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June 29, 2005

Secretary Jonathan G. Katz
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File Number 4-502

Dear Mr. Katz:

Thank you for this opportunity to comment on The Petition submitted by Les Greenberg.[1]

For several years I have been researching NASD arbitration. In particular, I am conducting a statistical study on the relationship between damage claims and awards.

The Petition focuses on customer disputes with securities firms. It draws from Mr. Greenberg's approximately thirty years of experience with NASD arbitration and his survey of more than one-thousand NASD arbitrators. It points out grave problems concerning NASD arbitrators' proficiency in the law as well as deficiencies in surrounding issues.

My research corroborates these problems and identifies similar problems regarding NASD arbitrators' proficiency in other aspects of the legal process. I encourage the SEC to further investigate these problems and to implement The Petitions' requests or in some cases implement more far-reaching measures.

NASD arbitrators are not proficient in the law

The Petition focuses on customer disputes with securities firms, however, most of the comments apply as well to employee disputes.

The Petition points out that NASD Dispute Resolution "ceased to provide arbitrator training in substantive law" and "[*The Arbitrator's Manual*] and the NASD Code of Arbitration Procedure provide little or no guidance to arbitrators as to how to learn and/or deal with applicable law."

[1] See Petitions at http://www.sec.gov/rules/petitions.shtml;
Petition 4-502 at http://www.sec.gov/rules/petitions/petn4-502.pdf; and
Comments on Petition 4-502 at http://www.sec.gov/rules/petitions/4-502.shtml

Instead, the NASD "informs arbitrators that they are not really required to follow the law in rendering their decisions." More precisely, *The Arbitrator's Manual* states:

> Arbitrators are not strictly bound by case precedent or statutory law. Rather, they are guided in their analysis by the underlying policies of the law and are given wide latitude in their interpretation of legal concepts.

At best the NASD's policies are a horrendous contradiction. The NASD is not training arbitrators in the law and legal reasoning, yet it is making the impossible request that they be "guided … by the underlying policies of the law."

The NASD refines its directives a bit when it offers "ambiguous NASD guidelines to arbitrators to 'do justice' or render 'fair and equitable' decisions." While the NASD rejects the law, it then comes full circle and returns to the law when it suggests that arbitrators use "legal reasoning" in reaching their decisions.[2] The Petition astutely concludes that the NASD "effectively discouraged use of the law in the arbitration decision-making process."

The NASD ill-conceived policies have several negative consequences. To begin with, different arbitrators will interpret "fair and equitable" differently. The Petition correctly states, "there need to be guidelines so that parties have some idea what their risks are in not settling an arbitration cases."

Indeed, securities firms - that have hundred-of-billions of dollars in assets and defend themselves against hundreds of claims - understand these risks and can afford to take them.

But the individual with few assets and who pursues arbitration only once in his lifetime may not understand these risks. Their counsels confusingly advise everything from arbitrators must follow or closely follow the law to arbitrators "do justice" or render "fair and equitable" decisions.[3] And even if the individual understands the risks, he usually can not afford the risks. They may discourage him from bringing a claim against the securities firm or it may cause him disproportionately more damage when the NASD arbitrators deny his claim.

Even worse the uncertainty favors the securities firms in another way. Securities firms' counsels apparently expect that arbitrators may rule on something other than the law because their counsels often flood a single proceeding with multiple cases involving multiple versions of events that would be deemed nonsense in court. This denies a fair arbitration to the individual who cannot afford to put on multiple cases but it still drives up the cost to the individual who is paying for his counsel and the proceeding.

Another negative consequence is that without the knowledge of the law, even arbitrators who think they are applying the law may in fact not be. The Petition rightly states, "Without that knowledge, rendering a fair and just arbitration decision becomes a farce" and the NASD's guidelines are "effectively, no guidelines and an excuse to foster and enable incompetence."

