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July 27, 2007

VIA EMAIL: Rule-Comments@SEC.gov

Ms. Nancy M. Morris
Secretary
SECURITIES AND EXCHANGE COMMISSION
100 F Street, NE
Washington, D.C. 20549-1090

Re: Proposed Rule Change – NASD Rules 10308 & 10312
Release No. 34-56039 --- SR-NASD-2007-021

Dear Ms. Morris:

The following comments deal with the above referenced proposal to "amend the definition of public arbitrator to add an annual revenue limitation," in NASD Customer Code, Section 12100(u), whereby attorneys, whose firms earn more than $50,000 per year from securities industry litigation/arbitration representation, would be "removed from the public roster."

My Background

I have served as the Associate General Counsel and/or Compliance Director of a regional New York Stock Exchange ("NYSE") Member Firm and have been engaged in the private practice of law, representing many individual investors and more than twenty (20) regional securities brokerage firms before arbitration panels and in various state and federal courts in hundreds of securities industry related disputes. I was admitted to the NASD Dispute Resolution ("NASD") roster of arbitrators in 1976. On May 13, 2005, I filed Petition for Rulemaking (SEC File No. 4-502),[1] which pertains to severe problems with the securities arbitration process and related questionable oversight, with the Securities and Exchange Commission ("SEC").

[1] A copy of the Petition is available at: http://www.sec.gov/rules/petitions/petn4-502.pdf. A copy of Supplemental Information is available at: http://www.sec.gov/rules/petitions/4-502/lgreenberg062205.pdf.

Attempt to Reinvent Ethics-In-Arbitration Wheel

"NASD has taken numerous steps in recent years to ensure the integrity and neutrality of its arbitrator roster by addressing classification of arbitrators." However, it is engaged in an attempt to reinvent the ethics-in-arbitration wheel.

Effective July 1, 2002, the California Judicial Council adopted Division VI of the Appendix to the California Rules of Court, entitled Ethics Standards for Neutral Arbitrators in Contractual Arbitration ("California Ethics Standards"). The California Ethics Standards conflict with current self-regulatory organization ("SRO"), e.g., NASD, NYSE, arbitration rules by imposing more detailed disclosure obligations on arbitrators than current SRO rules. Applying the California Ethics Standards to SRO sponsored arbitration would cause all securities industry affiliated personnel and those who financially benefit from the securities industry to be removed from SRO arbitration panel rosters.

The SROs and SEC opposed application of the California Ethic Standards to the SROs. After the SEC adopted that position, it engaged the services of Professor Michael A. Perino. The proposal states, "In July 2002, the SEC retained Professor Michael Perino to assess the adequacy of arbitrator disclosure requirements at NASD and at the New York Stock Exchange (NYSE). Professor Perino's report (Perino Report) concluded that undisclosed conflicts of interest were not a significant problem in arbitrations sponsored by self-regulatory organizations (SROs), such as NASD and the NYSE." The Perino Report did not reveal whether Perino had any "undisclosed conflicts of interest" of his own.

After issuing the Perino Report, Perino revealed his securities industry clients by stating, "EXPERT ENGAGEMENTS AND CONSULTANCIES: U.S. Securities and Exchange Commission; New York Stock Exchange; Morgan Stanley Dean Witter; UBS PaineWebber, Inc.; U.S. Bancorp Piper Jaffray; National Union Fire Insurance Company … New York Life Insurance Co. … BankAmerica Corporation." (Is Securities Arbitration Fair for Investors? Written Testimony of Professor Michael A. Perino St. John's University School of Law Before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee on Financial Services United States House of Representatives March 17, 2005)

No Impact Assessment and Public Disclosure

The proposal states, "NASD will survey its public arbitrators to determine which arbitrators will be removed from the roster for appointment to new cases upon the effective date of the proposed rule." It is surprising that the NASD did not attempt to assess the impact of the proposed rule change and set forth the results of that assessment in the proposal. The NASD

should investigate and publicly reveal the full extent of the problem it attempts to cure, when it first became aware of the problem and why it has taken so long to propose a remedy.

Manipulation of New Chair Roster

The proposal states, "NASD believes the new Codes have improved the arbitrator selection process by creating and maintaining a new roster of arbitrators who are qualified to serve as chairpersons. The chair roster will consist of more experienced arbitrators available on NASD's public arbitrator roster for all investor cases and for certain intra-industry cases." However, the NASD did not reveal that it exercises "discretion" to decline to appoint some "more experienced" arbitrators to the chair panel, even if the arbitrator chaired panels for many years and never received any complaint as to his conduct during an arbitration proceeding. The NASD should reveal: (1) the criteria, if any, upon which it exercises the "discretion"; and, (2) the extent of its use of that "discretion."

Conclusion

The NASD made the proposal as "some users of the forum continue to voice concerns...." It is time that the NASD and SEC listen to and act upon other, more material, concerns to level the playing field in securities arbitration.

Please communicate with me in the event that you desire further information.

Very truly yours,

Les Greenberg

Digitally signed by Les Greenberg
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