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May 3, 2007

Via email only

Nancy Morris, Secretary
Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549-9303.

Re: SR-NASD-2006-109
SEC Release 34-55604

Proposed Rule Change Regarding Parties' Representatives in Arbitration

Dear Ms. Morris:

My name is Richard Sacks. I write to comment on this rule proposal and request that the proposed rule not be approved in its current form. Unless the Commission makes it clear that the proposed rule applies only to those individuals who become disqualified *after* the proposed regulation is adopted, the proposed regulation appears to **add** to a sanction that was imposed against me by the NASD, and deemed to be adequate over 16 years ago! Further, the proposed rule does not protect the public, it may exceed the Commission's statutory authority, and it will seriously interfere with my ability (and perhaps others similarly situated) to represent existing clients in NASD arbitrations.

By way of background, since 1991 I have represented numerous parties in securities arbitration. Most often I represent public customers facing off against brokerage firms; occasionally brokers filing claims against their former employers in defamation and wrongful termination. I have completed over 1300 separate arbitration claims, tried 300 or so cases to a decision, and mediated another 250 or so claims to a settlement.

The Commission is being asked to approve Amendments to the NASD Code of Arbitration Procedure (SR-NASD-2006-109). These proposed amendments may significantly impact me personally since I currently represent approximately 100 public customers in open arbitration claims. If adopted in its current form, the proposed rule would seek to exclude me from the arbitration forums and nullify my contractual obligations to the parties I represent.

I am not now, nor have I ever been an attorney at law, nor a member of any state bar. I am one of the longest practicing of the non-attorney (NAR) representatives representing parties in the SRO arbitration forums. I also believe I am currently the only NAR in the country that would be adversely affected by this proposal.

To the best of my knowledge there is currently no other suspended NASD individual representing parties in arbitration. I am the only one and I believe, therefore, that this proposal is aimed directly at me. As an associate of mine recently said, "*just because a person is paranoid doesn't mean there aren't people out there trying to get him*".

I began in the brokerage business in 1974. In March 1985, I applied for and was accepted as a member of the NASD as owner of my own firm, Sacks Investment Co., Inc. Between 1989 and 1990, Sacks Investment Co. and I became the subject of three complaints by the NASD District Business Conduct Committee, which essentially were identical. At that time I was unaware that NASD treated small broker dealers substantially different than large ones.

Unfortunately I retained and listened to experts, and rather than settle, I decided to fight. I was somewhat successful in overturning two of three complaints at the National level, but unfortunately I was unable to overturn the second complaint by the National Business Conduct Committee. After expending several hundred thousand dollars in attorney fees, I decided to throw in the towel and sold Sacks Investment Company.

The final resolution of these complaints, after appeal to the NASD's National Business Conduct Committee, was a decision adverse to me, dated June 19, 1991. That decision included a sanction against me, specifically "*the imposition of a bar from association with any member firm in any capacity against Mr. Sacks.*"

I do not now seek to associate with any member firm in any capacity. I have not sought to do so at any time since 1991. I seek only to continue my lawful business of representing parties in SRO arbitrations.

In the normal course, should I wish to seek re-instatement in the industry, I would need to apply through an NASD member firm. I have no illusion that any member firm would step up to sponsor me to do what I now do, as I have brought claims against many dozens of them. More importantly, securities arbitration, *on behalf of public customers*, is not the business of the member firms that the Commission regulates. Nevertheless, the NASD seeks to exclude me from continuing to represent parties in arbitration.

As stated in the opening paragraph, unless the Commission makes it clear that the proposed rule applies only to those individuals who become disqualified *after* the proposed regulation is ultimately adopted, the proposed regulation will add to the sanction that was imposed against me and deemed to be adequate in 1991. It does so without any hearing or additional adjudication, and without any nexus or connection whatsoever to the facts that led up to the DBCC's original complaints. It would also do so based on lies and intentional distortions of the truth by whomever at the NASD prepared this proposal for the Commission's approval.

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Assuming that the NASD's proposed rule is adopted by the Commission, it would appear that the NASD would add to my previous sanction (and the sanctions of all those previously disqualified) by barring us from the arbitration forums. Whatever the transgressions the NASD complained of against me in 1989, this proposed rule would add significant punishment to me, 16 years after the fact. It would be in a singular word "unfair" and it would exceed both the NASD's and Commission's authority.

The purpose of disciplinary action under Section 15 of the Exchange Act is to protect the public "*without visiting upon the wrongdoers adverse consequences not required in achieving the statutory objectives*" Release No. 34-18284, 24 SEC docket 94, 1981 WL Van Dusen Administrative Proc. File No. 3-5946. The statutory goals of the Commission are not furthered by increasing the sanction on me, 16 years after the fact! The NASD took away my license to sell securities, now they (my suspicions of who "they" are I will save for another time) would like to take away my legal right to represent parties in its arbitration forum.

My representation of parties in securities arbitration presents no threat to the public, or to the arbitration system. Furthermore, I have participated or contributed my time in a number of important securities arbitration matters or securities industry conferences regarding arbitration over the years.

For example in 1995 the NASD invited me to participate in the NASD Arbitration Focus Group, a select group of arbitration professionals, on how to improve the arbitration process. I might add I was the only NAR across the country invited. That was 12 years ago, and since that time I have learned a great deal more about arbitration. Now the NASD would like to disqualify me from participating in arbitration at all and at the same time they say it will protect the public. Protect them from what? What happened in the intervening 12 years that would require the public to be protected?

For a short time I trained law school students at the University of San Francisco in the SEC sponsored Investor Justice Project. I was also invited by the California Judicial Council to participate in special legislative hearings regarding the issue of arbitrator disclosures, a subject matter with which I had substantial experience. My contribution was to encourage the California Legislature to impose the same arbitrator disclosures required of all other arbitrators in California, which the NASD ultimately ended fighting in a hotly contested Federal Court action.

