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Jonathan G. Katz, Secretary
SECURITIES AND EXCHANGE COMMISSION
100 F Street, NE
Washington, DC 20549-9303

Via Electronic Transmission

Re: Comment on File Number SR-NASD-2005-032

Dear Mr. Katz,

This letter will serve to provide commentary on the above-referenced proposal by the NASD to amend the Code of Arbitration Procedure in order to require arbitrators to provide an "explained decision" upon the request of a customer or an associated person in an industry dispute.[1/] In short, I strenuously oppose the proposed amendment, along with the majority of other individuals that have invested the time and money to provide commentary,[2/] inasmuch as the amendment poses a number of significant problems for public investors and the industry alike and will do little, if anything, to accomplish the purpose behind its proposal.

The NASD has stated that its purpose behind proposing this rule is "to increase investor confidence in the fairness of the NASD arbitration process" - a purpose to which I raise 2 questions: (1) Is there really a need to increase "investor confidence"?; and (2) Would "investor confidence" actually be increased by virtue of an "explained decision"? I submit that the answer to both of these fundamental questions is a resounding "NO". If anything, the proposed rule will decrease the effectiveness of the arbitration system to the detriment of

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1/ The principal focus of my practice is the defense of individual reps and firms in customer initiated NASD and NYSE arbitrations.

2/ At the time of writing this letter, comments had been submitted by 14 individuals with 11 (or 78.5%) opposing or criticizing the proposed rule as written and 3 (or 21.5%) advocating it.

everyone involved in the process and will essentially gut the intended purpose of the arbitration process as a whole - namely to provide a cost and time efficient means of dispute resolution that is fair to everyone involved.

First, the need to "increase investor confidence" is dispelled by the innumerable studies conducted by a number of different groups and organizations through the years that reflect that investors actually fare better than the industry in SRO-sponsored arbitrations and that there is very little difference statistically between the success rates of customers in SRO-sponsored arbitrations and non-SRO arbitrations. For example:

- in May 1992, the GAO issued a report titled Securities Arbitration: How Investors Fair wherein it reported that investors prevailed 59% of the time in NASD, NYSE and AMEX arbitrations and that investors fared substantially the same in AAA arbitrations where the success rate in favor of the investor was 60%;

- in 1999, a study was conducted of the evaluations submitted by parties to NASD arbitration proceedings and it was determined that more customers than industry participants viewed the process as just and equitable (see Gary Tidwell, Kevin Foster & Michael Hummel, Party Evaluation of Arbitrators (1999));

- in June 2000, the GAO issued yet another report, which set forth similar conclusions as those contained in its May 1992 Report;

- in 2001, SICA issued a similar report, further supporting the GAO's conclusions that customers fared better than the industry in SRO-sponsored arbitrations;

- in 2002, SICA issued a report on its pilot program permitting public investors to elect to arbitrate their disputes in certain non-SRO forums and found that the vast majority of the time, when given freedom to choose between SRO-sponsored forums and a non-SRO sponsored forums, public investors chose the SRO-sponsored forum;

- in November 2002, Dr. Michael A. Perino issued a report to the SEC regarding arbitrator conflict disclosure requirements in NASD and NYSE arbitrations and concluded therein that there was little support for the

proposition that NASD and NYSE arbitrations were unfair for the public customer; and

- the NASD has statistically analyzed the cases decided by arbitration panels in 2004 and acknowledged that more than 50% of the time - 55% to be exact - customers prevailed.

Available studies clearly and overwhelmingly reflect that there is nothing intrinsically unfair about the NASD arbitration process or that there is a lack of confidence on the part of the public that needs to be corrected. Indeed, if anything, the process is weighted in favor of the customer, who many times can receive monetary remuneration based upon claims that lack any legal foundation, but that do not require any reasoned explanation.

Second, with respect to the issue of whether allowing customers to request and obtain an explanation for an award will increase their confidence with respect to the fairness of the process, I submit that in all likelihood the exact opposite will occur. As an initial matter, the success rates of customers will likely decrease when arbitrators, who were previously willing to award some damages to a customer based upon a sense of equity as opposed to the law, find themselves hard pressed to proffer a reasonable explanation for an award that will survive appeal. Arbitrators will likely become more focused on technical legalities and stricter in requiring claimants to comply with legal standards of proof when they are forced to provide fact-based reasons for their awards.

Moreover, customers, whom the NASD believes views arbitrators as comparable to judges in a court of law, will come to recognize that there are arbitrators that lack sufficient knowledge, skill and training to serve in that capacity. It is difficult enough for a judge with years of legal education and training staffed with law clerks to draft a reasoned opinion much less a non-attorney with no legal background or knowledge or training and no experience in the securities industry.

Not only is the proposed rule flawed inasmuch as it: (1) seeks to correct something that needs no correction; and (2) will undermine its intended purpose by decreasing, rather than increasing, investor confidence, but it is also riddled with a number of other problems. Just by way of example, it will

- not serve to foster an equitable and fair process, but rather will serve to unfairly further weight the process in favor of the customer by equipping customers, and customers alone, in customer initiated cases with the right to request an explained decision. The broker and/or firm named as parties in the proceeding will have no equal right. This flies in the face of basic, fundamental notions of fairness;

- increase appeals and remands and consequently the amount of time and money required to bring a matter to a final conclusion, a result which is inimical to the arbitration process; and

- reduce the size and quality of the pool of arbitrators, who will be faced with the daunting possibility of devoting a significantly greater amount of time to the process with little additional compensation.[3/]

In conclusion, the Commission should stand by its earlier decision on this issue as set forth in its May 16, 1989 Order, and decline approval of the proposed rule, which would gut the very benefits offered by the arbitration process. Thank you for the opportunity to comment.

Very truly yours,

Rebecca C. Davis

[3/] One commentator, specifically David Plimpton, Esq., indicated that it takes him at least a day or two of additional work to provide an explained decision, and, in one instance, it even required an entire week of additional work.