LAYNE & LEWIS LLP
111 SOUTHWEST COLUMBIA STREET, SUITE 1000
PORTLAND, OREGON 97201
LOCAL: (503) 295-1882
TOLL FREE 1-888-295-1882

Richard M. Layne
Katherine A. Lewis
LICENSED IN OREGON AND WASHINGTON

FACSIMILE (503) 295-2057
E-MAIL: mlayne@layne-lewis.com
E-MAIL: klewis@layne-lewis.com

July 11, 2005

Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-93

Re: SR-NASD-2003-158

Dear Mr. Katz:

I am writing to comment on the NASD's proposed rule changes to the arbitration code. I was formerly the assistant commissioner of the Oregon Securities Division and my private practice since I left the public sector in 1981 has been devoted primarily to securities.

As a frequent user of the NASD's arbitration forum I am very concerned about several of the proposed code changes.

The mandatory inclusion of an industry arbitrator really stacks the deck against the customer. In my experience these arbitrators bring with them a bias in favor of the industry that simply cannot be overcome absent outright theft or some equally egregious conduct. It strains credibility to believe that a branch manager from one huge wire house will find fault with conduct similar to the actual practices at his or her own firm, even though the practice is unlawful at both firms. It is bad enough that the customer is forced to arbitrate in an industry forum and give up his or her right to a trial by jury, or at least the right to pick an arbitral forum, but to have one third of the panel chosen from the ranks of the industry is unconscionable. It is inherently unfair and should be prohibited. Claimants are entitled to a truly neutral panel and no one with industry ties should be permitted to serve on a panel.

Limiting the number of peremptory challenges might be ok if the list were neutral and did not include any industry arbitrators.

The new code eliminates the right of the claimant to reserve all of his or her closing statement for rebuttal. This effectively gives the respondent the last word with no opportunity for the claimant to challenge or rebut even though the claimant has the burden of proof. IM-10317 provides for the claimant to reserve all of his argument for rebuttal and this right should be preserved.

The idea of a "Chair Qualified" list is a bad one that will favor the industry. We need broader participation, not a specially designated elite. The chair of the panel can exercise

disproportionate power on the other members and we should have a truly neutral panel with the highest ranked panel member sitting as the chair.

The proposals on motions to decide claims before a hearing on the merits seem antithetical to the goals of arbitration. Rather than caving in to the fee generating, frivolous motion practice promulgated by the industry and its defense firms, the NASD should simply prohibit dispositive motions. If the case is truly without merit that will become readily apparent at the hearing and sanctions are available to compensate those who have to defend frivolous cases. In normal litigation practice dispositive motions are not heard until discovery is complete and most of the time in NASD arbitration those motions are filed with the answer or soon thereafter and long before discovery has been provided. Further, given the low pleading standards in arbitration no motion directed toward the pleadings seems appropriate. The motions are both unfair and unnecessary. Very few contingent fee lawyers will file frivolous cases. Neither will clients who believe that they will pay the cost to defend them.

Third party subpoena's are routinely abused and should be issued only by the panel after opportunity to object by the opposing party. Most are nothing more than fishing expeditions and add nothing but expense and harassment to the opposing side. Each request should be viewed with skepticism and issued sparingly by the panel after careful consideration.

The proposed rule on document exchange is a bad one. It will not permit any meaningful analysis of the evidence the other side actually intends to offer, as virtually all exhibits will have been exchanged. If one side produces thousands of pages of documents and intends to rely only a hundred, the other side has no clue what will be actually used in the hearing. Notebooks of numbered exhibits, with an index, should be provided to the opposing party 20 days before the hearing and to the panel at the hearing.

Sincerely,

Richard M. Layne

Enclosure