



January 23, 2007

Nancy Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street
Washington, DC 20549-9303

**Re: NYSE Proposed Amendments to Increase Monetary Threshold
For Single Arbitrator Cases -- File Number SR-NYSE-2006-61**

Dear Ms. Morris:

The Arbitration and Litigation Committee of the Securities Industry and Financial Markets Association (“SIFMA”)¹ welcomes the opportunity to comment on the referenced NYSE rule amendments (“Amendments”) which, among other things, propose to increase the monetary thresholds for single arbitrator cases from \$25,000 to \$200,000. As detailed below, SIFMA generally supports a reasonable increase in the threshold amount for single arbitrator cases and believes that such an increase will permit more parties to benefit from streamlined and more cost-effective dispute resolution. SIFMA opposes, however, the proposed \$200,000 threshold, on the grounds that it is too high and inconsistent with NYSE ongoing rule harmonization efforts. In all events, we believe the Amendments to be premature in light of the NYSE/NASD regulatory consolidation plan, which was approved by the NASD membership on January 19, 2007. SIFMA therefore respectfully requests that the NYSE reconsider the proposed Amendments, or at a minimum, modify the Amendments to conform to NASD Rule 10308.

Currently, NYSE Rule 601 provides that any customer dispute, claim or controversy in an amount of \$25,000 or less be resolved by one public arbitrator on the papers, unless the customer requests or consents to a hearing, or the arbitrator calls a hearing. Related counterclaims or third-party claims up to \$25,000 are also eligible for simplified arbitration by one arbitrator on the papers. As proposed, the Amendment would modify NYSE Rule 601(d)(2) to provide that where the related counterclaim and third-party is in the amount of up to \$200,000 (but more than \$25,000) exclusive of costs and interest, any party or the arbitrator may request a hearing before one arbitrator. The Amendments would also raise

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

the dollar threshold in Rule 607 to require all arbitration matters involving a public customer and an amount in controversy between \$25,000 and \$200,000 (excluding costs and interest) to be heard by a single public arbitrator at a hearing, unless the customer requests that the matter be heard by one securities industry arbitrator.

As a general matter, SIFMA supports raising the current \$25,000 thresholds for single arbitrator cases. We believe, however, that there is value to having more than one arbitrator hear and decide cases involving sizeable amounts of money. Where almost a quarter of a million dollars is potentially at issue, we do not think it appropriate to vest a single person with complete authority to hear and decide the dispute. Particularly where issues of credibility and experience are involved, it is important that three arbitrators hear the testimony, discuss their respective views and ensure that the final decision is based on an accurate assessment of all relevant factors. While we cannot know for certain what is the "correct" dollar threshold for single arbitrator cases, the proposed \$200,000 clearly is too high and, and if adopted, would apply to many claims not well-suited for determination by a single arbitrator. A more measured approach, and one that has served the public well for many years, is to raise the current \$25,000 threshold to \$50,000, which is the amount contained in NASD Rule 10308.

Indeed, in light of NYSE's rule harmonization initiative, SIFMA is puzzled by NYSE's decision to file a proposed rule amendment that is inconsistent with the comparable NASD rule. As you know, in early 2006, and as a condition to the NYSE-Archipelago merger, NYSE committed to the SEC "to work with the NASD and securities firm representatives to eliminate inconsistent rules and duplicative examinations." That process is well underway, and substantial progress has been made to identify and address inconsistent rules. NYSE is expected to submit a plan of action to the SEC in this regard by March 2007.

Notably, although the NYSE's rule filing references the single arbitrator provisions contained in the Uniform Code of Arbitration adopted by the Securities Industry Conference on Arbitration ("SICA Uniform Code"),² NYSE makes no mention of the NASD rule; nor is it apparent whether NYSE consulted with NASD Dispute Regulation staff before proposing the \$200,000 limit. Moreover, NYSE provides no explanation as to why it believes the \$50,000 threshold as currently contained in the NASD rules is inadequate. Accordingly, and in the interests of avoiding disparate standards among the SRO arbitration forums, SIFMA respectfully urges NYSE to conform the Amendment to NASD Rule 10308.

Furthermore, due to the of the NASD and NYSE regulatory consolidation, which was approved by the NASD Membership on January 19, 2007, and notwithstanding the forgoing, SIFMA believes that the Amendments are premature at this time. Because the NYSE and NASD arbitration functions are among the member regulation operations to be consolidated in the new self-regulatory organization (SRO), we respectfully suggest that the

² In contrast to the NYSE's proposed Amendments, SICA Code section 16(a) provides for hearing by a single arbitrator for claims up to \$100,000.

Nancy Morris
January 23, 2007
Page 3

Commission defer consideration of the Amendments until such time as the details of the SRO consolidation become finalized.

We thank you for the opportunity to provide comments in response to the NYSE's proposed Amendments, which would increase the monetary thresholds for single arbitrator claims to \$200,000. If you have any questions, please contact the undersigned or Amal Aly, Vice President and Associate General Counsel at 212-618-0568 or aaly@sifma.org.

Sincerely yours,

Edward Turan
Chairperson