Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission 100 F Street NE Washington, D.C. 20549-9303

Re: SR-NASD-2007-021: Proposed Amendment to Rule 12100(u) of the NASD Code of

Arbitration Procedure, Which Pertains to Definition of Public Arbitrator
Dear Ms. Morris:

I have been representing investors in securities arbitration cases for 10 years. I have an extensive background in securities having been a registered representative from 1979 to about 1990 and from 1983 to 1990 I owned several full services brokerages. Currently I represent investors in Utah securities fraud cases, both in arbitration and court.

I have reviewed many of the comment letters to you pertaining to the subject. I believe Larry Schultz's August 6, 2007 letter sums it up for me where he wrote:

I have arbitrated approximately 50 cases before the NASD, NYSE, and AAA. I also have served as an arbitrator with the NASD and NYSE.

Requiring investors to arbitrate their claims against the brokerage industry in an arbitration system controlled by the NASD on its face presents an irreconcilable conflict of interest for the brokerage industry. One result has been that many key investor arbitration rules, rather than being neutral and impartial, are written and interpreted to favor the brokerage industry. Rule 12100(u), defining who may serve as a public arbitrator, is a perfect example.
Rule 12100(u) has been widely criticized by investor representatives because it allows professionals to serve as public arbitrators even though they have clear conflicts of interest favoring the brokerage industry. This is particularly offensive and unfair to investors who are compelled to arbitrate in a forum where the rules also mandate that one of three arbitrators be non-public, which means one-third of every three-member panel is directly associated with the brokerage industry. Combining a mandatory industry arbitrator with one or possibly two conflicted public arbitrators on a three-member panel presents an overwhelming appearance of bias to investors that should not be tolerated by any organization dedicated to investor protection.

Rule 12100(u) currently provides that professionals such as lawyers and accountants may serve as public arbitrators even though their firms have substantial industry business, so long as revenues from the securities industry within the past two years are less than 10% of their annual firm revenues. The absurdity of this rule is apparent in that professionals may serve as public arbitrators, ignoring their material industry conflicts which may exceed millions of dollars of fees from the brokerage industry.

Furthermore, even the 10% limitation of Rule 12100(u) is not enforced by the NASD because professional arbitrators are not required to perform annual fee calculations and there is no NASD reporting requirement for this information. And although Rule 12403(b)(2) allows investors to ask arbitrators for information, the NASD incredibly does not require arbitrators to answer investor questions, so that inquiring investors cannot determine if arbitrators meet the 10% standard or even evaluate the extent of their conflict of interest.

I agree with the NASD that Rule 12100(u) must be amended to address its treatment of public arbitrator industry conflicts. But the NASD proposal, while an improvement, does not address the Rule's fundamental flaw, which is to impose conflicted public arbitrators on investors who must already face a mandatory industry arbitrator on their panel.

The NASD proposal to amend Rule 12100(u) would continue the rule in its current form except it would disqualify professionals who receive in excess of $50,000 in fees annually in the last two years, from disputes involving investor accounts or transactions. The NASD proposal must be revised as follows in the interest of investor protection.

1 Expand the NASD Proposal to Apply to All Industry Fees. The NASD proposal contains an obvious flaw in that it fails to recognize that receiving fees from the securities industry presents a basic conflict for an arbitrator regardless of the nature of the industry work performed. The fee disqualification proposal must be expanded to apply to all industry work. Not making this change means the 10% rule is the only limitation on public arbitrators performing non-customer dispute work for the securities industry. This would allow an arbitrator's firm to accept millions in fees from industry clients and still be classified as a public arbitrator. The appearance of a pro-industry bias is clear. No investor would willingly accept such a standard because it is unfair on its face. The $50,000 limitation proposed by the NASD must be applied to all industry work and the 10% rule, which allows material conflicts and is unworkable on its face, must be eliminated.

2 Arbitrator Fee Reporting Must Be Mandatory/Investor Questions Must Be Answered. Without a mandatory annual arbitrator fee reporting requirement and a provision requiring arbitrators to respond to party inquiries concerning conflicts of interest, any rule limiting securities industry fees is unenforceable. Failure of an arbitrator to file annual fee reports should result in disqualification. Conflict rules which are not coupled with reporting and disclosure requirements are mere window dressing and are an affront to any organization charged with protecting investor interests.

Conclusion

It is imperative that the SEC address the fundamental flaws of Rule 12100(u) in its consideration of the NASD proposal. Conflicted public arbitrators corrupt the NASD arbitration process, and the NASD should not be allowed to impose them on investors already subject to mandatory arbitration with an industry arbitrator.

I concur and ask that you consider the foregoing.

Sincerely,

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