

February 21, 2005

Subject: File No. SR-NASD-2004-164

Dear Jonathan G. Katz, Secretary:

My comments on the above follow. I am an Accredited Professional Mediator in New Jersey and a CPA with over 40 years of diversified experience with prestigious medium-sized CPA firms in New York City including serving as the managing partner for 25 years. In June 1995, I took the NASD sponsored course on basic mediation training at the US Bankruptcy Court in New York City. In Mar. 1996, I took the Advanced Mediation Training given by the American Arbitration Association in Washington, DC. In June 1998, I took the Advanced NASD Mediation Training Course. In 1996, I was admitted to the Commercial Mediation Panel of the AAA and still serve on it. I am also on the Mediation Panels among others of the CPR Institute of Dispute Resolution Financial and Accounting Panel of Distinguished Neutrals, the U.S. EEOC, and the New York and New Jersey Court Mediation Panels. Since 1995, I have conducted over 150 mediations and 50 arbitrations (in my role as an arbitrator). Several of my mediations involved major public corporations with claims ranging from \$10 to \$50 million. Among my arbitrations are more than ten at the NASD. I have a strong financial background and at one time was a registered investment advisor at the SEC.

In 1997, I was admitted to the NASD Panel of Mediators. Since then I have been assigned to only one mediation and that was during Mediation Month when there was very little fee for my case and I may have been called because the mediation had to take place within one week and others were not available.

My comments on the proposed rule change for the selection of arbitrators to be done randomly is that if this rule is passed that it also be required that a similar rule apply to mediations. When I appealed to the NASD staff for mediation assignments because of my advanced securities, financial, and mediation background and extensive training given to me by them, I was told that the mediation selection was done by the parties and that they tended to select mediators that they knew. As a result almost all of the mediations are performed by a small group of mediators. I do not think that this is in the public interest or provides for adequate competition. The public should have the right to select from a randomly selected list of mediators as is proposed by the NASD for arbitrators. Right now the lists given out contain mainly the names of the mediators that have done almost all of the preceding mediations. I believe inclusion for mediation selection is timely since the system being changed is called "the *Mediation* and Arbitration Tracking and Retrieval Interactive Case System" (MATRICS).

Very truly yours,

Philip Zimmerman
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