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October 3,2003

Secretary
Securities.and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

RE: SEC Release No. 34-48444; File No. SR-NASD-98-75; Comment on Proposed Changes to NASD Rule 3110(f)

Dear Commissioners:

I am writing to express my opposition to the NASD's proposed amendment to Rule 3110(f) to include subsection (f)(4)(B), allowing enforcement of a choice of law provision in arbitration. By way of background, I was a staff attorney at the Commission, Division of Corporation Finance, in '86, '87, and '88. I have served as an Arbitrator with the **NASD** since 1989. I earned a Master of Laws (LL.M.) in Securities Regulation from Georgetown University Law Center in 1987. I have represented investors in securities arbitrations' and litigation for the past fourteen (14) years, and I even represent stockbrokers and investment adviser representatives in NASD, NYSE, SEC and state securities regulatory investigations and administrative proceedings. With the exception of my three years stint at the Commission, I have.been a litigation and trial lawyer in private practice since 1982.

My opinion of the amendment, if adopted, is that it will single handedly wipe out the force and governance of every state's securities statute. Here's why: Brokerage firms located in New York, incorporated or re-incorporated in New York, or members of the New York Stock Exchange, will choose New York law as a means of defending investor claims. This is critical because the State of New York has not adopted the Uniform Securities **Act,** which has been adopted by a majority of the States and incorporated into their state securities statutes. New York has restricted claims for misrepresentation and omission against: all sellers and control persons. New York does not allow for the recovery of attorneys' fees **as** most states do for violations of their state securities statutes. New York has imposed legal obstacles to the recovery of punitive or exemplary damages. New York has statutes of limitations which **are** not as long as the SOLs of many other states. By allowing brokerage firms to choose New York law, investors will lose the statutory protections which their state legislatures and securities administrators deem necessary and appropriate for the protection of their residents.

Investors are entitled to the protections of their state when they transact business in their home state. National brokerage firms make an economic decision to operate in a given state.

Investors do not make the same balanced decision to be subject to the laws of New York.

National brokerage firms will sneak these choice of law provisions into their customer agreements. There is no equal bargaining power in opening an account with a brokerage firm. There is no negotiation over the terms of a customer agreement. 99% of the investors will never know that their rights as investors have been severely restricted and relegated to the governance and whims of the New York legislature and New York courts unless and until they have reason to assert a claim against their stockbrokers or financial advisers.

Adopting the amendment will allow brokerage firms to curtail investor rights. For years, the SEC and NASD have taken the public position that customer agreements cannot be used to curtail any rights that a party may otherwise have in a judicial forum or to limit the ability of arbitrators to make any award [see Exchange Act Release No. 26805, NASD Notice to Members 95-16 and NASD Rule 3110(f)(4)]. The proposed amendment is **a** regression from current policy. It is proposed under the guise of clarification, but it is clearly **a** direct attack on the rights of investors and current SEC and NASD policy. It will require me, as an Arbitrator, to disregard the laws of Maryland, Virginia and the District of Columbia and look to the laws of New York in rendering a "fair and equitable decision." There is no fairness or equity in telling me, as an Arbitrator, that I cannot apply the laws of Maryland to **a** situation in Maryland involving a Maryland resident doing business in Maryland with a Maryland brokerage firm.

There is no better proof that the purpose of the amendment is to hammer individual investors than the exemption in the amendment for agreements between brokerage firms and institutional investors. Only the unsuspecting public customer will be negatively impacted. Further proof ,of the disparaging affect on investor rights is that the amendment *proposes* a retroactive application to all customer agreements signed in the last fourteen years.

This proposed rule should not be adopted.

Very truly yours,

Daniel **A.** Ball

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cc: Melanie Senter Lubin, Commissioner
State of Maryland