Mary Yeager
Assistant Secretary

New York Stock Exchange LLC
11 Wall Street
New York, NY 10005

tel: 212.656.2062
fax: 212.656.3939
myeager@nyse.com

June 5, 2006

Ms. Katherine A. England
Assistant Director
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Response to Comments to File Number SR-NYSE-2005-43 – Relating to Classification of Arbitrators as Public or Industry

Dear Ms. England:

The New York Stock Exchange, Inc. ("NYSE" or the "Exchange") hereby submits its response to public comment letters received by the Securities and Exchange Commission ("SEC" or the "Commission") after the publication of File Number SR-NYSE-2005-43 and Amendment No. 1 thereto in the Federal Register on August 29, 2005.[1]

[1] Securities Exchange Act of 1934 (the "Act") Release No. 34-52314 (June 17, 2005), 70FR51104 (August 29, 2005) (SR-NYSE-2005-43).

The SEC received a total of 38 comment letters[2] (three comment letters have multiple

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[2] See Letter from Seth E. Lipner, Professor of Law, Zicklin School of Business Baruch College and member Deutsch & Lipner to Jonathan G. Katz, dated September 8, 2005, Letters from Steve A. Buchwalter to Jonathan G. Katz, dated September 13, 2005 and September 19, 2005 (Exchange response addresses both letters), Letter from Michael Knoll, Law Office of Michael Knoll to Jonathan G. Katz, dated September 13, 2005, Letter from Richard M. Layne, Layne & Lewis to Jonathan G. Katz, dated September 13, 2005, Letter from Michael J. Willner, Miller Faucher and Cafferty to Jonathan G. Katz, dated September 13, 2005, Letter from Steven B. Caruso, Maddox Hargett & Caruso to Jonathan G. Katz, dated September 14, 2005, Letter from Scott C. Ilgenfritz to Jonathan G. Katz, dated September 14, 2005, Letter from Jorge A. Lopez, Law Offices of Jorge A. Lopez to Jonathan G. Katz, dated September 14, 2005, Letter from Jay H. Salamon, Hermann, Cahn & Schneider to Jonathan G. Katz, dated September 14, 2005, Letter from Tracy Pride Stoneman to Jonathan G. Katz, dated September 14, 2005, Letter from Bill Fynes to Jonathan G. Katz, dated September 15, 2005, Letter from Rosemary J. Shockman, President, Public Investors Arbitration Bar Association ("PIABA") to Jonathan G. Katz, dated September 15, 2005, Letter from James D. Keeney to Jonathan G. Katz, dated September 15, 2005, Letter from Henry D. Fellows, Jr., Fellows Johnson & La Briola to Jonathan G. Katz, dated September 16, 2005, Letter from Philip M. Aidikoff, Aidikoff & Uhl to Jonathan G. Katz, dated September 16, 2005, Letter from Bruce E. Baldinger, Baldinger & Levine to Jonathan G. Katz, dated September 16, 2005, Letter from Debra G. Speyer, Law Offices of Debra G. Speyer to Jonathan G. Katz, dated September 19, 2005, Letter from Richard P. Ryder, President, Securities Arbitration Commentator, Inc. ("SAC") to Jonathan G. Katz, dated September 19, 2005, Letter from Royal B. Lea, III, Bingham & Lea and Randall A. Pulman, Pulman, Bresnahan & Pullen to Jonathan G. Katz, dated September 19, 2005, Letter from Harvey Eckart, Eckart & Leonetti to Jonathan G. Katz, dated September 19, 2005, Letter from Eliot Goldstein to Jonathan G. Katz, dated September 19, 2005, Letter from Alan C. Friedberg, Pendleton, Friedberg, Wilson & Hennessey to Jonathan G. Katz, dated September 19, 2005, Letter from G. Mark Brewer, Brewer Carlson to Jonathan G. Katz, dated September 20, 2005, Letter from Jason R. Doss, Page Perry to Jonathan G. Katz, dated September 20, 2005, Letter from William P. Torngren, Law Offices of William P. Torngren to Jonathan G. Katz, dated September 20, 2005, Letter from Thomas D. Mauriello, Law Offices of Thomas D. Mauriello to Jonathan G. Katz, dated September 20, 2005, Letter from L. Jerome Stanley to Jonathan G. Katz, dated September 20, 2005, Letter from Joel A. Goodman, Kalju Nekvasil, Stephen Krosschell and Jennifer Newsom, Goodman & Nekvasil to Jonathan G. Katz, dated September 20, 2005, Letter from Mitchell S. Ostwald, Law Offices of Mitchell S. Ostwald to Jonathan G. Katz, dated September 20, 2005, Letter from Scott Silver, Blum & Silver to Jonathan G. Katz, dated September 20, 2005, Letter from Steven J. Gard, Gard Smiley Bishop & Dovin to Jonathan G. Katz, dated September 20, 2005, Letter from Charles C. Mihalek and Steven M. McCauley to Jonathan G. Katz, dated September 20, 2005, Letter from Susan N. Perkins to Jonathan G. Katz, dated September 20, 2005, Letter

signatories[3]), one of which supports the proposed amendments in their entirety.[4] The other letters suggest various alternatives to panel composition and the method by which arbitrators are classified,[5] many of which alternatives the Exchange believes are beyond the scope of the filing,[6] and are, therefore, not being addressed by the Exchange herein. The Exchange is prepared to discuss any of those items outside the scope of this filing at the appropriate time.

