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VIA ELECTRONIC MAIL TO
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WACHOVIA SECURITIES

August 7, 2006

Nancy M. Morris, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: **File No. SR-NASD-2005-079 (Notice of Filing of Amendments Nos. 1,2 and 3 to Proposed Rule Change To Revise Rule 10322 of the NASD Code of Arbitration Procedure Which Pertains to Subpoenas and the Power to Direct Appearances)**

Dear Ms. Morris:

Wachovia Securities, LLC ("Wachovia") appreciates this opportunity to comment upon the above-referenced file in which NASD proposed additional amendments to Rule 10322 (the "Rule") of the NASD Code of Arbitration Procedure (the "Proposal").¹ To recap, the Proposal would amend the Rule so that an arbitration panel would have the sole power to issue subpoenas and direct appearances in arbitration proceedings. Wachovia believes that: 1) current industry practice does not warrant such a change; and 2) the Proposal will have a detrimental effect on litigants' ability to research and develop their cases in a timely fashion. Wachovia further explains its concerns below.

Wachovia respects NASD's attempt to bring clarity to and reduce gamesmanship in the subpoena process.² However, Wachovia has experienced relatively few disputes concerning third-party subpoenas with the Rule's present form, in which the parties' attorneys issue subpoenas as permitted under law and involve the panel only to resolve any disagreements. As such, Wachovia respectfully asks the Commission to consider amending the Proposal to allow parties to agree to "opt out" of Rule and issue subpoenas directly. Such a change would preserve a practice that has capably served both claimants and respondents for many years. It is also consistent with NASD's practice to allow procedural modifications by mutual consent.³

¹ See SEC Rel. No. 34-54134, 71 FR 40762 (July 18, 2006).

² *Id.* at 40764.

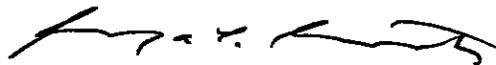
³ For example, NASD presently allows parties to agree to use a "Discovery Arbitrator" or to contact the arbitrators directly. See NASD, "Discovery Arbitrator Pilot" at http://www.nasd.com/ArbitrationMediation/ResourcesforParties/NASDW_014765 (last visited July 28, 2006) and Rule 10334, respectively.

Should the Commission decide against permitting litigants to opt out of the Rule, then Wachovia respectfully requests that the Commission ask NASD to adopt additional changes to prevent unnecessary and potentially burdensome delays in the arbitration process. As background, NASD presently sends the litigants a list of potential arbitrators at or about the time the respondent files its answer. NASD appoints the panel only after each side submits its rankings. Although the litigants do not learn their panel's identity for many weeks, they are free to begin discovery and continue to develop their respective cases. The Proposal would severely curtail this practice. It would prevent the parties from starting third-party discovery until NASD convenes the panel, which, in turn, would increase the time needed to complete discovery. Two unenviable consequences are sure to follow: 1) the parties would seek to schedule hearings farther into the future to accommodate the additional time needed to complete discovery; and/or, 2) the parties' ability to present their cases would be compromised for lack of time to complete discovery.

Wachovia recognizes that NASD's discovery arbitrator pilot program potentially could address some of these concerns; however, NASD surely did not intend for the Proposal to compel litigants to use this pilot program given its limited availability and history. Therefore, Wachovia respectfully requests that if the Commission permits NASD to amend the Rule to provide for panel pre-approval of all subpoenas, then it also asks NASD to amend the Code of Arbitration Procedure to appoint the panel within 45 days of service of the claimant's statement of claim.⁴ Alternatively, if naming the full panel is impracticable within this period, then Wachovia asks that the Code of Arbitration Procedure be amended so that NASD appoints the chairperson within 45 days. In addition, to ensure that parties can conduct discovery in a timely and orderly manner, Wachovia also requests that the Commission amend the Proposal to mandate that the panel must rule on any subpoenas no later than 10 days after receipt of the motion and subpoena.⁵

Wachovia trusts that the above is responsive to the Commission's request for information and would be pleased to meet with the Commission or its Staff to answer any questions regarding this matter.

Respectfully,



Ryan P. Smith

⁴ This 45-day window is consistent with the time in which respondents have to answer a statement of claim. See Rule 10314(b)(1).

⁵ In the Proposal, the panel must simply "rule promptly." See Proposed Rule 10322(c).