January 21, 2004

submitted electronically to
rule-comments@sec.gov

Secretary, Securities and Exchange Commission
450 Fifth Street, N.W.,
Washington, D.C. 20549-0609

Re: 1st Global Capital Corp response to proposed NASD CEO/CCO certification requirement
File No. SR-NASD-2003-176

To Whom It May Concern:

1st Global Capital Corp. ("1st Global") is a fully disclosed retail broker-dealer registered to conduct business in all domestic jurisdictions, with over 1200 Registered Representatives offering securities services through nearly 600 branch and non-branch locations.

As the Chief Executive Officer of 1st Global, I appreciate the opportunity to submit comments on the issues raised in the above captioned proposed rule change by the National Association of Securities Dealers, Inc ("NASD").

The NASD has proposed a requirement for each member to certify annually that it has processes in place to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable securities rules and laws. The stated purpose of the certification is to enhance investor protection by encouraging senior management to focus increased attention on a member's compliance and supervisory systems and by fostering regular interaction between business and compliance officers. We believe this purpose is already fostered under the current rules governing member conduct and that the proposal will increase litigation costs industry-wide. Furthermore, we are of the opinion that the certification proposal is nothing more than a clumsy quick fix designed for political expediency to correct perceived concerns about the industry as a whole that are more a function of individual transgressions than systemic problems. For these reasons, we are opposed to the adoption of the proposed rule.

The certification requirement is redundant and unnecessary

Conduct Rule 3010 already mandates that a firm establish supervisory policies and procedures that are reasonably designed to achieve compliance with applicable rules and law. A certification requirement adds nothing other than a second potential rule violation for the same underlying transgression – not having a reasonably designed supervisory system in place. It does, however, offer enhanced opportunities for a regulator (as always with the benefit of hindsight) to read the word "reasonable" out of the supervisory standard of conduct.

The certification requirement will expand liability and increase the cost of litigation

In its submission to the SEC, the NASD states that it disagrees with the proposition that the proposal would create new liability for CEOs and CCOs. Furthermore, the NASD states that the potential for merit-less litigation should not dictate its regulatory actions. We find appalling the NASD's inability to anticipate the probable effects of its rule-making on its members, in particular the significant impact upon its members of the legal costs resulting from the increased liability and litigious activity that will be associated with this proposal.

This new certification requirement will impose a new duty upon CEOs and CCO. With any new duty comes a new liability. We are of the opinion that the NASD's assertion that no new liability will be created is absurd and lacks the test of common sense. Perhaps if we theoretically bifurcate liability into *actual* liability and *potential* liability we may be able to understand such an assertion. No new *actual* liability will be created since the ranks of those who have established a reasonable system of supervision and the ranks of those who have not will remain constant before and after the implementation of any certification requirement. However, if this assumption is the basis for the NASD's benign outlook then it is at our peril that they ignore the reality of the United States legal system.

A certification requirement will result in one more cause of action – a new *potential* liability. The CEO and COO will be named, as a matter of course, in all consumer litigation and the certification itself will become exhibit A in the claim. Our system would be perfect if proving unfounded allegations were cost free; however, such is not the case. It would also be close to perfect if abusive litigation were dealt with by sanctions as the NASD asserts it should. Unfortunately, I believe the collective industry experience would support the fact that arbitrators are loath to sanction public customers.[1] We operate in a less

[1] If the NASD has data that indicates otherwise, we would welcome its publication. For instance, what is the total amount of (i) sanctions and (ii) attorney's fees awarded to firms or registered representatives who were defendants in customer arbitrations in 2003. For comparison purposes, what is the total amount of the

than ideal system that imposes significant costs on defendants involved in such matters regardless of the merits of the allegations. For this reason, a cost benefit analysis leads to many settlements without an ultimate determination as to the *actual* liabilities of the parties. With this backdrop, the personal involvement of the CEO and CCO in consumer litigation will ultimately drive up the real cost of defense. Perhaps the NASD does not recognize the opportunity costs associated with the CEO/COO expending firm resources defending alleged misdeeds of their registered representatives, as compared to proactively leading their firms as business enterprises. In other words, would the CEO and CCO prefer to participate in litigation as one of the named parties or would they prefer to participate in the management of their company?

If the goal is, as the NASD states, merely to focus on the obligations of the compliance function in an unprecedented manner and forcing regular and productive interaction with the CCO by the CEO, then we would suggest eliminating the certification proposal and issuing interpretative material in conjunction with Conduct Rule 3010 to that effect. I meet with my CCO as a matter of procedure every other week and at any time either of us deems it necessary. I do not need a rule or certification requirement to convince me that such a meeting is a necessity.

If the collective comments opposing this certification requirement do not give pause and this proposed certification requirement is enacted, then the **NASD should provide guidance in the interpretative material that the certification is not discoverable in customer litigation.** This action would guard against potential abuse. Whether the NASD recognizes the validity of the industry's concern about this issue or not, the NASD must realize that it cannot predict the future. If the concerns prove warranted, such an outcome could prove detrimental to the industry. The NASD must recognize this possibility and take action to prepare for it.

In summary, we are opposed to the adoption of the proposed certification rule. We believe it will impose unquantifiable yet significant costs for redundant and questionable benefits.

Again, we thank the Commission for the opportunity to comment on these important issues.

Sincerely,

Stephen A. Batman
CEO

(i) sanctions and (ii) attorney's fees awarded to customers who filed a customer arbitration against a firm and/or registered representative in 2003.