

**Securities Industry Association**

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January 13, 1998

Jonathan G. Katz, Secretary
United States Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549
(also via e-mail to: rule-comments@sec.gov).

Re: File No. SR-NASD-97-77
Proposed Rule Relating to the Arbitration of Employment
Discrimination Claims

Dear Mr. Katz:

The Securities Industry Association ("SIA")¹ appreciates the opportunity to provide comment to the Securities and Exchange Commission ("SEC" or "Commission") regarding the Commission's Notice of Proposed Rule Changes Relating to the Arbitration of Employment Discrimination Claims.

SIA submits this letter in support of the rule in its current form and commends the staff on its efforts to balance the competing concerns of arbitration's critics with those who believe in its efficiency, fairness and propriety for resolving all manner of employment claims. SIA particularly supports the rule's recognition that its implementation represents a dramatic departure from the way firms and employees currently operate and that it will have an enormous impact on both firms and employees.

As the Commission is aware, the securities industry has long supported arbitration as an efficient and fair method of resolving claims which arise within the industry. This favorable view of arbitration was, and is, held by industry firms and the industry's self-regulatory organizations (the "SROs"), and has been validated by the decisions of a range of courts, including the United States Supreme Court on numerous occasions.²

More specifically, SIA commends both the Commission and the National Association of Securities Dealers (the "NASD") on the proposed rule's one year phase-in period from the time the Commission approves the rule until its effective date. The NASD's stated reasons for the proposed one year period are powerfully persuasive: First, as the NASD correctly states, employees and firms need this time to consider what agreements they may wish to enter into directly with each other with regard to dispute resolution. Second, the NASD intends to use the

year productively by cooperating with a working group already formed by the NASD-R for the purpose of enhancing the quality of its arbitration programs and increasing the level of confidence that employees have in the fairness of the NASD arbitration forum. Third, the NASD states that it needs the time to work with its sister regulators to consider whether other changes in the industry registration process are warranted in light of the rule change to achieve maximum effectiveness and uniformity.

From the point of view of the NASD, the one year phase-in period is eminently prudent, and will forward the goals of the rule change. From the point of view of industry firms as well, the phase-in period is crucial for measured consideration of the very significant changes the proposed new rule would effect.

Among the most basic, and yet burdensome, of tasks that confront the firms is to properly notify the more than 556,000 registered persons³ of the change. Moreover, many firms will have to consider administrative, staffing and legal training initiatives. In some firms with a larger legal staff, attorneys are much more familiar with arbitration procedures than they are with court procedures. Factors in selection of outside counsel will shift. And, in the absence of direct agreements between employer and employee, claims inevitably will be bifurcated, with statutory discrimination claims tried in court while other employment-related claims such as compensation claims, defamation claims and the like would be arbitrated. All of these eventualities will require firms to consider and plan properly for increased administrative and workload burdens.

Notwithstanding the practical demands posed by the implementation of the proposed rule change and its far reaching impact on the manner in which firms and employees interrelate, opponents of the proposed one year phase-in period have urged that the rule should become effective immediately, purportedly so that employees' rights will be maximally protected. This erroneously assumes that the arbitration coverage in place for years is improper and unfair to employees, and that the situation calls for urgent action. This is false, and it is not the NASD's announced motivation for the proposed rule. As has been stated in SIA's previous submissions to the NASD and by the Supreme Court, parties who agree to arbitrate their claims do not forgo any substantive statutory rights, they merely "trade the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." Mitsubishi Motors Corp. v. Soler Chrysler Plymouth, Inc., 473 U.S. 614, 628 (1985); see also SIA letter to the NASD, dated April 25, 1997. SRO arbitration has been found to be an efficient, fair and effective forum for vindicating all types of employee claims, including those alleging violations of statutory rights.

In sum, the shift in SRO policy giving rise to the proposed rule is not a basis for precipitous action which is not only unwarranted, but will interfere with a complex transition. It is for these reasons that SIA supports the rule and its one year phase-in period.

Conclusion

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,

Stuart J. Kaswell
Senior Vice President and General Counsel

cc:

The Honorable Arthur Levitt, Chairman
The Honorable Paul Carey, Commissioner
The Honorable Isaac C. Hunt, Jr., Commissioner
The Honorable Norman S. Johnson, Commissioner
The Honorable Laura S. Unger, Commissioner
Richard H. Walker, General Counsel
Dr. Richard R. Lindsey, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation
Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation
Paula Jensen, Deputy Chief Counsel, Division of Market Regulation
Mary L. Schapiro, President, NASD-Regulation
Linda D. Fienberg, Executive Vice President, NASD-Regulation

Footnotes:

¹ The Securities Industry Association brings together the shared interests of more than 770 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.

² SIA notes that critics of the arbitration process have not proffered any empirical data to support their claim that arbitration through the SROs is not a fair forum for employees to resolve statutory discrimination claims. In fact, as SIA has demonstrated previously, statistics actually establish the converse -- employees alleging discrimination actually fare better in arbitration than in the overcrowded court system.

³ See NASD Regulation Statistics, as of Sept 1997, published at www.nasdr.com