Dear Sir or Madam,

This is to comment on the NASD's proposed revisions to Code of Arbitration Procedure Rule 10322. This office has for many years represented both customers and industry members in NASD arbitrations. We now represent primarily, but not exclusively, customers.

I urge the SEC to reject the NASD's proposal that customers be required to pay Respondents [see footnote] '"the reasonable costs associated with the production of the copies" in order to obtain copies of documents Respondents obtain through third-party subpoenas, for the following reasons:

1. The proposal disproportionately burdens public customers. It is the securities industry participants who overwhelmingly gather records from third parties. It is their decision to add that element of cost to the process. The industry can well afford to do so. Customers must, as a practical matter in almost every case, get copies of whatever it is the Respondents have gathered about them from third parties. Those documents can be voluminous. Claimants often have already lost much or all of their savings, and can ill afford to bear the costs of litigation. This additional cost should not be imposed on the investing public when it is the industry which creates the need for the documents, and which can better afford to absorb the cost.

2. Pricing the copies will add contention and delay to the process. In my experience when there are no rules about how much one can charge for copies, an adverse party (and often third parties like banks and doctors) often charges exorbitant rates. Allowing Respondents to withhold copies of subpoenaed documents until they are paid for will generate disagreements over payment, and create opportunities for Respondents to delay providing copies to the customer. I agree completely with another commenter's observation that:

"The inevitable consequences of expecting a party to pay 'the reasonable costs associated with the production of the copies' is not difficult to foresee. The parties will argue about what a reasonable cost per page is, whether labor costs should be included, and whether payment must be made before or after the documents are produced. In effect, the documents will be held hostage while the parties argue and time passes. Eventually, the issue will be presented to the arbitrators, and valuable time will again be lost. The rule creates an opportunity to obstruct the discovery process, and some parties rarely miss opportunities to obstruct."

The NASD's arbitration process today is highly litigious. Respondents benefit from making the process as difficult and expensive as possible for customers. Respondents' counsel, in my experience, narrowly interpret discovery obligations and vigorously contest and delay the production of documents. Allowing Respondents to withhold subpoenaed documents until they have been paid whatever they demand will contribute to this increasingly serious defect in the system, and will further disadvantage the public.

[Footnote: While it is true, as the NASD says, that the rule would apply equally to both sides, this is much like saying that a law prohibiting one from sleeping under bridges applies equally to the rich and the poor: customers rarely gather documents from third parties, as the Respondents themselves ordinarily have all of the documents relevant to the customer's claim.]

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