



Securities Industry Association

120 Broadway, New York, NY 10271-0080 • (212) 608-1500, Fax (212) 608-1604 • info@sia.com, www.sia.com

January 24, 2003

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: NASD Proposed Rule Change Relating to Filing Copies of Customer
Complaints -- SR-NASD-2002-112

Dear Mr. Katz:

The Arbitration Committee and Self-Regulation and Supervisory Practices Committee (the "Committees") of the Securities Industry Association ("SIA")¹ appreciate the opportunity to comment on the referenced proposed rule change submitted by the NASD. Specifically, NASD proposes to modify Rule 3070 to require firms to file with the NASD hard copies of virtually every criminal action, civil lawsuit or non-NASD arbitration in which a member is named. The stated objective of this proposed rule change is to improve the quality and flow of information to NASD with respect to allegations of wrongdoing in order to prevent similar acts of misconduct in the future.

As legal and compliance professionals, we appreciate the need for ongoing surveillance of, and prompt regulatory response to, allegations of serious misconduct. Such steps contribute to existing investor protection efforts of member firms. Indeed, all segments of the industry, not just investors, stand to benefit from improved monitoring systems. We therefore applaud and support NASD for undertaking to reexamine and improve upon the existing regulatory reporting framework in order to ensure that allegations of serious misconduct receive timely regulatory scrutiny.

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. Collectively they employ more than 495,000 individuals, representing 97 percent of total employment in securities brokers and dealers. The U.S. securities industry manages the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2001, the industry generated \$280 billion in U.S. revenue and \$383 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

We believe that NASD's efforts will be most effective, however, if the proposed changes focus upon potential sales practice violations, rather than the expansive rule proposal set forth in the *Federal Register*. As drafted, the proposed revisions to Rule 3070 would require firms to file with the NASD hard copies of any civil litigation complaint or arbitration claim in which a member is named as a defendant or respondent that relates to the conduct of business in securities or commodities. This would include, among other things, litigation that does not relate to specific broker-identified sales practice issues, such as nearly all class actions; non-retail civil litigation, including product failure, and operational complaints, and small claims involving relatively small dollar amounts. NASD also proposes to add a provision that would require firms to file with the NASD hard copies of all arbitration claims filed outside the NASD forum, such as arbitration claims filed with the New York Stock Exchange ("NYSE") or the American Arbitration Association ("AAA").

Though clearly well intended, the proposed revisions to Rule 3070 are overbroad and indeed would fail to advance the stated objectives of enhanced quality and flow of information to the NASD. In essence, the proposed amendments expand significantly the current reporting requirements by mandating that firms file hard copies of virtually all customer complaints, including civil litigation and arbitration claims, irrespective of the nature of the complaint or the dollar amount at issue.

A far better approach, we believe, would limit the rule proposal to copies of retail customer lawsuits and arbitrations that allege sales practice violations in accordance with current Form U-4 and U-5 reporting requirements and dollar thresholds. Coupled with the current Form BD reporting requirements, this should go a long way toward advancing the proposal's goals. Specifically, we propose that NASD eliminate proposed paragraph (f)(1) altogether and modify subsection (f)(4) to state:

"Any indictment, information or other criminal complaint, plea agreement or any private civil complaint, or arbitration claim against a person associated with a member that is reportable on Form U-4, unless in the case of an arbitration claim, the claim has been filed with NASD Dispute Resolution."

Such an approach is not only vastly more resource-efficient, it produces more targeted reviews of complaints by NASD, thereby advancing the stated objectives of enhanced information quality and flow to NASD.

In all events, we believe that the proposed rule is inconsistent with the NASD's ongoing rule modernization initiative,² which seeks to streamline NASD rules by maximizing regulatory efficiency while imposing the least regulatory burden. In light of the foregoing, we respectfully request that the Commission decline to adopt the proposed amendments in their current form.

² See NASD Notice to Members 01-35.

In conclusion, the Committees reiterate their support for the stated objective of improved quality and flow of information to the NASD. As proposed, however, the rule change fails to advance those objectives. The Committees, therefore, urge the Commission to consider the alternative approach proposed herein, which we believe satisfy the stated objectives of the rule proposal without unduly burdening member firms.

If you have any questions, or would like to discuss our comments further, please contact the undersigned or Amal Aly, Vice President and Associate General Counsel, at 212-618-0568.

Sincerely,

Edward Turan
Chairman
Arbitration Committee

John Polanin, Jr.
Chairman
Self-Regulation and
Supervisory Practices Committee