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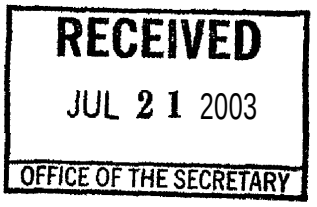

July 16, 2003

Secretary
Securities & Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: File No. SR-NASD-2003-95 dated July 12, 2003

Dear Sir or Madam:

This is submitted as an objection to the changes proposed by NASD Dispute Resolution, Inc. ("NASD-DR") with respect to Rule 10308 of the Code of Arbitration Procedure.

NASD-DR states (page 2) that the proposed change to amend Rule I0308 is intended "to further ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations." My objection relates primarily *to* the proposal that public arbitrators may not be investment advisers. This proposal is deficient and ill-advised for the following reasons:

1) No definition or explanation is given for the term "significant ties";

2) There is no differentiation between commission-based advisers and those that are Compensated on a fee-only basis; and

3) There is no differentiation between independent advisers and those affiliated with broker-dealers.

I submit that the exclusion of independent, fee-only advisers from the rolls of public arbitrators is contraindicated by the realities of the arbitration process and would be detrimental to the interests of public investors. The absence of such professionals on three-person arbitration panels would typically mean that the *industry* arbitrator would be the investment expert. Consider the following scenario:

> An investor claims that his broker made unsuitable investments for someone with conservative goals. The broker's counsel states that the investor bought options and gold stocks through his previous broker and is therefore clearly a speculator. The claimant is an unsophisticated investor appearing ***pro*** se; he simply followed his prior broker's advice without understanding the reasons for those recommendations. The public arbitrators are not investment professionals, so they must rely on the *industry* arbitrator to explain the issues. That arbitrator agrees with the broker's attorney: options and gold are obviously risky investments, so the claimant cannot be considered a conservative investor. The investor's claims are denied in their entirety. *This decision is inequitable* because the investor bought protective puts and sold covered calls, which are conservative investments after many years of a bull market. Moreover, the purchase of a small percentage of gold stocks to hedge his other equity holdings is also a prudent move and actually *reduces* the risk level of his portfolio, according to Modern Portfolio Theory.

It is important to note that the typical claimant and his representative usually lack the expertise of a broker's attorney. If, as in the above scenario, the arbitration panel does not include a public arbitrator who can counterbalance the claimant's disadvantage, the outcome is biased in favor of the broker. Thus, contrary to NASD-DR's implied assertion that an investment adviser would favor the securities industry, the exact opposite is likely to be true.

I have no doubt that the officials of NASD Dispute Resolution, Inc. and its parent organization believe that the proposed changes in Rule I0308 would benefit the public by improving the perception of fairness. They do not realize that bending over backward can cause a loss of balance. They also fail to foresee the unintended consequences of the proposed dumbing-down of arbitration panels, to the detriment of claimants.

My background: forty years as an investment professional (securities analyst, independent, fee-only investment adviser); the past several years as a public arbitrator for NASD-DR; education and training includes CFA, MBA in Finance, BA in Economics. I have also prepared arbitration claims for several clients and acted as an expert in securities arbitration – all *against* brokers.

Am I to be disqualified as a public arbitrator because I have some imaginary "significant ties" to the securities industry? The last check I received from a broker-dealer was in 1969. I would find it more understandable if I were to be banned as an arbitrator because I am likely to be biased *in favor* of claimants.

Without going into details, I also object to other proposed changes, such as defining an "immediate family member" as an *unrelated* member of a household of a non-public arbitrator.

As I see it, the solution is simple (although the specifics may require some work): **full disclosure** by arbitrators. Let the parties and their representatives consider a large number of competent, qualified arbitrators and strike those they consider potentially biased. Otherwise, the arbitration process will become increasingly dominated by industry experts and lawyers, thereby lessening claimants' chances for equitable results.

By the way, NASD Dispute Resolution, Inc., presuming SEC approval of the proposed changes, has already sent out questionnaires designed to exclude investment advisers. Also, as noted on page 15 of their filing, "Written comments were neither solicited nor received."

I hereby strongly recommend that the SEC reject these proposals and require the officials of NASD-DR to fully justify these changes, with the distinctions noted above.

Yours truly,

Joseph O'Donnell

Attachment

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or **of** the Commission

Not **applicable.**

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY:_____

Barbara Z. Sweeney , Senior Vice President and Corporate Secretary

Date: July 12, 2003