



DIVISION OF  
MARKET REGULATION

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

August 19, 2005

Les Greenberg, Esq.  
10732 Farragut Drive  
Culver City, CA 90230-4105

Dear Mr. Greenberg:

Your May 13, 2005 petition for Commission rulemaking has been referred to the Division of Market Regulation ("Staff") for review. We are also in receipt of your letter to Ms. Annette Nazareth, dated April 22, 2005. In your petition and letter, you express concern regarding, among other things, the level of training provided to arbitrators in applicable law, arbitrators' varying impressions about the role of applicable law in arbitrations, the time and resources of self-regulatory organizations ("SROs") devoted to conducting arbitrator evaluations, and the role of industry arbitrators in the outcome of customer cases. In your petition, you propose that the Commission proceed with rulemaking designed to encourage arbitrators serving on self-regulatory organization ("SRO") arbitration panels to conduct legal research; to eliminate the requirement that a securities industry arbitrator be appointed to each three-person panel hearing customer disputes; to enhance SRO evaluations of arbitrators; to require SROs to train arbitrators in applicable law; to require SROs to make disclosures pertaining to arbitrator discretion, training, and evaluation in pre-dispute arbitration agreements; and to require the Staff to oversee SROs in connection with the above.

Your petition and letter raise important issues, most of which would be best addressed by amendments to the Uniform Code of Arbitration ("Uniform Code"), which serves as a model securities arbitration code for the SROs. The Staff strongly encourages SRO-sponsored arbitration forums to conform to the Uniform Code and, in reviewing the SROs' proposed rules, asks them to justify any differences between their proposed rules and the pertinent provisions of the Uniform Code.<sup>1</sup> We are therefore forwarding your petition and letter to the Securities Industry Conference on Arbitration ("SICA"), which is responsible for drafting and updating the Uniform Code. We are urging SICA to consider issues associated with your proposals at its upcoming quarterly meetings.

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<sup>1</sup> For example, NASD recently filed a proposed rule change, based on a Uniform Code rule, to provide for a 10-day notice requirement before a party issues a subpoena to a non-party for prehearing discovery. See Securities Exchange Act Release No. 51981 (Jul. 6, 2005), 70 FR 40411 (Jul. 13, 2005).

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With respect to your suggestion that the Staff be required to oversee SROs' compliance with their arbitration rules, please be advised that this responsibility resides with the Commission's Office of Compliance Inspections and Examinations ("OCIE"). OCIE administers the Commission's nationwide examination and inspection program for regulated entities, including SROs. In this regard, it conducts inspections to foster compliance with the securities laws (including SRO rules), to detect violations of the law, and to correct any violations it may find. For example, OCIE recently issued a report concerning the Arbitration Department at the New York Stock Exchange ("NYSE"), in which it makes recommendations concerning the classification and appointment of arbitrators, among other things. One of the report's recommendations is that the NYSE adopt guidelines for regular evaluations of its arbitrators.

Thank you for taking the time to share your concerns and suggestions with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Catherine McGuire', written over a light gray rectangular background.

Catherine McGuire  
Chief Counsel