September 20, 2005

Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: File No. SR-NYSE-2005-43, "Public Arbitrator" Definition

Dear Secretary Katz:
We write to comment on the NYSE rule filing regarding Rule 607, which defines the term "public arbitrator". Even if the proposed changes are implemented in their entirety, the ongoing use of the industry arbitrator will continue to erode the belief that fairness and neutrality are realities in the arbitration process. We feel the proposed rule simply does not go far enough in protecting investors from biased panels.
We are of the opinion that there is no need whatsoever to have an industry representative on the panel. Arbitration is designed to be quick, inexpensive and fair. Mandating an industry proponent on each panel undermines that initiative. Along those same lines, if NASD arbitration is truly fair and just, then why not make it voluntary and not mandatory? In the midwest, and certainly in Kentucky, our state court system could resolve investors claims faster and cheaper than NASD arbitration [We recently had a client assessed $25,000 of hearing expenses; and this trend to shift costs appears to be on the rise.]

Moreover, the state court system would fully enforce the states securities laws. Our review of the NASD awards rendered in Kentucky, indicates that arbitration panels do not award the statutory damages to which successful Claimants are entitled. Rather successful Claimants receive some almagamation of industry damage theories, *i.e.*, NOP's, which have no statutory or state law basis.

A panel unbiased by industry indoctrination and training has a better chance of following the law in the Commonwealth of Kentucky.

Our firm has practiced in the securities arbitration field for approximately 15 years and arbitration seems to be slanted more in favor of the industry year after year.It is difficult enough to convince one industry member that a colleague in the industry acted unlawfully. Convincing a panel with a majority, or even the entirety, of arbitrators who are members of and advocates for the industry, will be next to impossible.

For the foregoing reasons, we believe that rule requiring an industry arbitrator should be repealed all together. If the Commission still sees a need for industry representation in every customer complaint, then at the very minimum, the definition of public arbitrator should exclude any attorney, advocate, accountant or other professional whose firm has represented industry members within the prior five years.
Respectfully submitted,

Charles C. Mihalek, Esq. and
Steven M. McCauley, Esq.
Charles C. Mihalek, P.S.C.
510 First National Building