July 20, 2005

United States Securities & Exchange Commission:

Re: SR-NASD-2005-079

I am writing this comment to the NASD's proposed rule change regarding requiring a 10-day notice prior to the serving of discovery subpoenas based upon both my experience as an attorney of record in Approx. 400 SRO arbitrations (with Approx. 125 being tried to conclusion) and my long experience as an NASD and NYSE arbitrator.

I believe that the Commission should not approve the rule proposal.

In my experience, public customer Claimants in disputes with member firms rarely have need for discovery subpoenas addressed to third parties as the vast bulk of the documents they need are in the possession of the Respondent member firm and are required to be produced without subpoena. However, public customer Claimants, who are not required by regulation to maintain their records, generally allege that they do not have the documents requested by the member firm Respondents. (Monthly statements and agreements from other firms they have dealt with as an example) It is rare that a member firm Respondent does not have to issue third party discovery subpoenas to obtain documents the public customer Claimant asserts he no longer has that are necessary for their defense of the arbitration claim.

In addition the proposal's provision for an automatic stay of the subpoena pending decision by the arbitrator(s) allows the objecting party, at least temporally, to frustrate the subpoenaing party from preparing their case. This procedure, which requires no initial showing prejudice, can easily be used to unfairly delay the arbitration process.

Because the proposed rule, in all practicality will only apply to member firm Respondents, it should not be approved by the Commission an as unfair restriction on one type of party to an arbitration proceeding to conduct discovery to prepare its case.

In addition, because of the volume of cases and the schedules of the arbitrators, prompt scheduling of arbitrator review of the subpoena process will be unlikely and an additional burden on the arbitrators.

Very truly yours

Dennis M. Pape