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September 12, 2005

VIA E-MAIL TO RULE-COMMENTS@SEC.GOV

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

Re: File No. SR-NASD-2005-0094
"Public Arbitrator" Definition

Dear Mr. Katz:

We appreciate the opportunity to comment on the NASD proposal to amend Rule 10308 of the NASD Code of Arbitration Procedure. We have maintained an active securities practice in our firm since the firm was organized in 1982 and have been representing both claimants and respondents in securities arbitration before the National Association of Securities Dealers since 1987. We submit the following comments with respect to the proposed NASD rule relating to the "public arbitrator" definition as referenced above.

The NASD's proposal to amend the "public arbitrator" definition in Rule 10308(a)(5) fails to address the essential unfairness of the existing "public arbitrator" definition.

Under the NASD rules, every three-person panel must contain one industry arbitrator and two public arbitrators. Since one of the three arbitrators is from the industry, it is imperative that the public arbitrators be free from industry influence; otherwise, they cannot be deemed "public."

The current rule is fundamentally unfair to investors because it allows public arbitrators to be subject to industry conflicts of interest.

The rule provides that attorneys may sit as public arbitrators even though they and their firms represent the brokerage industry. Thus, under the NASD rules, a panel may consist of an industry arbitrator and two so-called public arbitrators, both of whom have existing conflicts of interest and an appearance of pro-industry bias on behalf of their clients.

The NASD's approach to supposedly limiting this industry influence on public arbitrators is to prohibit attorneys who represent brokerage clients from serving as public arbitrators if their brokerage clients comprise 10 percent or more of their firm's practice.

This 10-percent rule simply makes no sense. An attorney whose firm represents any industry clients is subject to industry influence regardless of the percentage of industry business. An attorney's duty to his client under the law is not affected by the size of the client; it is identical and equally compelling for both large and small clients.

A percentage test for industry influence does not work. Any industry influence is unacceptable in a public arbitrator.

The arbitration process cannot possibly be fair to investors when a majority or potentially all of the arbitrators may be subject to industry influence. In a system where investors are required to accept an industry member on the panel, public arbitrators must be truly public.

The NASD's proposal should be amended to prohibit professionals from sitting as public arbitrators if they represent industry members, regardless of the percentage of the business.

Thank you for your consideration.

Very truly yours,

Laurence S. Schultz

LSS/ch