September 19, 2005

To the Honorable Secretary
Jonathan G. Katz
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C 20549-9393

Re: File No. SR-NASD-2005-094
Public Arbitrator Definition

Dear Secretary Katz:

I write concerning 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 am a commercial trial lawyer whose practice includes representing investors in connection with claims against securities broker-dealers and their registered representatives. I have been involved in securities litigation since the 1970's, well prior to the Supreme Court's decisions reversing prior cases which allowed investors with federal securities acts claims to avoid arbitration in the industry-run systems. In those days, I did everything I could to avoid arbitration because of the perception, right or wrong, that the investor was battling on the broker's home court and was at a distinct disadvantage. The federal and state court systems provided judges and juries who were not part of the defendants' industry and did not share their biases.

While I recognize that the SEC and NASD have made efforts to make the securities arbitration systems more fair to investors, the fact remains that imposing a mandatory industry panel member on each arbitration panel is fundamentally unfair. The proposed amendments do not go far enough to give investors an impartial forum in which to pursue their claims of wrongdoing by brokers. The availability in court of causal and peremptory challenges gave both sides the opportunity to eliminate jurors who could be expected to identify most closely with the parties. Trial lawyers long ago learned that jurors with working knowledge of particular businesses tended to exert undue influence on other jurors based on knowledge and expertise gained outside the trial proceedings. While having arbitrators with some fundamental knowledge of the securities business is not necessarily bad, having arbitrators whose livelihood derives from that business and who may therefore be reluctant to impose liability on their fellow brokers because they might one day find themselves defending claims against them is simply not fair to investor claimants.

The NYSE rule filing regarding Rule 607 and the NASD's proposed definition of public arbitrators would allow professionals whose firms represent broker-dealers to serve as public arbitrators, compounding the problems facing investors who

desire an impartial tribunal. Those arbitrators will have at least some degree of pressure from partners and clients not to make decisions which might have direct or indirect adverse consequences for firm clients even if those clients provide less than 10% of the firm's total revenues.

The system can and should be better. Eliminating the requirement for an industry member on each panel and toughening the definition of public arbitrators to make them truly public would make it better.

Sincerely,

Alan C. Friedberg

Alan C. Friedberg
Pendleton, Friedberg, Wilson & Hennessey, P.C.