. In addition, the Commission often seeks civil money penalties and the disgorgement of illegal profits. The courts may also bar or suspend individuals from acting as corporate officers or directors. Releases describing recent litigation are posted on this site.

The Commission can bring a variety of administrative proceedings, which are heard by administrative law judges and the Commission itself. One type of proceeding, for a cease and desist order, may be instituted against any person who violates the federal securities laws. The Commission may order the respondent to disgorge ill-gotten funds in these proceedings. With respect to regulated entities (e.g., brokers, dealers and investment advisers) and their employees, the Commission may institute administrative proceedings to revoke or suspend registration, or to impose bars or suspensions from employment. In proceedings against regulated persons, the Commission is authorized to order the payment of civil penalties as well as disgorgement. Releases related to recently-instituted or settled administrative proceedings are posted on this site. In addition, this site contains Initial Decisions issued by Administrative Law Judges in contested cases, and Commission Opinions on appeal from enforcement actions and disciplinary proceedings by self-regulatory organizations (e g., the National Association of Securities Dealers or the New York Stock Exchange).

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The Commission's mandate is to protect investors. While in some cases, ill-gotten gains disgorged by defendants are returned to defrauded investors, the Commission is not authorized to act on behalf of individual investors. If you believe you have been defrauded, you should discuss the matter with a private attorney who is familiar with securities laws to ensure that your rights are protected under federal and state law.

Additional information about the work of the Division of Enforcement is contained in the Commission's Annual Report.

This site contains information about reporting fraud (fraudulent stock offerings, manipulations, or other conduct in violation of the securities laws). If you have a dispute with your broker, you may wish to consult the Web page for the Commission's Office of Investor Education and Advocacy,

which has information on resolving such disputes (and avoiding them in future).

http://www.sec.gov/divisions/enforce/about.htm

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Exhibit 31

Author cites Wall Street Journal article dated May 31, 2007 entitled “Arbitrary and Unfair” by Ted Frank at http://www.aei.org/article/26280

Exhibit 32

Author cites Associated Press article dated Jan. 16, 2008 entitled "Ex-PwC Employees Settle SEC Insider-Trading Charge" by Judith Burns, available at http://accounting.smartpros.com/x60403.xml

Exhibit 33

Author cites Wall Street Journal article dated Mar. 17, 2010 entitled "SEC Tried to Ease Curbs" by Susanne Craig and Kara Scannell, available at
http://on1inewsj com/article/SB10001424052748704743404575128122174622274.html