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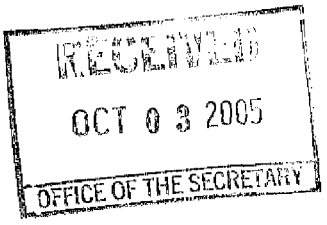


BY DHL EXPRESS AND FAX

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

RE: Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration (*Release No. 34-52332; File No. SR-NASD-2005-094*) – 61

Dear Secretary Katz:

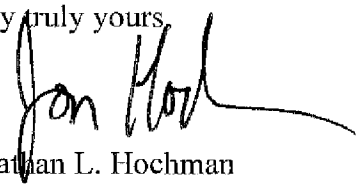
We write in response to the NASD's proposed changes to the classification of public arbitrators in Rule 10308 and in response to the comments generated by some of our peers to the proposed changes. We do not object per se to the changes proposed by the NASD, which seek to ensure that arbitrators with significant ties to the securities industry shall not be classified as "public arbitrators." It should be recognized, however, that the proposed changes will have the effect of rendering certain public arbitrators under the current classification non-public in the future, as classifying arbitrators as "public" will require a more extensive separation from the securities industry, and what constitutes a "non-public" arbitrator will now include those who are registered through a broker or a dealer. Given, then, the shift towards an arbitration panel makeup that has less knowledge of the securities industry, which the proposed changes will ensure, we believe it is even more imperative that the requirement of one non-public arbitrator on each and every panel be preserved.

A number of our peers have responded to the proposed rule change by arguing that the entire panel should be comprised of public arbitrators. Such an argument mistakenly equates naivete with fairness and knowledge with bias. First, it is unsurprising to note that those advocates who argue the entire panel should be comprised of public arbitrators represent, on the whole, customer claimants. Clearly then, what is fair for them is what will garner a larger recovery for their clients, and they believe, accurately or not, that public arbitrators are more

likely to award larger recoveries in customer/member disputes than industry arbitrators. Systematically precluding arbitrators with securities industry experience arbitrarily presupposes that non-public arbitrators will be biased against customer claimants. Second, advocates of precluding every member of a panel a certain experience with the securities industry would ignore the very context within which an arbitration panel adjudicates – the securities industry.

We acknowledge the delicate balance that the SEC has achieved in its requirement that each panel of three arbitrators includes one non-public arbitrator. Given the purpose of each and every panel – to resolve disputes in the securities industry – we feel it is imperative that every panel is infused with a certain standard of industry knowledge. It should be recognized that the proposed changes will have the effect of diluting this standard to some extent. Therefore, while we do not object per se to such changes, we feel strongly that the SEC ignore the position taken by some of our peers to eliminate the requirement of one non-public arbitrator on each panel.

Very truly yours,



Jonathan L. Hochman

bcc: Andrew J. Melnick, Esq. (via Email)