

# PACE INVESTOR RIGHTS PROJECT

## Pace University School of Law

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July 14, 2005

Jonathan G. Katz, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington D.C. 20549-9303

**Re: File No. SR-NASD-2004-013 -- Proposed Rule Change to Amend  
NASD Arbitration Rules for Mediation Proceedings**

To Whom It May Concern:

The Pace Investor Rights Project (“PIRP”) at Pace Law School welcomes the opportunity to comment on NASD’s proposal to amend its Code of Arbitration Procedure (“Current Code”) and establish the NASD Code of Mediation Procedure (“Proposed Mediation Code”). PIRP’s mission is to advocate on behalf of investor justice, particularly with respect to the rights of small, individual investors.

NASD Dispute Resolution’s (NASD-DR) current mediation program allows disputing parties to voluntarily submit their otherwise arbitrable customer disputes to a third-party mediator who attempts to facilitate the parties’ settlement of the matter. NASD-DR consistently reports a greater than 80% settlement rate of its mediations and high levels of satisfaction by its participants. At the same time, securities arbitration in the past few years has become more litigious, time-consuming and formal as well as acutely controversial.

In a forthcoming article, Professor Gross has analyzed in detail the fairness of securities mediation and has concluded that it is fair to the individual investor because it maximizes party control over the process, is encumbered by only a minimal level of regulation, and offers procedural justice at relatively low cost and more efficiently than arbitration.<sup>1</sup> Because the Proposed Mediation Code makes no substantive changes to the Current Code with respect to the mediation process thereby preserving the current system, and only enables individual investors to better understand through “plain-English” revisions the mediation rules, we endorse this rule change.

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<sup>1</sup> See Jill I. Gross, *Securities Mediation: Dispute Resolution for the Individual Investor*, 21 OHIO ST. J. ON DISP. RESOL. \_\_ (FEB. 2006) (forthcoming).

Please do not hesitate to contact us if you have any questions regarding these comments. Thank you for the opportunity to comment on this proposed rule change.

Sincerely,

*Jill Gross & Barbara Black*

Directors, Pace Investor Rights Project