September 13, 2005

Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: File No. SR-NASD-2005-94
"Public Arbitrator" Definition

Dear Mr. Katz:

Please accept the following as comments to the above-referenced NASD rule filing concerning the "public arbitrator" definition.

I believe that in order for the arbitration of customer complaints to be fair and impartial, the SEC needs to look no further than the arbitrators themselves. In order for arbitration at self-regulatory organizations
("SRO") to be fair to the parties, truly independent public arbitrators must be used.

This rule is in need of substantial revision in order to level the playing field for all parties involved and, most importantly, to maintain investor confidence in the fairness and neutrality of the NASD arbitration forum.

The NASD weights arbitration in favor of their industry members by requiring a "non-public" or "industry" arbitrator on all three-person arbitration panels. Because of the mandatory industry arbitrator, the other two "public" arbitrators must be truly "public." The definition of "public arbitrator" should require that the arbitrator have no connection whatsoever with the securities industry. It is only then that public customers involved in the arbitration process can be assured that the two public arbitrators, who they are forced to present their complaint to, are truly neutral and impartial. In its present state, the current definition of "public arbitrator" fails to provide this assurance and must be changed.

The practical impact is this problem is that there are many practicing attorneys who actively represent industry respondents, such as brokers, registered investment advisors, and broker-dealers, are also actively serving as "public arbitrators." These individuals have a duty to represent their clients' best interests, but it also means that they have an interest in limiting awards against their industry clients in the context of SRO arbitration.

NASD should take all these defense lawyers out of the pool altogether. Assuming the rationale for the industry arbitrator is his or her functional expertise in the industry, it makes no sense to have defense lawyers on arbitration panels. For securities defense lawyers to be allowed to serve (no matter the extent of their securities client base), it effectively forces the public customer to present their case to two industry arbitrators. This could hardly be considered fair and impartial.

In conclusion, the proposed rule should be amended to eliminate attorneys with any ties to the securities industry from serving on SRO arbitration panels as "public arbitrators." If the SROs desire to define public arbitrators as truly "public" the rule needs to be changed immediately so that public customers, who in most instances have no choice but to prosecute their complaints with the SROs, have their case heard by a panel that is neutral and impartial. Only then can investor confidence be protected.

Sincerely,

Jeffrey S. Kruske

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