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May 16, 2006

480-596-1986  
FACSIMILE 480-596-2689

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

Re: File No. SR-NASD-2003-158: Comment on NASD 5<sup>th</sup> Amendment to  
Code of Arbitration Procedure

Dear Ms. Morris:

I ask that the NASD's request for accelerated approval of the NASD's 5<sup>th</sup> Amendment to the Code of Arbitration Procedure be denied. This document presents important changes to the Code. A reasonable publication and comment period should be set.

Further, I write to object to two specific portions of the Amendment. These are the explanatory narrative to describe when motions to dismiss should be granted, and the section concerning whether a claimant must produce documents under his "control."

## When Motions to Dismiss Should Be Granted

The NASD proposes to amend the narrative portion of the rule filing to "explain under what circumstances a motion to dismiss might be granted." The proposed text is:

"For purposes of this rule, if a party demonstrates affirmatively the legal defenses of, for example, accord and satisfaction, arbitration and award, settlement and release ***or the running of an applicable statute of repose***, the panel may consider these defenses to be extraordinary circumstances. In such cases, the panel may dismiss the arbitration claim on the merits if the panel finds that there are no material facts in dispute concerning the defense raised and there are no determinations of credibility to be made concerning the evidence presented." (Emphasis added.)

The language concerning "statute of repose" will inevitably result in scores of motions to dismiss on statutes of limitations issues. The issues of when such statutes

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are tolled, begin to run, or what facts or circumstances constitute the acts giving rise to the claim, are complex. Some panels have no lawyers, and many have no lawyers trained in litigation principles. Some claimants are not represented by counsel. Will these panels understand the differing standards for motions to dismiss and motions for summary judgment, and the need to conduct discovery on many of these matters before they are decided? Will panels consistently understand the difference between material and non material facts? The panels are not trained as judges, to decide complex substantive and legal motions.

This language should be deleted. It will complicate what is intended to be a simplified form of alternative dispute resolution. It will encourage the filing of routine motions to dismiss.

I have been on the NASD National Arbitration and Mediation Committee and a member of the PIABA Board of Directors for many years. I am unclear as to what investor representatives could have supported language so clearly unfavorable to investors.

Production of Documents under the "Control" of a Party

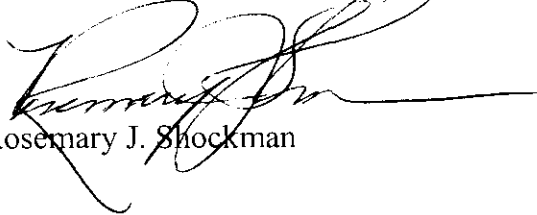
The 5<sup>th</sup> Amendment would require production of documents under the "control" of a party. This vague term could be argued to include records from other brokerage firms where the claimant maintained accounts, and numerous other professionals with whom the claimant had contact. When claimants ask lawyers or accountants with whom they had contact to assemble packages of documents, they would be charged at the regular hourly rates of those professionals. Other brokerage firms also frequently charge clients for copies of documents.

The "control" requirement should be eliminated.

Thank you.

Very truly yours,

SHOCKMAN LAW OFFICE, P.C.

  
Rosemary J. Shockman

RJS:dfr