

**Securities Industry Association**

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August 19, 1998

Jonathan G. Katz, Secretary  
United States Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549

**Re: File No. SR-NASD-98-48**  
**Proposed Rule Change to Amend Method of Selecting Arbitrators in**  
**Customer Disputes**

Dear Mr. Katz:

The Securities Industry Association ("SIA")<sup>1</sup> appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") regarding the Commission's Notice of Proposed Rule to amend the method of selecting arbitrators in customer disputes. SIA commends the Commission and the staff of the National Association of Securities Dealers Regulation, Inc. (the "NASDR") in their efforts to develop a new method for selecting arbitrators which we think is a tremendous improvement over the current method. The proposed list selection method will invariably lead to a greater level of endorsement of the arbitrators by the parties.

While extremely supportive of the proposed rule, SIA offers two comments which we feel would improve the proposed rule. The first involves the authority of the Director to disqualify arbitrators, in Section (d)(2), page 13 of 113 in the version of the rule sent to the SEC by the NASDR under cover letter from Joan Conley, dated July 10, 1998. The proposed rule currently provides that the Director has the authority to remove an arbitrator from a panel at the earlier of the first pre-hearing conference or the first hearing. As a practical matter, SIA believes that the Director should retain the ability to remove an arbitrator until after the pre-hearing conference. In many cases, the pre-hearing conference is the very first opportunity the parties have to hear the views or perceptions of any of the arbitrators, or otherwise to address the arbitrators directly. It is thus important that the Director have the ability to deal with situations where the pre-hearing conference itself exposes some evident bias, inability or unwillingness on the part of an arbitrator to be impartial in the performance of his or her duties. We thus propose that the words "the earlier of (i) the first pre-hearing conference or (ii)" be deleted.

SIA's second suggested modification relates to what amounts to an automatic exclusion, as

either a public or non-public arbitrator, of any immediate family member of registered representatives or others who work in the securities industry ( see page 84 of 113, and footnotes 14 and 15 thereon). While we are well aware that this exclusion existed in the old arbitrator selection rule as well, we think it important that the rationale be re-examined at this point in time. Indeed, it is unfair to assume that one who is married to, or the sibling, parent or child of, a securities industry professional should be automatically barred from serving as a public arbitrator. Just as there is no reason why the brother or sister of a district attorney, for instance, should be automatically excluded from the jury of a criminal case, there is simply no reason that a sibling, spouse or child of a securities industry professional should be presumptively adjudged to be incapable of being a capable, effective and impartial arbitrator.

The mechanics of the proposed list selection method makes the parties' attorneys able to capably deal with any perceived problems or biases. By way of example, many attorneys may not feel that this familial relationship poses a problem at all, but for those that do, they can either rank the proposed family member low on their list of 1 to 10, or simply not rank them at all. In short, at a time when the NASDR is dutifully trying to expand and more fully train its arbitrator pool, it seems counterproductive to collectively eliminate an entire category of arbitrators based on a perceived bias, particularly when the current construct of the rule is perfectly able to address such situations as they arise.

SIA thanks the Commission for the opportunity to comment on the proposed rule. If SIA can provide further information, please contact the undersigned or Fredda L. Plessner, Vice President and Associate General Counsel.

Very truly yours,

Stephen G. Sneeringer  
Chairman, SIA Arbitration Committee

**cc:** The Honorable Arthur Levitt, Chairman  
The Honorable Paul A. Carey, Commissioner  
The Honorable Norman S. Johnson, Commissioner  
The Honorable Isaac C. Hunt, Jr., Commissioner  
The Honorable Laura S. Unger, Commissioner  
Linda D. Fienberg, Executive Vice President, NASDR

## Footnote:

<sup>1</sup> The Securities Industry Association brings together the shared interests of nearly 800 securities firms throughout North America to accomplish common goals. SIA members -- including investment banks, broker-dealers, and mutual fund companies -- are active in all markets and in all phases of corporate and public finance. In the U.S., SIA members collectively account for approximately 90 percent, or \$100 billion, of securities firms' revenues and employ about 350,000 individuals. They manage the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift and pension

plans.