September 20, 2005

SR-NYSE-2005-43-20

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

Dear Secretary Katz:

I write to comment on proposed NASD Rule 10308 as well as NYSE Proposed Rule 607 SEC File Number SR-NYSE-2005-43, which seek to redefine the term public arbitrator. For the record, I am the former securities broker and branch office manager who has acted as the attorney for numerous public investors in NASD and NYSE - sponsored arbitrators since 1990. I am also a non-public NASD arbitrator.

Even under the newly proposed rules, a public arbitrator could be an individual whose firm derives up to 10% of its gross revenues from the securities industry. Even under the proposed rules, an SRO arbitration panel could be (and many times is) composed of the following:

1) an active securities industry broker or manager.
2) a former securities industry broker or manager who has been retired for five years;[1] and
3) an attorney from a law firm that makes 10% of its gross revenue from defending securities industry clients.

Assume, for sake of discussion, that you bought a new car and you have a dispute about the car with the dealership you bought it from. Assume that, because of the language in the sales documents, you are obligated to arbitrate the dispute at an arbitration forum sponsored by the National Association of Car Dealers ("NACD"). Lastly, assume that the arbitrator rules of the NACD are the same as the SRO rules. The arbitrators on your NACD panel could consist of the following:

1) the sales manager of a car dealership;
2) an owner of a car dealership who retired five years ago;
3) an attorney from a firm that represents several large car dealerships and defends those dealerships in consumer arbitrations, and 10% of the firm's gross revenues come from representing these dealerships in these arbitrations against claims made by car buyers just like you.[2]

If you were the owner of that car, and you were faced with the prospect of going to binding arbitration with that arbitration panel, would it instill confidence in you that you would get a fair shake on your claim at the arbitration hearing?

It's almost a rhetorical question. The answer is – of course not.

And, if you asked a public customer the same question about being faced with going to a SRO arbitration, you would get the same answer – of course not.

If the purpose of the rule changes, as stated in the rule filing, is to enhance investor confidence in the fairness and neutrality of the SRO arbitration system, they fall woefully short. The proposed SRO rule changes are not material changes that would affect the fundamental make-up and the actual and perceived fairness of SRO arbitration panels.

The answer to instilling public confidence in the SRO arbitration system is simple – the industry arbitrator must be eliminated. The presence of the industry arbitrator is a hold-over from the pre-*Shearson v. McMahon* days, when the industry controlled the arbitration process, and the investor had the option to arbitrate. If the investor's option to arbitrate is gone – so should be the industry arbitrator.

Without meaningful reform of the fundamental composition of arbitration panels and the elimination of the industry arbitrator, erosion of what (if any) is left of the public's confidence in the "fairness and neutrality" of the SRO arbitration system will continue.

Thank you for the opportunity to comment.

Sincerely,

L. Jerome Stanley

Baton Rouge, La.

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1. The SRO rules allow for two security industry panelists – one active and one retired. This is in spite of the fact that the arbitration disclosures used by virtually all of the securities firms advise that a minority of the arbitration panels will be composed of individuals who are or were associated with the securities industry.