



M & A INTERNATIONAL, INC.

Alan S. Carmel, Esquire

July 25, 2005

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-9303

RE: SR-NASD-2005-032

Dear Mr. Katz:

This letter will set forth my comments and opinions concerning the proposal submitted by the National Association of Securities Dealers to, under certain circumstances, require arbitrators to prepare reasoned awards.

The purpose of the proposed rule change is to increase investor confidence in the fairness of the NASD arbitration process. This stems from complaints received by the NASD concerning the failure of decisions to contain written explanations or opinions concerning the decision itself by parties who lose and complaints concerning the insufficiency of the award. It is the belief of the NASD that reasoned awards will abate those complaints.

It is my considered opinion that reasoned awards will not be the panacea sought. I have been an arbitrator for the NASD, the NYSE and other securities organizations for almost 30 years and have had numerous discussions with other arbitrators on this topic.

Although some complaints are made with regard to the insufficiency of the award, reasoned awards need not include damage calculations. If damage calculations are not included in these awards, how will either party understand the reasonableness of the award? A reasoned award without the damage calculation will only add to the frustrations of the parties.

The award will "...state the reason(s) each alleged cause of action was granted or denied and will address all claims involved in the case, whether brought by the party requesting the explained decision or another party." The last non-*pro se* case I heard from the NASD had six causes of action along with motions to dismiss and other motions. To require a panel who hears cases

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mainly to give back something to the industry and community would be an undue burden. In this modern day of the computer with word processing and templates, it becomes very easy for the complainant's attorney to include a veritable laundry list of every cause of action possible, each requiring an explanation by the panel. I pity the poor sole arbitrator who would be laboring under the same requirements.

The NASD has agreed to pay each arbitrator an additional \$200 in those cases requiring reasoned awards. On those panels where only one arbitrator is an attorney, there will be a tendency for the non-attorney arbitrators to ask the lawyer to draft the decision. Indeed, on any panel, one person will either volunteer or be drafted to prepare the award. This means one panelist does 90% of the work on the award while all are compensated equally. And what does this do to the arbitrator who dissents? Will the dissenter be required to issue an explanation as well? If the dissenter agrees with the liability issue but not over the damages granted, how will that be explained without a damage calculation?

A reasoned award will, as recognized by the NASD, require additional time on the part of the arbitrators. Leaving aside the issue of whether or not the additional honorarium is adequate, how much additional time will be allowed to draft such an award and have it reviewed and agreed to by all the arbitrators? This will require additional conferences amongst the arbitrators to discuss the reasoning, wording, changes, disagreements, etc.

Arbitration very often brings into play the desire by the arbitrators to provide an equitable outcome to a customer's complaint. Reasoned awards will inhibit this process. I have sat on numerous panels where the arbitrators might have disagreed over specific counts but were able to put together an equitable award to the satisfaction of all arbitrators. How would a panel explain to the parties that arbitrator 1 felt that recovery should be allowed under count 1, arbitrator 2 felt that recovery should be allowed only under count 2 and arbitrator 3 felt that number 3 was the count that worked? This would do more to decrease the confidence in the process rather than to increase it.

No one wants arbitrators to base their award on how easy or difficult it would be to put it into a reasoned format. What arbitrator wants to put in writing that Claimant failed to prove his case because the panel members felt that the witnesses lied or were not credible?

This brings us to the issue of appeals. There seems to be two schools of thought here. Some believe that reasoned awards will create a drop in the number of appeals. Others feel that the number of appeals will increase. (Interestingly, I know of no one who feels that the number of appeals will not change dramatically one way or the other.)

It is my belief that the number of appeals will increase. At the present time X cases are appealed. They are appealed without the appellant having any idea as to why the arbitrators ruled as they did. If reasons for the award were given, attorneys would be dissecting each word of the decision to seek grounds for appeal. If they make X appeals with no real grounds, imagine the number of appeals when reasons are given.

We must keep in mind that these decisions will be written by what must be considered a voluntary group of arbitrators given a modicum of training by the NASD. These are not judges with years of training and practice in writing reasoned awards. While some will be attorneys, we will also have stockbrokers, accountants, and people from all walks of life writing or contributing to these opinions. The opportunities for grammatical mistakes, poor selection of words, misused or misplaced punctuation, etc. are too numerous to not think that there will be an increase in appeals.

While others who have commented on the proposed changes have also commented on arbitrator compensation, I will not do so. Nevertheless, I feel that changes such as the ones proposed here are pushing us more to the inevitability of professional arbitrators, fully trained in the arbitration process. Will that increase investors' confidence in the system?

Thank you for allowing me to present my comments and opinions.

Very truly yours,

Alan S. Carmel, Esquire
President