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July 23, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. SR-NASD-2007-021

Dear Ms. Morris:

I write on behalf of the Public Investors Arbitration Bar Association ("PIABA") in response to the Commission's request for comments regarding the proposed amendment to Rule 12100(u) of the NASD's Code of Arbitration Procedure for Customer Disputes ("Customer Code"), contained at SEC Release No. 34-56039.

As you may be aware, PIABA is an international bar association which, since it was established in 1990, has pursued a mission statement that promotes the interests of the public investor in all securities and commodities arbitration forums.

We welcome and endorse the stated position of NASD Dispute Resolution that it is critical "to ensure the integrity and neutrality of its arbitrator roster" through further refinement and clarification of its public arbitrator classification definitions.

We also are appreciative of the fact that NASD Dispute Resolution, through its submission of the proposed amendment, readily acknowledges the validity of the "concerns" which have been advanced by public investors and numerous other interested parties, for many years, that individuals who are permitted to serve as public arbitrators, notwithstanding their "business relationships with entities that derive income from broker-dealers," undermine the integrity of the entire arbitration process and create a perception of actual or potential conflict and/or bias.

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As submitted, the proposed amendment would remove from the "public arbitrator" classification any "attorney, accountant, or other professional whose firm derived $50,000 or more in annual revenue in the past two years from professional services rendered to any person or entities listed in paragraph (p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees."

It is our opinion, however, that the proposed amendment requires further revision and clarification before it is approved by the staff of the Commission.

Accordingly, we offer the following comments and suggestions for consideration.

● We are concerned by the fact that the proposed amendment would be limited to *only* the revenue that would be derived from professional services that would be rendered in connection with *just* "customer disputes."

If the purpose of the proposed amendment is to truly "ensure the integrity and neutrality" of the arbitrator roster, then we would submit that the nature of the services rendered, from which any revenue is derived, should not be a factor.

To the contrary, common sense would seem to suggest that it is the receipt of revenue which is the primary factor which creates the perception of actual or potential conflict and/or bias.

For example, the proposed amendment would permit an "attorney, accountant, or other professional" whose firm exceeded the $50,000 annual revenue limitation, for services derived in connection with matters involving corporate finance, underwriting, regulatory defense, etc., to remain within the public arbitrator classification.[1]

It would seem to be somewhat disingenuous to believe that an individual whose firm derives more than $50,000 in annual revenue from broker-dealers in connection with the defense of "customer disputes" is somehow more conflicted

[1]/ For purposes of this discussion, it will be assumed that the revenue received by the firm did not exceed "10 percent or more" of the firm's annual revenue in the preceding two year period of time. [See, Customer Code, at Rule 12100(u)(4)].

and/or beholden to the securities industry than another individual whose firm derives the exact same amount of revenue from the very same broker-dealer in connection with corporate finance activities or regulatory defense proceedings.

In the preceding example, we would submit that both individuals are equally as conflicted as the other and that the simple and most logical answer to the issue presented would be that it is the receipt of income which should be of greatest concern and not the specific services that were undertaken which led to the same.

Based on the preceding, we would request that the phrase "relating to any customer disputes concerning an investment account or transaction" be removed from the proposed amendment.

- We are also concerned by the fact that the proposed amendment is totally devoid of any discussion as to the manner in which the $50,000 annual revenue limitation is going to be audited, monitored and/or enforced by the staff of NASD Dispute Resolution.

While it would appear that the intention may be to transfer the compliance function associated with the proposed revenue limitation to each individual public arbitrator under an "honor-system" of self-reporting, our experience with other areas of similar self-reporting requirements (for example, required amendments to Forms U-4 and/or U-5), would seem to suggest that the expectation of voluntary and honest compliance is not realistic.[2]

Based on the preceding, we would submit that, at a bare minimum, there should be a requirement that every classified public arbitrator will be required to file an annual certification, *under oath*, as to their compliance with the stated revenue limitation[3] and that a procedure be imposed which would permit the independent audit of the same by either the staff of the Commission or some other independent

[2]/ We would further note that, in the past, when a number of our members have attempted to elicit information from proposed arbitrators as to the appropriateness of their classification under existing revenue guidelines, a troubling number of arbitrators have either refused to respond to those inquiries and/or have otherwise stated that they were unable to ascertain the required information.

[3]/ Obviously, for any arbitrator whose annual certification was found to have been materially deficient, the immediate and permanent removal of said individual from the arbitrator pool would have to be mandatory.

organization, on a periodic and continuing basis, so that a determination can be made as to whether the proposed revenue limitation is, in fact, being appropriately monitored and enforced.[4]

- Finally, we are concerned that, for purposes of the revenue limitation, the utilization of the term "professional services" will lead to confusion and/or subjective interpretational differences by participants in, and/or administrators of, the arbitration forum.

We would submit that it is an artificial distinction to attempt to differentiate the specific services that were rendered to a broker-dealer, which led to the receipt of income, between those that may be considered "professional" and those that may be considered "non-professional."

Based on the preceding, we would request that the phrase "professional services" be replaced by the term "services."

Thank you for the opportunity to provide you with our comments to the proposed amendment and for your consideration of the same.

Very truly yours,

Public Investors Arbitration Bar Association

s/ Steven B. Caruso

Steven B. Caruso
President

[4]/ The importance of having a public arbitrator rule, that is capable of being monitored and *actually enforced*, is especially critical in the existing system of securities arbitration in view of the fact that, the mandatory presence of a securities industry arbitrator, which is required for every three (3) person panel of arbitrators, already creates an undeniable atmosphere of inherent unfairness and/or bias for public investors who have been denied their right to have their claims adjudicated in a court of law.