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SR-NASD-2005-032

228 Secret Cove Drive
Lexington, SC 29072
March 14, 2005

Kathleen Maguire
SEC, Division of Market Regulation
450 Fifth Street, NW
Washington, DC 20549

RE: Yes Vote for NASD Arbitration Rule

Dear Ms. Maguire,

I am an investor who is involved in a dispute with my brokerage firm. My complaint is being filed (or may have already been filed) with NASD Dispute Resolution. It is my understanding that this will be an arbitration hearing.

In following the results of other NASD arbitrations, I have not been able to understand the wide range of awards because the arbitrators do not have to explain their reasoning. This is very unfair to the small investor who has already been harmed monetarily and now begins to question the arbitration process.

I am now aware that there is a new rule being proposed that will require arbitrators to give an explanation of their reason for an award decision when requested to do so by the claimant. It only makes sense that the small investor should know why there was a ruling for or against his claim. There may be sealed verdicts in other legal dispute resolutions but at least the two parties involved know how the decision was reached.

There needs to be more sunshine on this arbitration process to assure the single investor that he is getting a fair evaluation of his dispute against the big brokerage firm. **I strongly urge the SEC to approve this new rule.** I cannot understand why this rule of silence has been allowed in the past. But, I imagine that the big money of Wall Street will be trying to convince you that this is not a good rule change. Imagine yourself in a similar position and realize that you would want to know why a decision was made in your case.

Thank you for allowing me to write to you about this subject.

Sincerely,

John G. Black

Enclosure:
Wall Street Journal
3/3/05

WSJ 31305

Sturm, Drang und Spitzer

By Jacob H. Zamansky

Eliot Spitzer has fashioned himself as a champion of individual investors, and the financial media has uncritically promoted his act. But for all his headline-grabbing accusations and charges, he has done virtually nothing for individual investors. Mr. Spitzer has brought about no real reform, and the millions of investors who have been cheated by Wall Street's most prominent brokerage firms have recovered virtually nothing because of his efforts. At the end of the day, the privileged titans of Wall Street owe Mr. Spitzer a debt of gratitude for allowing them to operate virtually unscathed despite their egregious and pervasive wrongdoing.

Let's examine Mr. Spitzer's record:

In announcing the original $1.4 billion settlement he and other regulators helped wrangle from 10 Wall Street firms three years ago, Mr. Spitzer thundered that "our objective throughout the investigation and negotiations has been to protect the small investor." The settlement was based on research reports these firms issued on 90 mostly tech-related stocks that Mr. Spitzer deemed were conflicted. Although the stocks in question once boasted multibillion-dollar market capitalizations before becoming virtually worthless, the restitution fund Mr. Spitzer set aside for the millions of investors who were cheated was a paltry $387 million. Shamefully, none of that money has been distributed to date.

Adding insult to injury, Mr. Spitzer could have required Wall Street firms to admit wrongdoing, but allowed them to settle without doing so. As a result, many arbitration panels have refused to accept Mr. Spitzer's findings as evidence in investor cases, thereby severely limiting the likelihood of recovery. Equally damaging was a comment made by Mr. Spitzer's spokesman to Forbes in May 2003 that WorldCom research published by Salomon Smith Barney analyst Jack Grubman was not judged conflicted as "We did not find Grubman's public and private views were divergent." Citigroup attorneys have repeatedly cited that comment in arbitration hearings, allowing the firm to wiggle out of paying restitution to the scores of individual investors who bought WorldCom stock on Mr. Grubman's recommendation.

It's worth noting that Citigroup, Salomon's parent, subsequently agreed to pay a $2.7 billion class-action settlement related to WorldCom securities it issued while Mr. Grubman was touting the stock, and WorldCom's directors recently agreed to pay an $18 million penalty from their own pockets for negligence in overseeing the company. These settlements provided some meaningful recoveries for investors—but they were despite Mr. Spitzer's efforts, not because of them.

Mr. Spitzer recently made clear that he wasn't truly committed to implementing any real reform on Wall Street. In a Dec. 21 interview on CNBC he said that perhaps some of the rules he spearheaded on research were "overly restrictive" and maybe should be relaxed. This was the same Eliot Spitzer who just two years earlier issued a news release touting the introduction of reforms that would "permanently change the way Wall Street operates."

I'm no fan or defender of outsized pay packages, but Mr. Spitzer's campaign to recover more than $100 million from former NYSE chairman and CEO Dick Grasso offers no benefit to individual shareholders. For starters, that money was awarded and approved by CEOs of some of the leading Wall Street firms—the very firms that ripped off individual investors for billions of dollars. If Mr. Spitzer prevails, any monies he recovers will go to the Exchange's 1,366 seat-holding millionaire members. Given that Mr. Spitzer is using taxpayer-funded resources to clean up a mess caused by the presumed negligence of the NYSE's directors, he should at least insist that most of the money go to an investor restitution fund. If being paid pennies on the dollar is an acceptable settlement for customers shafted by the NYSE's member firms, it should be good enough for the Exchange.

Equally disappointing is that Mr. Spitzer has not used his influence and clout at the NYSE to overhaul its flawed arbitration process, which is stacked against individual investors. For all the NYSE's purported reform, individual investors still do not have a level playing field when going up against their brokers in arbitration.

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Mr. Spitzer deserves credit for putting an end to the corrupt mutual-fund practice of allowing some of the industry's biggest institutional customers to time market stock trades at the expense of their fund holders. The practice was well known and reported several years before Mr. Spitzer chose to make it an issue, yet the SEC chose to do nothing.

But it isn't likely that the restitution Mr. Spitzer has negotiated will have any real impact on individual investors. It also remains far from certain whether the $925 million reduction in expected fund fees over the next five years will come to pass—and it is highly questionable whether Mr. Spitzer's intervention in this area is appropriate or ultimately even beneficial to individual investors. For all the Spitzer *Strum und Drang*, it is business as usual on Wall Street. Though the fleecing of millions of investors took place within blocks of his office, he brought nary a criminal charge against those responsible. The big Wall Street firms got off with wrist-slaps, and Jack Grubman and Henry Blodget—poster boys for conflicts and misinformation—were largely allowed to keep the millions they earned despite their wrongful behavior. Former Citigroup chairman Sandy Weill, who created the industry's most compromised and conflicted financial institution, was also given a free pass.

So what has Mr. Spitzer *really* been doing? In a nutshell, shaking down payola without really changing anything, or threatening anybody important. Count me in the ranks of the unimpressed. Actually, make that deeply unimpressed.

Mr. Zamansky is a securities attorney.