Many arbitrators can not even read and understand the law let alone discern whether or not it is applicable. They do not understand precedence, motions, and arguments. Arbitrators do not know

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[2] "Requirements When Using Predispute Arbitration Agreements With Customers… The arbitrators' award is not required to include … legal reasoning …" [NASD Rule 3110(f)]

[3] But some simply advise that NASD arbitration is "rigged" in favor of the securities firms.

when a certain legal standard has been satisfied. They do not know how to calculate damages. Arbitrators hide their incompetence by not giving written explanations of their decisions. In at least one instance where they did give a written explanation it evidenced a "manifest disregard of the governing law."[4]

This "incompetence" of arbitrators is well known and the securities firms' counsels depend on it. Routinely they exploit it by filling the record with irrelevant laws, motions, and arguments. Securities firms' counsels will even put forth illogical lines of reasoning. At the very least it wastes time and undermines the individual's ability to put on his case. Clearly arbitrators give weight to the nonsense and it benefits the securities firms.

A significant number of arbitrators do not even know enough to realize what they do not know. They can not distinguish between an honest, skilled counsel presenting a worthy case and a sleazy, buffoon peddling a frivolous one. Arbitrators engage the securities firms' counsels in wasteful, inappropriate discussions. Arbitrators have been known to allow securities firm's counsel to put on a long-winded, laughable case and then commend them for their "expertise."

The NASD's failure to train arbitrators in the law as well as the related contradictions raises very serious issues which challenge the credibility of NASD arbitration. The US justice system depends on the principle that for the law to be effective individuals must know the law and expect the law to be enforced. Obviously, the NASD rejects this principle and believes they have a better standard for enforcing order in the capital markets (though they never clarified it or let alone validated it). In any case, the law and legal reasoning are the baseline for settling all disputes.

If arbitrators are not proficient in the law and legal reasoning, then they are not qualified to decide disputes. The failure of arbitrators to follow the law means that individuals forced to agree to mandatory NASD arbitration are not only signing away their rights to a court trial, they are unknowingly signing away their rights to protection under the law. This is causing great harm to individuals who assume the securities firms will follow the law or if they do not, that the NASD will force them to follow the law.

NASD arbitrators are not proficient in other aspects of the legal process

The Petition rightly states, "If an arbitrator does not understand the applicable law, the arbitrator cannot determine which facts are relevant and which are not or their significance." Actually, it is worse, regardless of their knowledge of the law, arbitrators do not have the experience and expertise to understand and manage the legal process.

Indeed, many arbitrators (of customer and employee disputes) are not proficient in the fact-finding portion of the legal process. They often fail to distinguish between relevant and irrelevant information; first-hand experience and hearsay; fact and innuendo; proof and speculation; hypothesis and conclusion; eyewitness and expert witness; or testimony and argument. And they fail to weigh the different significances of evidence and demonstratives; primary and secondary information; documents prepared for business and documents prepared for litigation; and contemporaneous evidence and 20-20 hindsight.

[4] Susanne Craig, "New Rule May Lead More Arbitrations Into the Courtroom," The Wall Street Journal, February 5, 2005.

A lot of arbitrators do not even have common sense. They can not distinguish between independent and self-serving documents or objective and subjective testimony.

Again the securities firms' counsels know this and exploit it to their advantage. They bring in bogus documents and testimony through every means possible. They present "evidence" in opening statements. They continually change the facts and argument up to and including the closing statement. Sometimes it sounds like the securities firms' counsels are testifying. The fact that arbitrators condone it and will even encourage it by asking questions based on the nonsense means that they do not understand the fact-finding portion of the legal processes.

And a great number of arbitrators (of customer and employee disputes) are not qualified to enforce legal and ethical standards. They look the other way when securities firms and their counsels clearly break the rules and abuse the proceeding. Over and over again securities firms exploit this. They fill the record with dubious evidence, calculations, or testimony. Offenses that would be labeled obstruction of justice, perjury, or forgery in court are customary strategies in arbitration. Similarly arbitrators ignore ethics violations. Securities firms' counsels contradict their clients' testimony and make prejudicial statements.