Background

Rule 607 provides for the classification of arbitrators as public or securities industry. On June 17, 2005, the Exchange filed with the SEC proposed changes to Rule 607 which: (1) expand the list of entities engaged in the securities business; (2) preclude any individual who is associated with any entity that controls or is controlled by the expanded list of entities from being classified as a public arbitrator; and, (3) preclude any individual from being classified as a public arbitrator who has an immediate family member (defined in the rule) associated with the expanded list of entities. The Exchange filed an amendment on August 4, 2005, to indicate that the National Association of Securities Dealers (NASD) filed a similar rule proposal and to clarify that implementation of the proposed rule change would take place 90 days following publication in the Federal Register of the Commission's approval of the rule change. Proposed Rule 607 was published for comment in the Federal Register on August 29, 2005.

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from Teresa M. Gillis, Shustak Jalil & Heller to Jonathan G. Katz, dated September 20, 2005, Letter from Brian M. Greenman to Jonathan G. Katz, dated September 20, 2005, Letter from Jonathan W. Evans, Jonathan W. Evans & Associates to Jonathan G. Katz, dated September 21, 2005 and Letter from Bradford D. Kaufman, Greenberg Traurig to Jonathan G. Katz, dated October 7, 2005.

[3] See Letters from Lea, III, Pulman, Goodman, Nekvasik, Krosschell, Newsom, Mihalek, and McCauley.

[4] See Letter from Kaufman.

[5] See Letters from Lipner, Buchwalter, Knoll, Layne, Willner, Caruso, Ilgenfritz, Stoneman, Lopez, Salamon, Shockman, Keeney, Baldinger, Fynes, Fellows, Jr., Aidikoff, Speyer, Ryder, Lea, III, Pulman, Eckart, Goldstein, Friedberg, Brewer, Doss, Torngren, Mauriello, Stanley, Goodman, Nekvasik, Krosschell, Newsom, Ostwald, Silver, Gard, Mihalek, McCauley, Perkins, Gillis, Greenman, and Evans.

[6] See Letters from Ryder, Willner, and Eckart.

Response to Comments

1. The Exchange should exclude securities industry arbitrators from customer arbitration panels and/or all arbitration panels.[7]

The Exchange believes that the presence of a securities industry arbitrator adds value to the process of securities dispute resolution. As noted in the comment letter supporting the proposed amendments, to eliminate the presence of industry arbitrators would "remove a valuable resource from securities arbitration to the detriment of all participants in the forum."[8] As noted in another comment letter, the Securities and Exchange Commission ("SEC") should not consider eliminating the industry arbitrator until either a rule proposal is filed or the Securities Industry Conference on Arbitration ("SICA") makes a recommendation.[9]

However, as the administrator of a neutral forum intent on being investor-friendly as well as providing a level playing field for all participants, the Exchange also believes that the users of its forum - the public investors, non-members, and members - should have input into the procedures by which arbitrators are appointed to panels.

The Exchange is a member of SICA, and notes that SICA has been reviewing proposals from its membership that represents both public investors and the securities industry regarding the issue of a securities industry arbitrator serving on panels. The Exchange will continue to participate in these discussions, and will carefully review any rule regarding panel composition that SICA adopts into its Uniform Code of Arbitration ("UCA").

2. The definition of public arbitrator should exclude any professional who has represented, or whose firm has represented, members of the securities industry.[10]

The comment letters expressed three proposals regarding how a public arbitrator should be defined. The proposals would exclude from the definition of public arbitrator: (1)

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[7] See Letters from Lipner, Buchwalter, Layne, Willner, Ilgenfritz, Lopez, Salamon, Baldinger, Speyer, Goldstein, Friedberg, Lea, Pulman, Eckart, Brewer, Stanley, Ostwald, Silver, Mihalek, McCauley, Gillis, Greenman, and Evans.

[8] See Letter from Kaufman.

[9] See Letter from Ryder.

