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August 8, 2007

Robert S. Banks, Jr.
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Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-9303

Re: SR-NASD-2007-021: Proposed Amendment to Rule 12100(u) of the NASD Code of Arbitration Procedure

Dear Ms. Morris:

The proposed amendment to Rule 12100(u) is certainly an improvement to the FINRA arbitration process. If it is enforced, the proposal would reduce the number of cases in which one or both of the public arbitrators have direct financial ties to the securities industry. As one who lobbied the NASD to amend Rule 12100 so that attorneys who actively represent the industry cannot sit as public arbitrators, I support the change. It makes the process less unfair.

However, the Commission needs to understand that the arbitration system is fundamentally unfair. I have worked within the system for more than more than 20 years, as an attorney, as an arbitrator, and as a former member of the NASD's National Arbitration and Mediation Committee. After spending a lot of time and effort trying to help fix the process, I am now convinced that an arbitration code that requires at least one of the three arbitrators to be directly tied to the industry whose conduct is on trial cannot be made fair. I know of no other arbitration process in which one party is forced to have as an arbitrator a member of the very industry against whom he or she is making a claim. The proposed amendment, like many of those that have come before it, is designed to fix a lopsided process that cannot be fixed without going to the source of the problem. The Commission needs to insist upon one simple change to the process: remove the mandatory industry arbitrator requirement. Arbitrators with industry ties can certainly remain in the pool, but both sides should have a say in whether they sit as arbitrators, not just the respondents.

Very truly yours,

Robert S. Banks, Jr.

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