For example securities firms and their counsels regularly give obviously spurious excuses to not produce responsive, discoverable documents. The arbitrators often fail to scrutinized and document it as required by the rules.[5] In one instance a securities firm made the excuse that the terrorist attack on 9/11 destroyed documents created *after* 9/11 and stored in locations *different from* the World Trade Center. The arbitrators allowed it. On the other hand they compelled the individual to turn over personal items to be examined by the securities firm. Later when the securities firm tried the same tactic in a legitimate court, the judge called it "obstructionist" and instructed the jury to draw a negative inference.[6]

Additionally, plenty of arbitrators (of customer and employee disputes) can not even efficiently run the proceeding. They allow securities firms' counsels to lead their witnesses; put on cumulative witnesses; make repetitious, gratuitous arguments; or misrepresent facts. Arbitrators permit the counsels to verbally abuse and humiliate the individual. They allow securities firms' counsels to delay the proceedings.

The Petition states, "The NASD needs to train everyone in a lot more than just being civil to one another." But arbitrators (of customer and employee disputes) are not even "being civil." Arbitrators show no respect for the individual while at the same time displaying a kind of sycophantic reverence for the securities firms' representatives. Frequently the individual has lost all his wealth and has no job. He is the only person attending the proceeding who is not paid to be there. He is paying for his counsel and effectively has already paid for the securities firms' counsel as well. Yet the arbitrators have been known to mock and ridicule individuals and their witnesses. The individuals' life's savings

[5] "II. Document Production Lists. .C. Affirmation in the Event that there Are No Responsive Documents or Information. If a party responds that no responsive information or documents exist, the customer or the appropriate person in the brokerage firm who has personal knowledge (i.e., the person who has conducted a physical search), upon the request of the requesting party, must: 1) state in writing that he/she conducted a good faith search for the requested information or documents; 2) describe the extent of the search; and 3) state that, based on the search, no such information or documents exist." [Discovery Guide, Last updated on: 06/21/01]

[6] Gretchen Morgenson, "All that missing E-mail … It's Back," *The New York Times,* May 8, 2005.

may be at stake, yet the arbitrators for no apparent reason rudely hurry the individuals and their counsels.

And worst of all many arbitrators (of customer and employee disputes) often exhibit a clear-cut bias in favor of the securities firm. Within the same proceeding the arbitrators will make a series of inexplicable decisions and comments regarding evidence, direct examination, testimony, and argument with the only pattern being that it goes in favor of the securities firm. They cut off the individual's counsels' legitimate and permitted cross-examination the moment the witness appears to be uncomfortable, but they allow the securities firms' counsels to badger the individual and his witnesses. And if all these obstacles fail to deter the individual and his counsel, the arbitrators flagrantly ignore the facts and the law and decide in favor of the securities firm.

In at least one case the arbitrators let the securities firm choose which documents would or would not be produced regardless of whether the individual or the securities firm held the documents. The arbitrators even made the individual produce privileged documents. In the end the arbitrators excluded almost all documents helpful to the individual.

The securities firms' are accustomed to this bias in their favor. They fail to settle cases when their actions are clearly indefensible. Then while distraught individuals confide to their counsels that they can not afford to not recover their stolen assets, securities firms' representatives and their counsels have been known to stand outside the hearing rooms laughing at how the arbitrators favor them.

NASD arbitration promotes unlawful conduct. The securities firms often employ the same law firms, so tricks learned in one securities firm's arbitration are passed along to the next securities firm. Securities firms and their counsels concoct elaborate schemes to cheat so-called "problem" individuals who expect them to abide by the law.

And sometimes arbitrators ignore evidence that the securities firms' business practices may be in violation of securities rules and laws. Or worse, they have been known to punish honest individuals who draw attention to illicit business practices. This guarantees that bigger crimes also go unpunished.

