September 14, 2005

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

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

Dear Mr. Katz:

I write to make known my personal comments on the above-referenced NYSE rule filing concerning the "public arbitrator" definition, Rule 607 of the NYSE arbitration rules (the "Proposed Rule").

While I am in favor of the Proposed Rule in that it removes persons from the NYSE arbitration rules "public arbitrator" definition who may have industry-related conflicts of interest, it must do more than that in order to provide investors with a level playing field. The presence of a mandatory industry arbitrator sitting in a mandatory industry-sponsored forum makes it essential that the two remaining "public" arbitrators be free from industry influence. Investors must be assured that they will have no more than one of three panel members with the appearance of a pro-industry bias. I have been a part of several arbitrations in which I believe the negative result was due, in part, to the fact that an industry bias pervaded my panel. This was not a bias discovered after the arbitration but rather one that was well known in advance of the arbitration - more than one of my arbitrators had ties to the brokerage industry - it's as simple as that.

Currently, Rule 607 provides that an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past two years from brokerage or commodity firms or their associated persons is barred from being a public arbitrator. The problem with this definition is that it allows large groups of professionals who have existing relationships with the industry or its associated persons and which account for less than 10 percent of their firm revenues to serve as so-called public arbitrators, ignoring that these industry relationships present a conflict of interest and an appearance of pro-industry bias.

Thus, the current definition does not provide investors with assurance that public arbitrators are truly public and free from industry influence. In addition, the 10 percent revenue standard is arbitrary and has no practical or legal significance. In larger law firms, industry clients may generate millions of dollars in fees and not equal or exceed 10 percent of the firm's billings.

Even more significant, an attorney who represents industry clients which comprise less than 10 percent of the firm's annual revenue in the past two years, has the same obligation, commitment, and duty of loyalty to the client as does the attorney with clients who equal or exceed the 10 percent limit.

Allowing professionals who have industry clients to serve as public arbitrators is particularly unfair to investors because all three-person panels already have one industry member. Under the current rule, investors are required to accept arbitration panels where two out of three arbitrators (and potentially all three arbitrators) have industry relationships. This presents an unacceptable appearance of pro-industry partiality or bias.

The question arises as to what level of interest a professional may have in representing an industry member and still be deemed a public arbitrator. The only reasonable conclusion is that the professional serving as a public arbitrator can have no representation of industry members. The basic reason for this is the referenced principle that a professional owes the same obligation to all clients. Whether the client is a large or small portion of the firm business, the duty is identical. Under the legal canons, a lawyer must aggressively advocate the interests of every client, even those that may be pro bono.

Furthermore, regardless of the percentage of business, it must be assumed that a lawyer would be disinclined from doing anything that would jeopardize the existing client relationship. A lawyer with any conflicted industry representation is going to be less likely to render a decision which may be adverse to the interests of the industry client.
If the industry client sells B shares, the lawyer is less likely to rule that a respondent improperly sold B shares. The same is true with respect to the improper sale of variable annuities or other products which are sold by the lawyer's industry client. Further, the conflicted lawyer is going to be less likely to render a large arbitration award or a punitive damage award or an award of attorneys' fees if the lawyer perceives that the industry client may react negatively to such a ruling. And even if the lawyer does not react to the conflict, there will be an appearance of bias to the investor which will taint the proceeding.

There also is the issue of the lawyer's desire to obtain new industry business. One who is engaged in representing industry members must be assumed to have a continuing interest in acquiring new industry clients.
A lawyer in this situation is going to be less likely to render arbitration awards that would be troublesome to potential new industry clients, further adding to the appearance of a pro-industry bias.

Establishing a percentage cutoff for the amount of industry business a professional may have before concluding that an appearance of bias or prejudice exists is an arbitrary and fictional standard. Any industry business on the part of the professional establishes the same conflict. Combined with the existence of mandatory industry arbitration and the mandatory industry arbitrator, a public arbitrator with any appearance of industry bias or prejudice is unacceptable.

Based upon the foregoing, I am strongly in favor that the definition of "public arbitrator" as set forth in Rule 607 be modified to exclude from the term "public arbitrator" any person who is an attorney, accountant, or other professional whose firm has represented within the past five years any persons or entities listed in Rule 607(a)(2).

Thank you,

Tracy Pride Stoneman
Tracy Pride Stoneman, P.C.