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Submitted by E-Mail

Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-93-3

Re: File No. SR-NASD-2005-094
File No. SR-NYSE-2005-43

Dear Secretary Katz:

This is to comment on rule changes proposed by the NASD and NYSE regarding the classification of arbitrators. I have practiced in the securities area for more than 30 years during which time I have represented, among others, brokers, registered representatives, and customers. My first SRO arbitration was in 1976.

The NASD and NYSE propose minor changes in the definition of "public arbitrator." Those changes, however, will not provide truly impartial panels. The ultimate goal of SRO arbitration has to be a fair procedure before an impartial and neutral panel while maintaining the appearance of fairness to the parties and, in particular, public customers. After all, the public customer is forced into SRO arbitration when a jury may be more attuned to his or her plight and the impact of losses on his or her life.

The appearance of fairness suffers initially and in every case because one arbitrator is a member of the securities industry. I cannot imagine any circumstance where a court proceeding in which one-third of the jurors worked in the business of one of the parties would be perceived as fair. That, however, is exactly what every customer faces. This obvious appearance of unfairness is not addressed at all by the proposed changes.

The proposed changes address another issue – *i.e.*, the classification of professionals who have representational ties to the securities industry. Under the proposed changes, those professionals may serve as "public" arbitrators depending upon what percentage of their firms' total revenues are derived from the securities industry. This simply does not go far enough. Depending upon the size of a professional's firm, revenues from the industry can be in the millions of dollars, but the professional still would be classified as "public."

Any appearance of fairness flies out the window when a professional with representational ties to the securities industry is appointed to a panel. Some portion of his or her livelihood depends upon the very industry being examined. In other words, two-thirds of the jurors either work in the business of one of the parties or advocates for that business. Would the SEC enforcement staff want to try a case before that jury? Would staff believe the public interests which the SEC represents were receiving a fair shake?

Maximum fairness requires elimination of the industry – mischaracterized as "non-public" – arbitrator and professionals with ties to the industry from SRO arbitration panels. But at minimum and to provide some additional appearance of fairness to customers, the definition of public arbitrator should be modified to exclude any attorney, accountant, or other professional who personally or whose firm has represented industry members within the prior five years.

Yours very truly,

William P. Tomgren