

VIA E-MAIL AND U.S. MAIL

September 9, 2003

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: NASD Proposed Change to Rule 10308: Restrictions of Eligibility to Serve as a
Public Arbitrator

Dear Mr. Katz:

A.G. Edwards & Sons, Inc. ("Edwards") appreciates the opportunity afforded by the Securities and Exchange Commission ("SEC") to comment on the rule change proposed by the National Association of Securities Dealers, Inc. ("NASD"). Edwards agrees with all alterations to the definition of "public arbitrator," save one. Edwards disagrees with the NASD's proposed change to Rule 10308(a)(5)(A)(iv) for the reasons that follow.

The Premise Underlying The Proposed Change Is Questionable.

As a preliminary matter, Edwards questions the supposition underlying the NASD's proposed rule change. The proposal presumes that any individual fitting the description of :

"an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years for any persons or entities listed in paragraph (a)(4)(A)"

is, *ipso facto*, biased (or has an appearance of bias) in favor of the securities industry (and against customers). Such a sweeping indictment of an entire group of people based solely upon the sources of their employers' income can only be based upon prejudice or unsubstantiated innuendo. Before taking such a radical step, research should be conducted to substantiate the innuendo. No such research was proffered by the NASD to substantiate its proposal.

Further, if the sources of an employers' income is sufficient to indict an individual as being biased (or having an appearance of bias), then the inverse is also necessarily true. Namely, any individual fitting the description of :

“an attorney, accountant or other professional whose firm derives 10 percent or more of its annual income during the last two years from persons or entities adverse to any persons or entities listed in paragraph (a)(4)(A)”

would also, *ipso facto*, be biased (or have the appearance of bias) against the securities industry.

The Language Of The Proposed Changes Is Unclear.

First, the use of the phrase “other professional” is overbroad and may lead to dubious future challenges of arbitrators. The use of the term “professional” in the vernacular has a far broader and varied meaning than it once did. The term is now applied to almost any individual with a skilled labor job. For example, the noun “professional” is defined as *inter alia*, “a person who does something with great skill.” See Webster’s New World Dictionary, Third College Edition (Simon & Schuster 1988). Accordingly, the word “professional” can mean a skilled employee who is good at his or her job. Obviously, this term would include doctors, dentists, insurance agents, pharmacists, etc., but may also include (or, more importantly, it could be contended that it includes) paralegals, professional sports figures, policemen, firemen, computer analysts, etc. Quite frankly, in today’s world, it is more difficult to define those individuals who are deemed not to be “professionals” than the alternative.

Second, the use of the word “firm” is equally unclear, because the term is undefined. The word “firm” is defined “popularly, [as] any business company whether or not unincorporated.” See *id.* Accordingly, the word “firm,” without further definition, simply means any business, partnership, corporation, unincorporated association, limited liability company, etc. The following examples illustrate how certain individuals might be challenged as public arbitrators because of this definition:

Example 1: An accountant in private practice with her own accounting firm prepares tax returns for clients. Ten percent (10%) of the accountant’s income is received from preparing personal tax returns for individuals associated with a broker or dealer;

Example 2: A professional golfer wins the Wachovia LPG Classic. The prize money for this tournament is contributed by Wachovia. Ten percent (10%) of the winner’s annual income for that year arises from the prize money from this tournament; and

Example 3: A skilled employee works for Citigroup. Citigroup derives more than ten percent (10%) of its annual revenue from Citibank Brokerage Services.

The Effects Of The Proposed Change Are Uncertain.

Because, as illustrated, any skilled employee of a business that derives ten percent (10%) of its annual revenues during the past two (2) years from the securities industry cannot serve as a public arbitrator, accepting the NASD's proposal could severely reduce the number of competent candidates eligible to serve as public arbitrators. Nevertheless, the NASD undertook this proposal without providing any research to support its conclusion that the imposition of such restrictions would have no significant effect on the pool of eligible public arbitrators. Such research could have been easily undertaken by the NASD utilizing its web-based technology to solicit opinions from each of its public arbitrators.

Further, individuals willing to volunteer to serve as public arbitrators may be dissuaded from doing so after considering the ramifications of this proposal. If an attorney or accountant is challenged regarding the sources of the revenue of their business, and the percentages thereof, will the attorney or accountant continue to serve as an arbitrator in face of such a challenge? Will the arbitrator be forced to produce his or her financial records to prove the sources of income? Would any attorney or accountant be willing to serve if subject to such a threat? Has the NASD considered how it intends to respond in the face of such challenges?

For these reasons, Edwards disagrees with the NASD's proposed change to Rule 10308 (a)(5)(A)(iv). Edwards believes it is based upon faulty perceptions and will lead to untenable results. Notwithstanding its strong disagreement with the proposal, Edwards believes that if such a definition is adopted based prejudice or innuendo, then the inverse of the proposal must also be adopted based on the same alleged bias.

If we can provide any further information concerning this comment, please call James Browning at (314) 955-7980.

Sincerely,

Stephen G. Sneeringer
Senior Vice President and Counsel

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