[10] See Letters from Lipner, Buchwalter, Knoll, Layne, Caruso, Ilgenfritz, Salamon, Lopez, Stoneman, Shockman, Keeney, Fynes, Fellows, Aidikoff, Speyer, Lea, Pulman, Friedberg, Goldstein, Doss, Torngren, Mauriello, Goodman, Nekvasik, Krosschell, Newsom, Silver, Gard, Mihalek, McCauley, Perkins, Greenman and Evans.

individuals who represent, or are in a professional firm which represents, any securities industry clients[11]; (2) individuals who have represented, or are in a professional firm which has represented, any securities industry clients within the past five years;[12] and, (3) individuals who receive, or are in a professional firm which receives, any revenue from securities industry clients.[13]

Initially, the Exchange notes that its Arbitration Rules include in the definition of securities arbitrator those professionals who have devoted twenty percent or more of their work effort within the past two years to representing securities industry clients.[14] The Arbitration Rules do not reference in the definition of who will not be classified as a public arbitrator those individuals whose firms receive a percentage of revenue derived from securities industry clients.[15]

The Exchange currently classifies as public arbitrators individuals who have devoted less than twenty percent of their work effort within the past two years to representing securities industry clients. The Exchange believes that, if such individuals were not classified as public arbitrators, well-qualified individuals whose ties to the securities industry are minimal would be completely excluded from the pool, as they would not fulfill the requirements necessary for classification as a securities arbitrator. Additionally, individuals excluded from the pool would include professionals whose primary representation is that of public investors, but who also occasionally represent securities industry clients.

Furthermore, the Exchange believes that, if those individuals whose firms receive any income from representing securities industry clients were not classified as public arbitrators, well qualified individuals, who themselves represent no securities industry clients and have no securities experience, would be completely excluded from the pool as they would not fulfill the requirements necessary for classification as a securities arbitrator. The Exchange notes that arbitrators whose firms represent securities industry clients disclose such relationships in their profiles and are not assigned to cases involving those clients.

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[11] See Letters from Lipner, Knoll, Layne, Lopez, Speyer, and Greenman.

[12] See Letters from Caruso, Ilgenfritz, Salamon, Stoneman, Shockman, Keeney, Fynes, Fellows, Aidikoff, Lea, Pulman, Goldstein, Doss, Torngren, Mauriello, Goodman, Nekvasik, Krosschell, Newsom, Mihalek, McCauley, and Evans.

[13] See Letters from Buchwalter, Friedberg, Silver, Perkins, and Gard.

[14] NYSE Rule 607(a)(2)(iv).

[15] NYSE Rule 607 (a)(3).

The Exchange also notes that, in addition to individuals who represent securities industry clients twenty percent or more time within the past two years being classified as securities arbitrators, any professional who has devoted twenty percent or more of his/her work effort representing securities industry clients for twenty percent or more of his/her career remains classified as a securities arbitrator.[16]

The Exchange acknowledges the concerns expressed in the comment letters, and believes that the users of its forum should have input into the arbitration process. While the Exchange believes that its proposed amendments are consistent with the Act, the Exchange will review its current definition of individuals not eligible to serve as public arbitrators, to address those persons whose firms receive a percentage of revenue derived from securities industry clients. The Exchange will subsequently propose an amendment by a separate rule filing with the SEC specifying that individuals whose firms receive a certain percentage of revenue derived from securities industry clients will not be classified as public arbitrators. However, the proposed amendments as currently set forth are an important step forward and should be approved at this time.

3. There should be no difference between NYSE and NASD Rules.[17]

The Exchange notes the differences mentioned in the comment letters between the proposed amendments of the Exchange and those of the NASD regard the definitions of "immediate family" and "control." The Exchange's definition of "immediate family" includes in-laws but not step-parents/children whereas the NASD's definition includes step-parents/children but not in-laws. The Exchange's definition of "control" does not extend to the immediate family of the "control-related parties" whereas the NASD's definition does.

The Exchange defined "immediate family" and "control" in a manner calculated both to ensure that individuals with perceived significant securities industry ties would not be defined as public arbitrators, and to avoid eliminating from the pool individuals with minimal ties to the securities industry. Therefore, the Exchange believes that its definitions better serve the intended purpose of tightening the definition by which individuals are classified as public arbitrators without removing from the pool altogether those individuals with minimal securities industry ties.

Conclusion

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[16] NYSE Rule 607(a)(2)(iii).

[17] See Letter from Ryder.

The Exchange notes that the comment letter from the group routinely representing public investors in arbitration, which is comprised of over 700 members, supports the amendments, although they do not believe the amendments "go far enough." They recommend that individuals who have represented, or are in a professional firm that has represented, any securities industry clients within the past five years not be classified as public arbitrators. As noted above, the Exchange is aware of their concerns and has attempted to be responsive, while at the same time trying to avoid having qualified individuals with minimal securities ties, including those professionals who primarily represent public investors or whose firms receive any income from representing securities industry clients, completely eliminated from the pool of arbitrators. The Exchange also notes that, as stated above, a subsequent amendment regarding individuals whose firms derive revenue from securities industry clients will be proposed.

The Exchange believes that the proposed amendments are an important step forward in narrowing the definition of public arbitrator, and in ensuring that individuals with significant ties to the securities industry do not serve as public arbitrators. The amendments will both enhance the process of securities arbitration as well as benefit public investors.

Accordingly, and for the reasons set forth above, the Exchange believes that no further amendments should be made to the proposed rule filing and the rule should be approved as noticed in the Federal Register.

Thank you for the opportunity to respond to the comment letters.

Please contact Karen Kupersmith at 212-656-4865 if you have any further questions concerning the above.

Sincerely,

Mary Yeager
Assistant Secretary