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September 19, 2005

Mr. Jonathan G. Katz, Secretary **Via Email & U.S. Mail**
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-9303

**RE: Comments Related To Release No. 34-52332**

Dear Mr. Katz:

Please accept this correspondence as my comments upon Release No. 34-52332; File No. SR-NASD-2005-094, relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration.

I exclusively practice in securities litigation, including representing investors aggrieved by the misconduct of their brokerage firm's financial advisors. While the proposed amendments are appropriate, they do not go far enough to provide an arbitration system that is as fair as possible for aggrieved investors. While a number of changes to the arbitration process are appropriate, including making arbitration optional at the election of the investor, one change that is entirely appropriate is the elimination of the required industry arbitrator for 3-member panels. I urge you to consider and promulgate such a rule.

In the 1980's, the securities industry prevailed upon the Supreme Court to overturn its long standing refusal to enforce arbitration provisions in Customer Agreements with broker/dealers by convincing the courts that "arbitration is adequate to vindicate" the rights of aggrieved investors. *Shearson/American Express v. McMahon*, 482 U.S. 220, 238 (1987). While one cannot lightly assume that the industry panelist will come to the process with an improper bias, the fact of the matter is that to the lay investor, who has often suffered significant loss or financial ruin at the hands of a financial advisor, the perception is that 1/3 of the panel already will be predisposed against their position before the hearing even starts. Were the matter in court, there would be no requirement that a portion of the jury be associated with the securities industry. Indeed, counsel might well exercise a peremptory challenge if such a person were in the jury venire.

Further, to the extent that the supposed purpose of the industry panelist is provide expertise on the industry for the other panel members, (i) it is inappropriate to suggest or imply that any panel member, whose opinion of the case should carry equal weight with all other panel members, should defer to the supposed expertise of the industry panelist; and (ii) it is the parties who should present to the panel whatever expert assistance the parties deem appropriate to assist the panel in the decision making process.

The requirement of the industry arbitrator should be eliminated to provide the public with the perception that the arbitration process is evenhanded and unbiased, and does indeed provide an adequate forum in which an investor can believe they have been given a fair opportunity to vindicate their rights. With the industry arbitrator on the panel, the integrity of the arbitration process will continue to be scrutinized. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Andrew Stoltmann