September 20, 2005

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

Re: SR-NASD-2005-094

Dear Secretary. Katz:

I am writing to express my opinion that the proposed changes to the NASD Code of Arbitration do not sufficiently address the ultimate goal of enhancing investor confidence in the fairness and neutrality of NASDs arbitration forum. See SEC Release No. 34-52332, File No. SR-NASD-2005-094, Sec. (II)(A)(2). Even if the proposed changes are implemented in their entirety, the ongoing acceptance of the industry arbitrator will continue to erode the belief that fairness and neutrality are realities of the arbitration process.

The decision of an arbitration panel is final and binding. Because there is no meaningful review of a panel's award, absent limited circumstances, there is a heightened need to ensure that each of the arbitrators comes to the hearing without any bias. Even the appearance of partiality created by an arbitrator's direct link to the same industry as a respondent generates substantial concern by investors that they begin their arbitration hearings at a distinct disadvantage.

The goals of fairness and neutrality are not served by the existence of the industry arbitrator. Given the quality of the representation of claimants and respondents, coupled with the appropriate training of public arbitrators, there is no need for an arbitrator to bring any of his or her own industry-related expertise to the decision-making process. I wholeheartedly agree with the observation of another commentator that both claimants and respondents typically offer the testimony of expert witnesses and other witnesses, who are subject to cross-examination, to explain the relevant issues and facts. Moreover, arbitrators are able to ask questions of witnesses to resolve their own uncertainties about the evidence. There is no reason to believe that three well-trained public arbitrators are less capable of resolving disputed issues than the collection of untrained layman that constitute a typical jury.

Imagine the objections of broker-dealers if every arbitration panel was guaranteed to include an arbitrator who had suffered investment losses as a result of improper advice? Certainly, an argument could be made that such an arbitrator could impartially judge the conduct of various brokerage firms while bringing investor-related experience to the hearing. Yet, industry members would scoff at the notion that such an arbitrator could be fair and impartial. As an attorney who has represented investors in securities claims for ten years, I know that investors have a similar lack of confidence that a branch manager of a brokerage firm which has been the subject of prior arbitration claims is capable of making an impartial decision.

Thank you very much for the opportunity to comment on this matter.

Very truly yours,

Laurence M. Landsman
Block & Landsman
Chicago, Illinois