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

Sent by Email Only to:

rule-comments@sec.gov

Re: SR-NASD 2006-109
Release No. 34-52045
Representation of Parties in Arbitration and Mediation

Dear Ms. Morris:

I write to comment on SR-NASD 2006-109.

I am a lawyer licensed to practice in New York and California. From 1982 to 1986, I was a staff attorney in the Division of Enforcement of the Securities and Exchange Commission. I have been active in private securities litigation since 1990, and have been representing clients in NASD securities arbitrations for over a decade.

I do not believe that SR-NASD 2006-109 is in the interest of investors. The proposed rule would only make it more difficult for investors to secure good representation, and tips an already stacked industry sponsored arbitration deck further against investors. In addition, the rule would unnecessarily and unfairly bar qualified representatives based on actions occurring many years before the rule was proposed.

The Proposal Only Makes the Real Problem Worse

In my experience, many investors find it difficult or impossible to find good representation for their NASD arbitrations. Any rule that is enacted should address this problem by providing that lawyers and other representatives

from any state may represent an investor in any arbitration. In many cases, the parties to an NASD arbitration are located in multiple states. The investor may be one state, the registered representative in another, the controlling persons of the broker-dealer who employed the registered representative in another, the clearing firm in another, and the hearing location in yet another. There is simply no reason to permit the state in which a hearing may be held simply for convenience to deprive the investor of his chosen representative. Investors need a regulation that empowers them to choose the best representative for their case from among those all over the country, without restrictions imposed by local laws and rules, which are often drafted by local practitioners to protect them from outside competition rather than for the protection of investors.

The Proposal Further Stacks the Deck Against Investors

This proposal further biases the system of industry controlled arbitration against the investor. As a practical matter, investors with all leading brokerage firms are contractually required to submit their claims to a forum where the rules have been written by their opponents. As a lawyer who has spoken with hundreds or thousands of investors with potential claims, it is often my unpleasant duty to tell them that, if they do bring a claim, it will be determined by a panel where at least one member is a stockbroker or other person employed by the securities industry, and that the other members of the panel may currently have or have in the past had ties with the industry may strongly bias them against investors but that do not necessarily provide sufficient grounds under the still rather narrow rules for disqualification. Under these circumstances, it often seems like the investor is a mouse seeking justice from a panel of cats.

The Proposal Excludes Able and Effective Non-Attorney Representatives

As part of my representation of parties in NASD arbitrations, I have had the opportunity to become familiar with the work of Richard Sacks, owner of Investors Recovery Service in Northern California. He has been representing clients since 1991 and he is not an attorney. The proposed rule will adversely impact Mr. Sacks and the investors he

represents because he was disqualified from the securities industry by the NASD in 1991.

My first experience with Mr. Sacks was as his opponent in a matter where I represented the industry party and he represented the investor. I recall that I did not like Mr Sacks when I first spoke with him. I had heard people disparage him as a disbarred broker, and I did not particularly like being on the receiving end of his energetic and aggressive advocacy.

I found personal experience from experience that Mr Sacks wouldn't give up until he obtained what he thought was a reasonable settlement. I believe that his obvious familiarity with the practices of the industry, as well as with the law and procedures in the arbitration forum, were a distinct asset to his client. I considered him to be an able and dangerous opponent.

Since then, as I have had the opportunity to observe more of Mr Sacks' work representing public customers, my opinion of him has continued to increase. His understanding of the inside of the securities business, together with his experience, skill, and tenacity, make him unique among practitioners that I have encountered in these forums.

In my work, I have had personal contact with dozens of lawyers who concentrate in securities arbitrations, and have had occasion to evaluate the qualifications and results obtained by many of them in connection with cases on which we have worked together, which I have referred to them and continued to follow through completion, which I have discussed with them, or which have been reported by the NASD. In connection with selecting panels for my clients, I have also reviewed the written awards rendered and published in hundreds or thousands of cases. Based on that experience and research, there are only about a dozen investor representatives, whether lawyers or not, whom I consider to be outstanding based on the cases they take, the effort they put in, and the results they get, and Mr Sacks is one of them.

I have been especially impressed with the number of instances where Mr Sacks has accepted claims that, while having merit, also had factual, economic, or evidentiary problems, or procedural complications, that would have caused me and, I think, many other experienced lawyers to

decline them. In several such cases, I have seen Mr Sacks obtain substantial recoveries for investors, and have had occasion to congratulate him for the unusually or surprisingly good results that he has been able to obtain.

In the fifteen years that I have known him, I have never seen or heard a single complaint against Mr Sacks by an investor whom he represented in an arbitration. He is respected, and even feared, by many in the defense bar for his energy and effectiveness, even though he is disliked by some.

Because of his ability, energy, and tenacity, I believe that prohibiting investors from being represented by Mr. Sacks in the arbitration process would deprive many of them of what may be their best hope of a fair recovery. I do not believe that removing him from the arbitration process will further the Commission's mandate to protect the markets, nor advance any cause that would make the arbitration process better. It will just remove one of the most effective and experienced customer representatives from the limited pool of such representatives available to investors.

I urge the Commission to reject this proposal as a move in the wrong direction. I believe that the Commission should be attempting to increase access by investors to qualified representation, not decrease it, and to ameliorate the bias of the current arbitration system against investors, not increase it. I hope it will do so.

Very truly yours,

Vincent DiCarlo

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