

**Securities Industry Association**

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March 13, 1998

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

**Re: File No. SR-NASD-98-07**  
**Proposed Rule Extending Time to Answer**

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 extend the time to answer an arbitration claim.

SIA commends the Commission and the staff of the National Association of Securities Dealers, Regulation (the "NASDR") in their efforts to streamline the arbitration process and to reduce the administrative burdens borne by the NASDR. Obviously, such efforts can only inure to the benefit of investors and members firms alike insofar as the ultimate goal is to lower the overall cost burdens of arbitration for all its users.

While SIA is generally supportive of the subject rule and its espoused goals, we urge the Commission to make two adjustments, both of which we deem to be critical to its fair implementation. First, in subsection (5), dealing with the granting of extensions of time under the Code, the Rule provides that "[t]he time period to file any pleading . . . may be extended for such further period as may be granted by the Director of Arbitration or with the consent of the initial claimant." (Emphasis in original) (Page 3 of 16). Because the proposed rule is unclear as to whether the parties have the ultimate right to consent to an extension, we believe the staff of the NASDR would not intentionally deprive the parties of so basic a right. However, the proposed language is contrary to the norms of traditional arbitration and litigation practice, where parties are typically free to agree to an extension. Accordingly, the simple addition of language stating that "Nothing herein shall be construed to impede the ability of the parties to agree among themselves to an extension of time" is warranted.

Such a modification is in accord with the very premise of arbitration as a creature of contract of the parties. Moreover, there are many practical reasons that parties agree to alter the time prescriptions set forth in the Code, the most obvious of which is that the parties are engaged in settlement discussions. As the espoused reasoning for this proposed rule is to decrease administrative burdens imposed on the staffs of the NASDR and to decrease the attendant costs to the parties, a provision which prohibits or discourages parties from working matters out between themselves (hopefully, to the end of removing the case entirely from the NASDR's active docket), surely seems to be counterintuitive.

The second objectionable area also concerns language in subsection (5), discussed above. The inclusion of the language that "extensions of time . . . are disfavored" is problematic for two reasons. First, SIA deems it to be improper for the rule itself to contain what may be more appropriately categorized as commentary. Second, the very nature of the quoted language is somewhat pejorative. SIA believes that the language of the rule itself, i.e., that extensions may only be granted by the Director of Arbitration, or by consent of the parties (assuming that SIA's suggestion is adopted) would be more than sufficient guidance for the parties.

SIA wishes to thank 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 of the Arbitration Committee

cc: The Honorable Arthur Levitt, Chairman  
The Honorable Norman S. Johnson, Commissioner  
The Honorable Isaac C. Hunt, Jr., Commissioner  
The Honorable Laura S. Unger, Commissioner  
Richard H. Walker, General Counsel  
Dr. Richard R. Lindsey, Division of Market Regulation  
Linda D. Fienberg, Executive Vice President, NASDR

## Footnotes:

<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. More information about SIA is available at our Internet web site, <http://www.sia.com>.