Public Investors Arbitration Bar Association

August 14, 2006

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: Proposed Amended Revisions to NASD Rule 10322
SR-NASD-2005-079

Dear Ms. Morris:

The Public Investors Arbitration Bar Association ("PIABA") is pleased to comment in response to the Commissions' Release No. 34-54134, issued on July 12, 2006, concerning the NASD's proposed subpoena rule (Rule 10322).

As you know, PIABA is a national bar association of attorneys who represent investors in securities arbitration matters. Our members have expressed serious concern over proposed section 10322(e), which requires that parties who obtain copies of subpoenaed documents "*shall be responsible for the reasonable costs associated with the production of copies.*" The custom in securities arbitration is and has been that each party makes document discovery available to other parties without cost. PIABA requests that the quoted language be removed from the proposed rule, and that common custom continue to govern document discovery. We are aware of no problems resulting from the allocation of costs as a result of this long-standing practice, and we see no need for change. In those unusual circumstances where the allocation of discovery costs becomes an issue that the parties cannot resolve themselves, it can easily be resolved by the panel Chairperson.

The problem with the cost proposal is that it may very well prevent claimants from adequately preparing their cases simply because they could not afford to purchase copies of records that the respondent has subpoenaed. Whenever a party receives documents in response to a subpoena, counsel for an opposing party must request copies of those documents in order to be on equal footing. If a respondent brokerage firm subpoenas copies of years of records from third party brokerages, banks, mortgage companies, employers, and accountants, and receives 10,000 pages of responsive documents, it could cost the claimant $2,000 or more to obtain copies of the documents that the respondent may seek to

use against him or her. Many claimants simply cannot afford those costs in addition to the filing fees and other costs related to the prosecution of their claim. Under the proposed rule, if the claimants cannot afford to pay those costs, the respondents would not have to provide the information. Investors should not be disadvantaged in their case preparation merely because the respondents have set a price to review evidence that the claimants cannot afford to pay.

For those reasons, we urge the Commission to remove the provision of proposed Rule 10322(e) relating to the responsibility for the payment of costs.

Thank you for your consideration.

Very truly yours,

Robert S. Banks, Jr.
PIABA President

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