The NASD is aware of arbitrator "incompetence" and fails to correct it. One egregious example involves another twist on the discovery process. For at least several years numerous securities firms have simply refused to produce responsive, discoverable documents. The arbitrators condoned it. The NASD was aware of these abuses, but they did not discipline the arbitrators or the securities firms. Instead it issued gentle reminders in it various publications.[7] [8] [9] [10] [11] [12] [13] [14] This confirms that the abuse was widespread. The response is notable not just for its indifference but for its implicit message that one could somehow rehabilitate an arbitrator who so egregiously ignores such fundamentally important rules. Not surprisingly the notice did not solve the problem. To this day securities firms refuse to produce documents and arbitrators allow it.

[7] Notice to Members, November 1999
[8] Notice to Member, November 2003
[9] Neutral Corner, October 2003
[10] Notice to Members, December 2003
[11] Notice to Parties, January 12, 2004
[12] Neutral Corner, February 2004
[13] Neutral Corner, June 2004
[14] Neutral Corner, October 2004

The above examples are just a small sampling of range of arbitrator "incompetence." Each year customers and employees and their counsels send hundreds of complaints to NASD Dispute Resolution regarding abuses that denied them a fair arbitration. The NASD drags it feet and the guilty parties go unpunished.

Almost never do arbitrators have the same experience and expertise of a judge, so it is not surprising that securities firms abuss the process and the outcome is random. The merits of the case become irrelevant and the decision depends on the arbitrators' prejudices.

At the end of the day, because NASD arbitration is closed and appeal almost impossible, the NASD is asking, or, more accurately, forcing the individual to assume that arbitrators are competent and honest. The US legal system does not even ask that of anyone.

Addressing arbitrator proficiency

The Petition accurately states, "the law is the best guideline." Moreover, "the law represents publicly known principles that the courts or legislatures have spent much time trying to set forth as to what is 'fair and equitable' in specified situations" and "justice will not be served unless and until the NASD establishes and promulgates policies concerning the use applicable law in the arbitration decision-making process and takes effective measures to educate and evaluate its arbitrators as to their knowledge of applicable law."

In response The Petition "requests the creation of rules designed to require SROs to train arbitrators in applicable law" and "require SROs to reveal in pre-dispute arbitration agreements whether their arbitrators are required to follow the law in their decision-making process."

While the request is sensible, it may not have the intended effect. The Petition draws attention to the resilience of the problem when it contrasts NASD instruction for customer disputes with employee disputes. It states:

> The NASD recognizes that knowledge of the law is important and is willing and able to employ very competent arbitrators in intra-industry disputes, but not in customer oriented disputes.
>
> Parties receive some assurance that arbitrators are knowledgeable of applicable law only in disputes among NASD members or NASD members and their employees. In those matters, arbitrators are required to have "substantial familiarity with employment law," "ten or more years legal experience" or "experience litigating" and apply a "legal standard."

But the same arbitrators run both customer and employee disputes. And as shown above NASD arbitrators of employee disputes are not proficient in the law and/or chose to ignore it. Moreover arbitrators are not proficient in other aspect of the legal process. And the NASD does not enforce existing rules. So there is absolutely no reason to believe that new rules for customer disputes would have any affect. So while this problem must be addressed, stronger measures are necessary. (See below.)

NASD arbitrators seek out information from industry arbitrators

The Petition criticizes the practice that "securities industry arbitrators are encouraged to provide alleged information pertaining to the securities industry to their co-panelists, without any restriction as to whether or not the parties are informed." Even worse "the parties do not know of the secret information and do not have a means to challenge its accuracy or veracity."

In response the Petition "requests the creation of rules designed to abolish the requirement that a securities industry arbitrator be assigned to each three person panel hearing customer disputes or, in the alternative, require that information presented to a panel of arbitrators by a securities industry arbitrator be revealed to the parties during open hearing."

Clearly the practice is unethical and results in additional bias in favor of the securities firms. Some form of this request would be helpful. But abolishing "the requirement that a securities industry arbitrator be assigned to each three person panel hearing customer disputes" does not go far enough. Even completely excluding industry arbitrators from all panels will not fix the problem because even public arbitrators have industry ties.

