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VIA EMAIL

Investor Advisory Committee

Re: **Securities Arbitration Reform**

Dear Member of the Investor Advisory Committee:

Congratulations on your appointment to the Investor Advisory Committee ("Committee") of the Securities and Exchange Commission ("SEC").

Abolition of Mandatory Pre-Dispute Arbitration Contracts

I hope that the Committee will recognize and act upon important investor issues related to securities arbitration that is required to occur before panels sponsored by self-regulatory organizations, *e.g.*, Financial Industry Regulatory Authority ("FINRA"). Unfortunately, such securities arbitration is the province of untrained amateurs unsuccessfully attempting to imitate the quality of justice dispensed by the court system.

Due to pre-dispute mandatory arbitration agreements, investors who are aggrieved by the securities industry suffer without effective recourse. Accordingly, investor confidence in the securities markets substantially declines. Petition for Rulemaking (SEC File No. 4-541) asks the SEC to "create a rule which would prohibit broker-dealers from requiring investors to accept mandatory arbitration clauses." I fully support that petition.

The SEC Staff found that securities arbitration should be voluntary when it thoroughly considered the issue in 1988. The SEC's *Oversight of Self-Regulatory Organization Arbitration* (Audit 289) dated August 24, 1999 states, in pertinent part:

> The MR (Division of Market Regulation) officials responsible for overseeing arbitration were well aware of the arguments in favor of and against mandatory predispute arbitration agreements. In 1988, MR forwarded a legislative proposal to the Commission that would have prohibited broker-dealers from requiring customers to sign predispute arbitration agreements as a condition of opening brokerage accounts.

My Background

From 1971 to 1973, I served as the Associate General Counsel and/or Compliance Director of Mitchum, Jones & Templeton, Inc., a regional New York Stock Exchange Member Firm.

From 1973, I have been engaged in the private practice of law as a sole practitioner where substantially all representation dealt with financial/investment litigation. I have represented many individual investors and more than twenty (20) regional securities brokerage firms before arbitration panels and in various state and federal courts in hundreds of securities industry related disputes.

I was admitted to the panel of arbitrators of the National Association of Securities Dealers in 1976. In addition, I have served on the panels of arbitrators of the American Arbitration Association, Pacific Stock Exchange, New York Stock Exchange and Municipal Securities Rule Making Board.

SEC Ignored Petition for Rulemaking (SEC File No. 4-502)

The SEC has been extremely reluctant to act upon petitions to change the securities arbitration process. That reluctance may have increased as the current SEC Chairperson previously served as President of FINRA.

In Petition for Rulemaking (SEC File No. 4-502) ("Petition"), I raised issues pertaining to the severe problems with securities arbitration and related questionable SEC oversight. I requested that the SEC create rules designed to:

(1) specifically permit arbitration panel members, should they elect to do so, to conduct legal research, or, in the alternative, forbid Self-Regulatory Organization ("SRO") sponsored arbitration forums from restricting arbitrators from conducting legal research;

(2) 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;

(3) 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;

(4) require SROs to train arbitrators in applicable law;

(5) require SROs to reveal in pre-dispute arbitration agreements whether their arbitrators are required to follow the law in their decision-making process, the training of I their arbitrators in the law, their process, if any, to evaluate their arbitrators on a continuing basis; and,

(6) require the SEC's Division of Market Regulation to specifically oversee SROs to determine whether they are in compliance with rules adopted pursuant to items (1) through (5), inclusive.

Essentially, the SEC ignored the Petition until I filed federal court litigation under the Administrative Procedure Act and the Freedom of Information Act. Eventually, the SEC produced documents that demonstrate that it only acts upon arbitration related petitions when the securities industry concurs with the proposals. However, since such proposals seek changes that will have a negative impact upon the financial interests of the securities industry, the SEC has repeatedly taken no action. When the federal court informed the SEC to either take action on the Petition or go to trial, the SEC summarily denied the Petition in a non-public procedure.

You may access the sordid details of the SEC's activities and copies of documents that demonstrate how the SEC works with the securities industry to the detriment of the investing public through my website at http://www.LGEsquire.com/LG_Links.html.

Conclusion

The SEC has essentially lost its fairness compass when it comes to securities arbitration. The SEC will not liberate the investing public from the shackles of mandatory securities arbitration unless this Committee and others continually remind the SEC that its purpose involves investor, vis-à-vis securities industry, protection.

Please communicate with me in the event that you desire further information.

Very truly yours,

Les Greenberg

Digitally signed by Les Greenberg
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Reason: Securities Arbitration Reform
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