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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 have been active in securities arbitration as an expert and attorney for more than twenty years. My practice includes representing investors in connection with claims against securities broker-dealers and their registered representatives. My experience has shown that many results are at odds with the evidence submitted and that even when the Claimant prevails, the award only reflects a small fraction of the actual losses. I have also observed that in several instances the award is against those Respondents who are least able to pay (the individual broker and the defunct brokerage firm), leaving the "deep pockets" (e.g. principals of the BD firms) immune from bearing the costs of their failed supervision.

The SEC and NASD are making efforts to make the securities arbitration systems fair to investors. A step forward would be to remove the mandatory industry panel member on each arbitration panel. The proposed amendments still do not appear to provide an impartial forum. Contrast the proposed procedures with those available in the courts. Causal and peremptory challenges give both sides the opportunity to eliminate jurors who would identify most closely with the parties.

Having arbitrators with some fundamental knowledge of the securities business may be useful during deliberations. However, if their livelihood derives from that business, it is understandable that they would hesitate to impose liability on their fellow brokers. A system that allows this is unfair to investors.

Proposed NYSE Rule 607 and the NASD's proposed definition of public arbitrators permits professionals whose firms represent broker-dealers to serve as public arbitrators, compounding the problem of providing an impartial tribunal. It is difficult to imagine that pressure not to make a decision adverse to fee-paying clients will not come from partners and clients.

By removing the mandatory industry arbitrator and assuring that a “public” arbitrator is indeed public, and not tied to the industry, the Commission would do much to improve the system and enjoy the public confidence of a fair and impartial proceeding.

Sincerely,

Brian M. Greenman