The later part of the request that "information presented to a panel of arbitrators by a securities industry arbitrator be revealed to the parties during open hearing" should be adopted.

Incidentally, this problem casts a light on the bigger issue of allowing securities industry representatives as arbitrators. The NASD insists on putting at least one industry representative on each arbitration panel. When securities firms stand to pay a lot in damages, it puts two industry representatives on the panel. And in the cases that the NASD fills the chairperson spot with an industry representative, he decides what the other arbitrators see and hear. The NASD claims that securities disputes are uniquely complicated and necessitate the special arrangement of having securities industry representatives as arbitrators.

The Petition accurately says, "The argument is disingenuous." The NASD has never offered anything beyond their baseless claim. There is no proof that securities industry arbitrators add anything other than a bias in favor of the securities firm. In fact, experience shows that securities industry arbitrators at best understand their own specialized area of credit, tax, accounting, etc. and do not necessarily have any extraordinary insights into the specifics of disputes involving other issues with other securities firms.

It is outrageous that that someone beholden to the securities industry would be allowed to decide disputes involving the securities industry, particularly since the entire process is closed to public scrutiny and appeal is almost impossible. This corrupt practice should be terminated. (See below.)

The NASD does not review Arbitrators

The Petition honestly states, "The NASD has not implemented an effective means to evaluate arbitrator competence" and "with regard to its peer reviews, the NASD has engendered a 'why bother' attitude among its arbitrators." And "the NASD is essentially flying blind as to the quality and competence of its arbitrators."

Indeed, as described above there are hundreds of examples of arbitrator misconduct, yet none of the other arbitrators reported the incident.

As a solution The Petition "requests the creation of rules designed to require SROs to conduct continuing evaluations of ability of every arbitrator on their panels to perform his/her duties, including, but not limited to mandatory peer evaluations.'

The request absolutely should be adopted as well as other rules to see that the NASD follows through. (See below.)

The NASD does not disclose how it trains Arbitrators

The Petition draws attention to the fact that the NASD hides how it trains its arbitrators. It correctly states:

> NASD arbitrators have uniformly revealed their misunderstanding that they are forbidden to employ legal authority not cited by the parties in their decision making process. They gathered that misinformation from non-publicly available "training materials" used in their NASD introductory training sessions. They gathered that misinformation from non-publicly available "training materials" used in their NASD introductory training sessions.

The Petition states, "Thirteen years have passed since the GAO Report was issued; however, the NASD has not implemented adequate arbitrator training, which would benefit the investing public and the securities industry."

The Petitioner had raised his concerns to NASD Dispute Resolution. He wrote:

> The NASD's aforesaid secret policy has engendered a systemic manifest disregard of the law in the arbitration decision-making process.
> …
> Officers of the court, including employees of the NASD, should not encourage, permit or condone such manifest disregard of the law.
> …
> Again, you are specifically requested to provide an answer to each of the originally posed questions. (Single underline emphasis added.) Ms. Feeney has not responded to my aforesaid letter dated March 31, 2005 nor has she provided a copy of the alleged "training materials."

But the NASD had not addressed his concerns. In fact, he even asked for clarification of the meaning of certain statements in the NASD's *Manual*, but the NASD again failed to respond. The Petitioner wrote:

> The NASD is stonewalling my efforts to learn specifics of its unpublished policies concerning the use of substantive law in the arbitration process. The NASD has failed and, thus, refused, to provide an answer to any of the aforesaid questions.

The Petitioner's experience is typical. As mentioned above, each year hundreds of customers and employees and their counsels complain to NASD Dispute Resolution. The NASD claims it will investigate, but it does not. It claims it will discipline parties that abuse it process, but it does not.[15]

Instead the NASD stonewalls. It arrogantly points to rules and policies and procedures. The NASD almost never addresses complaints and does not see that problems are corrected and/or the responsible parties are disciplined. None of this should be surprising. There are seemingly no rules and laws that the NASD must enforce its rules and laws. And the NASD board of directors is made up of securities industry representatives.

