



Securities Industry Association

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February 25, 2005

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0609

Re: File No. SR-NASD-2005-007

Dear Mr. Katz:

The Securities Industry Association (“SIA”)¹ appreciates the opportunity to comment on the proposed rule change by the National Association of Securities Dealers, Inc. (“NASD”) to adopt a new Rule IM-10308 regarding mediators who serve as arbitrators. SIA supports the proposed rule change.

The NASD adopted several rule changes in 2004 that were intended, *inter alia*, to provide that arbitrators who received more than 10 per cent of their revenue from industry parties, or devoted more than 20 per cent of their professional work to securities industry clients, could not be classified as “public” arbitrators. This has led to some confusion as to whether fees paid to mediators counted towards the 10 per cent and 20 per cent thresholds. We agree with the view of the NASD Dispute Resolution Board that the rules should not be construed to cover revenues and work associated with serving as a mediator. Simply acting as a mediator does not give rise to the sorts of potential conflicts that led the NASD to adopt its rule changes limiting who could be classified as a public arbitrator. Mediators perform a valuable service, and should not be deterred from performing that role due to an unintended application of the rules. The proposed rule change is therefore appropriate.

¹ The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA’s primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry employs 790,600 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated \$213 billion in domestic revenue and an estimated \$283 billion in global revenues. (More information about SIA is available at: www.sia.com.)

Thank you for giving SIA the opportunity to comment. Please contact me at 202-216-2000 or gkramer@sia.com if you have any questions.

Sincerely,

George R. Kramer
Deputy General Counsel

Cc: Catherine McGuire, Chief Counsel, SEC Division of Market Regulation
Paula Jensen, Deputy Chief Counsel, SEC Division of Market Regulation
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