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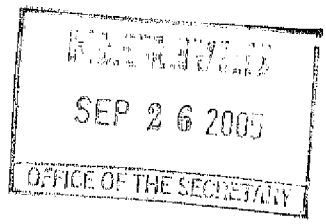

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September 19, 2005

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

Re: File No. SR-NYSE-2005-43, "Public Arbitrator" Definition

Dear Secretary Katz:

My comment on the proposed rule is that it is inadequate to protect the appearance of neutrality of the arbitration forum. Furthermore, I submit that securities arbitration is increasingly being viewed as biased against investors and a tool of the securities industry.

I have represented consumers in the NASD securities arbitration forum for over seven years and have observed an increasing degree of cynicism and disrespect for the arbitration process owing to the perception it is biased against consumers. If not corrected, this perception will undermine the legitimate exercise of justice to the detriment of everyone. It is a dangerous prospect for society when the public feels abandoned by its government, and particularly so if by denying access to justice. I firmly believe that nothing less is at stake with respect to how securities litigation has been delegated to industry sponsored arbitration.

I have personally encountered a situation where an attorney who predominantly represents and defends brokers and brokerage firms lists himself as "public arbitrator" for purposes of arbitrator panel selection. The proposed rule is a step in the right direction to the extent it would correct this situation. But it is inadequate because industry bias permeates the current arbitration process beyond what the amendment can cure.

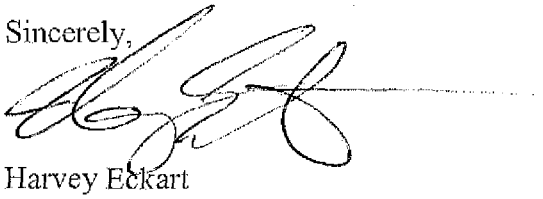
Though anecdotal, my experience convinces me that the process needs drastic reform. I am personally aware of a seasoned industry arbitrator who recently ceased arbitrating because it is unfair to customers. Another industry arbitrator related to me how two public arbitrators serving on a panel with him had preconceived convictions placing the customer's standards of proof higher than what the law requires. Finally, what compels

† Admitted in Minnesota and Illinois

me to believe that the arbitration process is biased is the nearly universal reaction I've observed from industry respondents who believe that in arbitration there is a fifty-fifty chance they will not be found liable, a strong likelihood that if found liable it will be for less than the customer's damages, and the near impossibility that a panel will render a punitive award in even the most egregious conduct. In effect, my experience is that the security industry views the arbitration process as a forum for bargaining. Their view is formed by experience.

I submit that the neutrality of the securities arbitration forum should be reasserted by eliminating the requirement of an industry arbitrator and implementing a new, transparent arbitrator training process that fully incorporates consumer advocacy.

Sincerely,



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