NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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October 3,2003

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OFFICE OF THE SECRETARY

Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street NW
Washington DC 20549-0609

Re: Release No. 34-48444; File No. SR-NASD-98-74, NASD Proposal to Amend Rule 3110(f), Governing Use of Predispute Arbitration Agreements with Customers

Dear Mr. Katz:

The North American Securities Administrators Association, Inc. (NASAA)[1] appreciates the opportunity to comment on Release No. 34-48444, which proposes to amend that portion of the NASD "Books and Records" rule, Rule 3110(f), governing use of pre-dispute arbitration agreements with customers.

The thrust of the proposal is to require broker-dealers to provide more extensive and clearer disclosure to customers regarding arbitration provisions in customer agreements. NASAA applauds all efforts to make certain that customers fully understand what they are signing. As the NASD notes, arbitration agreements are generally part of non-negotiated customer agreement that is drafted by the firm.

Arbitration agreements should not be used to restrict or nullify the rights investors would have in the judicial system. In the coming year, NASAA's Broker-Dealer Section intends to thoroughly examine the issue of arbitration, hopefully in concert with the SEC and the SROs, including NASD. As I said when I took office as NASAA's President, "Since our nation's investors are compelled to seek arbitration to resolve disputes with Wall Street, we need to make sure that they are treated fairly."

NASAA has concerns regarding the content of the proposal, as well as the timing and form of the release. We did not become aware of the proposal until several days ago, and we believe that other parties with an interest in the important issues presented may have had similar problems receiving notice of this release. The release was not posted on the NASD's website, nor does its title indicate the subject matter. Accordingly, it may have escaped the notice of others who share concerns about the arbitration process. We therefore suggest that the comment period be extended and the notice highlighted more effectively in order to provide a better opportunity for interested parties to submit their views.

[1] The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

While the NASD proposal contains beneficial elements, NASAA believes that certain provisions are ill-advised and contrary to investors' interests. NASAA's most serious concern is with proposed Rule 3110(f)(4)(B). The proposed language states: "No member may seek to enforce any choice-of-law provision unless there is a significant contact or relationship between (i) the law selected and (ii) either the transaction at issue or one or more of the parties." This provision favors brokerage firms to the detriment of investors and fails to adequately address the ambiguity that has resulted in litigation over choice of law issues. Given that the firm is a party to a dispute, the mere fact that it has a relationship to New York would suffice to force a New York choice of law under proposed Rule 3110(f)(4)(B). Furthermore, the reference to the "transaction" could be read as a reference to the exchange where a trade took place, not the transaction between the investor and his local broker-dealer, once again yielding a result that favors the brokerage firm.

In addition, in some states, contractual provisions that purport to require customers to proceed under out-of-state laws are invalid, by either judicial fiat or executive action. However, in such cases, the burden rests with the investor to raise the issue with the arbitration panel, and there is no assurance that the panel will apply such state law provisions. In fact, the panel may mistakenly rely on Rule 3110(f)(4)(B) as authority to ignore state law. Investors reasonably expect that they will be able to have their grievances decided according to laws of the state in which they reside. The proposed rule does not address these issues and in fact favors the brokerage firms.

The NASD discussion of the proposed rule notes that investors' participation in SRO-sponsored arbitration may be involuntary given that customers must sign predispute arbitration agreements in order to open accounts. These agreements are drafted by the firms and place the customer at a disadvantage. The NASD proposed choice of law provision does not remedy this inequity, and may in fact be used by the brokerage firms to assert that the standard, albeit inequitable, contract language is supported by the NASD rules. In the interest of the investing public, Rule 3110(f)(4)(B) should either be re-drafted or deleted.

NASAA appreciates NASD's consideration of these views. We look forward to continuing to work closely with the SEC, NASD, and other SROs on arbitration and other issues of mutual concern. Questions concerning this letter can be addressed to Tanya Solov, Chair, NASAA Broker Dealer Section or to Mark Davis at NASAA's General Counsel's office.

Sincerely,

Ralph A. Lambiase

Ralph A. Lambiase
NASAA President and
Director, Connecticut Division of Securities