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September 19, 2005

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

RE: SR-NASD-2005-094
SR-NYSE-2005-43
Classification of Arbitrators

Dear Mr. Katz:

Please consider our comments on the proposed new rules.

The proposed rules tinker at the edge of existing rules that are substantially flawed and unfair at the core. If fairness is the goal, the "non-public arbitrator" should be eliminated. There is no designated "customer arbitrator"—someone who lost her life savings to an unscrupulous brokerage firm—to appreciate the nuances of what it's like to be a customer in arbitration. There is no reason to have an industry representative either.

The appearance of unfairness in using a designated industry representative is obvious from the fact that a euphemism is necessary for the official title for the position. "Non-public arbitrator" really is empty of content. Calling the person what he or she really is—the industry representative—is a much more meaningful description. And yet the system doesn't use that description because, to do so, is to signal that the field is tilted from the start.

If the industry representative is going to stay, then the proposed changes don't go nearly far enough to include who is an industry representative. It's all too common to see lawyers who represent industry interests as arbitrators. Why let the industry create or enforce an arbitrary standard of how much money is enough to create the appearance of bias or unfairness. With a lawyer from a law firm with tens of millions of dollars of revenue annually, lots of money can still change hands under the proposed rule and leave as a "public" arbitrator a person with significant ties to the industry. Ask the public if $10,000.00 is enough money to create the appearance of bias or unfairness, and the answer will be "yes" regardless of annual revenue. If

the industry representative is here to stay, then any professional who personally or whose firm has received any revenue from the industry in the last five years should be an industry representative—*i.e.*, a "non-customer arbitrator."

Respectfully submitted,

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