Interestingly, the SEC filed an amicus brief in that case which held that the NASD was not going to have 50 different sets of rules for all 50 states, but to a great extent, Commission approval of this rule proposal, in its current state, will likely result in many different sets of rules regarding who can represent who in securities arbitration.

The NASD has shamelessly advised the SEC that its proposed rule allegedly “*will protect investors by prohibiting individuals who have been suspended from the practice of law or disbarred from representing parties in the NASD forum*”. NASD firms currently employ a great many individuals who have previously been “disqualified”. The Commission has given relief from disqualification to any number of member firms despite actual evidence of culpability and fraud and market manipulation (ie those firms involved in the recent Research Analyst Global Settlement). This is mainstream market activity, not the backwater of arbitration.

Nothing the NASD ever accused Sacks Investment Company of doing wrong rose anywhere close in severity to what these firms have done, yet these firms remain in business, earning billions of dollars annually, and individuals associated with these firms continue to serve as arbitrators and hold high positions of authority within the NASD hierarchy.

To put it mildly, these firms and their employees poison the well, as their ultimate influence over the arbitration process infects or injects into the system a built in bias against the public. That is precisely why NASD arbitration must always appear to bend over backwards to demonstrate to the public they are getting fair hearings. But, if I, or anyone else with specialized knowledge of the securities industry will be excluded from representing parties in arbitration, particularly after 16 successful years doing so, at least some of the public will not get the best or lets just say the representative of their own choosing. The NASD is in effect now telling the public who can and who can't represent them. That makes this rule proposal most definitely not about protecting the public. That is another reason why the Commission should not approve this proposal in its current form.

From an administrative perspective, the NASD fulfilled its regulatory mission and protected the public when they suspended me. Now they would also like to punish me some more. **Has NASD presented any facts to the Commission to back up this proposal concerning currently suspended brokers? No, they have not, because there are no facts to support their exclusion from NASD arbitrations.** They have had ample time to do so, over 16 years to be precise. Instead the NASD relies on shameless innuendo, and unsubstantiated conclusions, casting aspersions of guilt upon persons such as myself that committed no crime and in all honesty and fairness represent no threat to anyone but the liars and cheaters we go after in arbitration.

The substantiated facts strongly suggest that formerly suspended individuals such as myself have performed a valuable service to the public, and in no way represent any threat to the public. If the NASD had any evidence to the contrary they would have shown it to the Commission. Further, without substantial evidence to support this proposal, that prohibiting individuals currently suspended from NASD from representing parties in arbitration is in the public interest, the SEC has no conclusive evidence, or for that matter any basis upon which to approve this proposal.

Additionally, it is indeterminate if the Commission actually has the right to regulate who can represent who in arbitration, or whether it exceeds the SEC's statutory authority, an important consideration which I am hopeful that the SEC will also not overlook when deciding to approve this proposed rule change. The area of who can represent who in arbitration appears somewhat far away from the SEC's congressional directive, namely to protect the integrity of the securities markets and to protect the public interest.

What this rule does though is guarantee litigation. Even though California permits non-attorneys to represent parties in arbitrations, (as do many other states), and a California court has previously held that what I do is legal and permissible, I know that industry lawyers will attempt to obtain a restraining order, based upon this new rule, every time I show up at an arbitration. How does this help any public customer I may represent, now or in the future?

If the Commission would like to keep a level playing field for aggrieved investors in NASD arbitration it should not approve this rule. People like myself have repeatedly been proven as effective advocates. That is a fact. Without providing me with some form of regulatory relief, this rule clearly represents additional punishment I never contemplated, with no current procedure in place at the SEC for curing this wrong. Quite frankly, I believe that fact alone demonstrates that SEC regulatory authority is being stretched beyond its limit by NASD seeking approval for this rule change in its current form.

I decided to go into securities arbitration because I saw an opportunity of taking advantage of what I learned after 17 years in the business and at 42 years of age and with a young family to support I needed to earn a living. It is irrelevant as to whether or not in my circumstances the penalty fit the so-called crime with regards the transgressions I was accused of committing. What I did not bargain for, and what is clearly at stake here is the extraordinary punitive effect this rule proposal may have on me and my wife now after 16 years of doing this work, not to forget the 100 or so clients I currently represent and the many hundreds more I may represent in the future. It is unfair to me, to the public I serve (not to mention brokers we assist as well) and at its very core unethical and despicable.

For all the above reasons, I believe that Commission should not approve this proposed rule change in its current form, and/or recommend that the rule applies only to those disqualified **after** the rule becomes effective (although I feel that the industry would be far less eager to suspend any individual in the future, if they knew or suspected that person may come back at them at a later date by representing parties in securities arbitration, perhaps another of their real, but unstated motives for presenting this rule proposal).

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I am an individual that has successfully tried more cases in NASD arbitration, than most likely any other claimants' attorney in the system, and I don't deserve to be singled out. It is a form of punishment that at this point in my life could be far worse than my losing my securities license was. It will in no way help to protect investors or will it affect the goings on in the securities markets. However, it will deny many individuals the opportunity of my representation, and will actually harm the public, based upon my long and successful track record representing aggrieved investors.

What virtually everyone wants and/or prays for, whatever their position in life, whatever their goals and aspirations, whatever their actions or circumstances bring them to, is that they will be judged with fairness and justice in mind. Mind you, a goal not always obtained but certainly what defines what we as Americans stand for. I hope and pray that the Commission will not approve this rule in its current form.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Sacks", written in a cursive style.

Richard Sacks