The Petition "requests the creation of rules designed to require SROs to conduct continuing evaluations of ability of every arbitrator on their panels to perform his/her duties, including, but not limited to mandatory peer evaluations." And it "requests the creation of rules designed to require the SEC's Division of Market Regulation to specifically oversee SROs" with respect to the rules recommended above."

Both requests should be adopted, but much more needs to be done to ensure that those rules are enforced. The public too should oversee the entire process. (See below.)

The NASD has failed to deliver fast, inexpensive, and fair Justice

From the beginning the NASD promised to deliver arbitration that was faster and less expensive than the US justice system as well as fair. At best fast and less expensive was at one time a benefit that both the individuals and securities firms shared. But even if arbitration was once "faster and less expensive," it is no longer. The NASD's own data shows that proceedings regularly run a year or more. When individuals hire specialized counsels that are experienced with the NASD's arcane arbitration system, legal fees run from tens-of-thousands to hundreds-of-thousands of dollars. The NASD's fee for the proceeding alone can be in the tens-of-thousands of dollars. This far exceeds the average award of about $20,000.[16]

And the NASD has failed to deliver a fair arbitration system. Nevertheless, it takes every opportunity to delude customers and employees as to the virtues of its arbitration. For example, the NASD deliberately promotes the myth that arbitrators will award individuals even when the law would not allow it. Their untruthful contention regarding "fair and equitable" decisions was already mentioned above. Another instance comes from *The Arbitrator's Manual* that uses the quotation*:*

> "Equity is justice in that it goes beyond the written law. And it is equitable to prefer arbitration to the law court, for the arbitrator keeps equity in view, whereas the judge looks only to the law, and the reason why arbitrators were appointed was that equity might prevail." —Domke on Aristotle

[15] "NASD will investigate all referrals of instances in which member firms are prolonging arbitration by engaging in a protracted discovery process. Any firm found abusing the arbitration process, including discovery, will face disciplinary action." [Mary L. Schapiro, Vice Chairperson and President of Regulatory Policy and Oversight, NASD Regulatory Policy and Oversight, NASD Notice to Members 03-70]

[16] And the NASD claims that in 2004 its arbitration system awarded $194 million in 9,209 cases. (Allegedly this is awards to customers only and not to employees or securities firms.)

But as shown above, the NASD does not instruct its arbitrators to provide a specific moral standard or any other kind of "equity" criterion that would give the aggrieved customer or employee an advantage over the US court system.

In another example, the NASD issued a press release titled "NASD Arbitration Forum Overwhelmingly Praised For Fairness According To Independent Survey."[17] In actuality the survey proved nothing of that sort. It did not support the conclusion that the forum was fair and it was not independent. At best the survey did not look for and did not find proof that NASD arbitration was not fair.

Finally, the NASD asserts outright that its arbitration is fair.[18] It peppers its proclamations with optimistic words like "strive," promote," "improve," and "ensure," and it points to alleged rules, policies, and procedures and insinuates that they guarantee fairness.[19]

These claims of fairness are completely self-serving and false. No independent study has ever shown that NASD arbitration is fair for every customer and employee. The NASD has never offered any proof that its arbitration is fair. Instead it fights to hide its system from public scrutiny. The NASD hoards data and other information that would reveal the truth about its arbitration system. The NASD knows its arbitration is not fair, yet it fails to fix it. The NASD's conduct is unconscionable.

For NASD arbitration to be fair, it must be fair for <u>every</u> customer and employee who uses it. An arbitration system that denies a customer or employee the opportunity to present his case and be judged by the law is not fair. As system that doles out at random a few miniscule awards to customers and employee is not a fair system. A system that closes its eyes to securities firms' illicit conduct is not a fair system. <u>The experiences of hundreds of customers and employees and their counsels unquestionably prove that NASD arbitration is not fair but rather is biased in favor of the securities firms.</u>

Conclusion

NASD arbitration is unique in that one entity both makes the rules and polices those rules. And that same entity enforces the rules with a single judge, jury, and executioner.

