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Nancy C. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090

To Whom It May Concern:

File No. SR-NYSE-2006-61

We are law professors who have written extensively about the securities arbitration process and have served as arbitrators at NASD Dispute Resolution. In addition, we have represented small investors in their disputes with brokers and advocated on behalf of the rights of individual investors. Although we are skeptical that the NYSE proposed rules, if approved, would be effective for very long due to the potential consolidation of the NASD and NYSE arbitration forums, we are writing to set forth our views from the perspective of a small investor.

Generally, we support the proposed rule raising the limit for one-arbitrator panels to $200,000 because it decreases the costs associated with arbitration for most investors with smaller claims, it adds flexibility in scheduling and, in some instances, increases the choices for customer claimants. However, as detailed below, we object to a few particular provisions in the proposed rules.

Proposed Rule 601. A simplified arbitration decided on the papers by a single arbitrator is a quick, inexpensive option particularly useful for *pro se* small claimants. Under current Rule 601, however, its utility is diminished because the arbitrator can call for a live hearing even though the claimant does not want it.

Because of our experience as directors of a securities arbitration clinic that provides representation to small investors, we are very conscious about the need to minimize the costs of small claims. We are also acutely aware of the absence of clinics in 46 of 50 states in the country, leaving the vast majority of small investors without access to legal representation. We do not believe the NYSE should be able to impose the costs and/or burdens of a live hearing on a customer claimant who may be unwilling to incur or unable to pay those costs and burdens. Certain investors, particularly the elderly or disabled and those who are proceeding *pro se*, may be dissuaded from pursuing their small claims if they risk being forced to travel to a hearing location, testify in person

against a broker, and argue facts and law to a professional arbitrator who may be intimidating to them.

Thus, we object to the proposal to the extent that it retains for the arbitrator the discretion to call for a live hearing in simplified arbitrations. Removing the arbitrator's option would be consistent with the approach to simplified arbitration in NASD Dispute Resolution's proposed revised Customer Code for Arbitration (Proposed Rule 12800), currently awaiting SEC approval.

Proposed Rule 607(a)(1)(a). We oppose the proposal to the extent that it removes from the customer claimant the option to request three arbitrators in claims that exceed $25,000, but do not exceed $200,000. While we do not believe that a public arbitrator needs two additional arbitrators to decide a truly small customer claim, such as one less than $50,000, we do not agree that a customer should be deprived of the choice if s/he is willing to pay for it and recognizes that it will make scheduling more difficult. Moreover, with claims in the range of $50,000 -- $200,000, the cost/benefit analysis of one versus three arbitrators may be a closer question, and a customer may reasonably prefer to pay for more than one decision-maker.

Comments on Questions Posed by the SEC. The Commission asks whether the proposal should be revised to confirm with SICA's $100,000 cap on one-arbitrator cases. We do not believe that it should. The costs of a three-arbitrator case, under today's litigious securities arbitration process, can be staggering. Few arbitration cases are completed in less than one hearing day, and it is not uncommon for a typical suitability case to last even three or four days. A case involving alleged damages of $101,000, for example, costs $1,500 *per hearing day*. Thus, a three day hearing, plus a filing fee and a pre-hearing conference, could cost more than $5,000. Reducing those costs substantially by using one-arbitrator panels seems prudent, if the customer wishes to do so.

The Commission also seeks comment on whether customers or non-members should be able to request one arbitrator for claims exceeding $200,000. We believe that arbitration functions best when it is a dispute resolution process based on consent. If all parties consent to one arbitrator for a claim exceeding $200,000, we do not believe the forum should supplant that choice with rigid rules. Indeed, the default rule at many commercial arbitration service providers is that cases are decided by one arbitrator, unless the parties agree otherwise. For example, the American Arbitration Association, Commercial Arbitration Rule 15, provides:

> If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the demand or answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.

Thus, we believe any rule that maximizes party choice is preferable.

Thank you for the opportunity to make these comments.

Sincerely,

Jill I. Gross and Barbara Black