

September 20, 2005

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:

As the former owner of a fully licensed SEC general securities broker-dealer, my firm was a named respondent to NASD arbitrations from time to time. During the course of these arbitrations, my firm was grateful to have a friend on the panel, i.e., an industry arbitrator. In preparing for the hearing in these cases, the ultimate strategy with my counsel was to win over just one of the two public arbitrators because I knew that generally, the industry arbitrator was on our side. I knew the arbitration process was in my firms favor because 1/3 of the panel could be counted on to dismiss all of the claimants claims with prejudice. If a claimant filed an action in court, my firm expended considerable resources to get the action removed into arbitration because of the advantage I knew we had with the industry arbitrator.

I sold the assets of my broker dealer and went to law school, graduated, and have been representing claimants in securities arbitrations ever since. Just as I knew back then, I know now, through painful and sad experience, that having an industry arbitrator on panels is unfair to the claimant who just wants a fair hearing. Now, as I strategize for my clients in hearing preparation, I know I need to win over both public arbitrators, which includes minimizing the damage the industry arbitrator will be doing in terms of damages, etc. This is not an easy task, and certainly not fair knowing I generally have one no vote going into the hearing.

I urge you, in the strongest terms, to level the playing field by eliminating the industry arbitrator from the panels in order to give the public customer a fair hearing to the extent that is possible with NASD and NYSE administering the hearings.

Very truly,

Randall R. Heiner
Attorney at Law