NASD arbitration is closed to any public scrutiny. Recruitment and training are secretive. Instruction in the law and legal reasoning are ambiguous. The NASD has failed to make publicly available the rules by which arbitrators make decisions.

Each year customers and employees of securities firms file thousands of claims with NASD arbitration totaling billions of dollars in damages but at best recover only a small fraction. The

[17] "NASD Arbitration Forum Overwhelmingly Praised For Fairness According To Independent Survey," August 5, 1999.

[18] "NASD has operated the forum since 1968, providing a fair process through arbitration and mediation for investors to settle disputes with their brokers." [Linda Fienberg, President of NASD Dispute Resolution, Testimony to Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, March 17, 2005.]

[19] [Linda Fienberg, President of NASD Dispute Resolution, Testimony to Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, March 17, 2005.]

growth in number of cases suggests that the arbitration is not a deterrent but rather it encourages securities firms to break the law.

Decisions are mysterious, come with no explanation, and are final. There is no body of knowledge or experience to learn from.

The NASD does not review arbitrators. It ignores individuals' complaints. Even the most egregious abuses go unpunished. The NASD has fought attempts to independently evaluate its system. There are little statistics or other research on the reliability of the system.

NASD arbitration has changed over the years. Despite all the changes, it is still a troubled system and is no where close to converging to a fair system. Instead, only the formality remains. The arbitrators are trained to swear in a witness, label evidence sequentially, break for lunch on time, etc. - that is, everything to give the appearance of a legitimate forum. NASD arbitration has turned out to be something like the mythical multi-headed hydra: when one problem is patched, several more turn up.

The changes, like the ones The Petition requests, amount to making it more like the US court system. This should come as no surprise to experts on the US justice system. The NASD had removed everything good about court that protects the individual but it opposes returning any of those protections.

Clearly the NASD arbitration system was an incredible gift to one of the least deserving industries. They get closed proceeding which avoid public scrutiny of their unconscionable treatment of customers and employees. And they avoid potentially large awards. But it has never been clear what advantages it offered the individual.

Given that immense benefit to the securities industry, it is reasonable to expect that customers and employees also get something. Unfortunately, individuals get nothing or less than nothing. As The Petition rightly states, "In its current form, the NASD arbitration process … constitutes a sham upon the investing public."

The NASD and its arbitrators are helping the securities industry steal from honest, hard-working American people. They are making off with retirement savings, college funds, inheritances, etc. and are robbing people of lifetime achievements. They are destroying lives and livelihoods.

I implore the SEC to study and consider The Petition's requests as well as the following:

- An individual should not be subjected to mandatory securities arbitration, rather at the time of the dispute he should be allowed to accept or decline to resolve his dispute through arbitration.

- The burden is on the NASD to show that their system is fair for every customer and employee who uses it. In particular, the NASD must disclose how arbitrators' decisions may differ from a judge or jury decision. And if that decision differs, then the decision should offer a clear and measurable advantage to every customer and employee who uses arbitration.

- Abolish the rule that allows securities industry representative to serve as arbitrators. Arbitrators should be completely independent of the securities industry. They should be

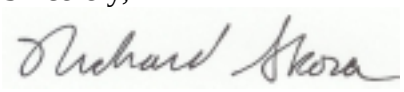
skilled and experienced in the law and legal reasoning as well as other aspects of legal proceedings.

- NASD arbitration must be transparent. The NASD must clearly disclose how it selects, trains, and evaluates arbitrators. The proceedings must be public. And the entire process should be open to study and evaluation by anyone including customer and employee advocacy groups.

- The NASD must acknowledge that arbitrators make mistakes. Decisions should be subject to appeal (or only appeal by the individual). Arbitrators should give detailed and complete written explanations of their decisions the same way a judge would.

Thank you for your consideration.

Sincerely,



Richard Skora