

AN OPEN LETTER FROM PIABA TO THE INVESTING PUBLIC CONCERNING THE PROPOSED MERGER OF THE REGULATORY SECTIONS OF THE NASD AND NEW YORK STOCK EXCHANGE

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The Securities Industry Association has announced that it favors a merger of the regulators of NASD and New York Stock Exchange so that Wall Street brokerages will be governed by a single set of regulations. (See, e.g., *New York Times*, "Should the Securities Industry Have Just One Set of Rules?" January 25, 2006 by Jenny Anderson.) That makes some sense. There is no need for two separate self-regulating organizations to police the same brokerages using similar but not identical regulations. However, the SIA's proposal that it be given a seat on the board of a newly formed regulatory body reminds us of the fox in the henhouse.

The overriding purpose of securities regulation is investor protection, which is necessary to maintain (or perhaps in the post-Enron, post-analyst scandal world, repair) public trust in the securities markets. The SIA is a trade association of 600 brokerage firms, investment banks and mutual fund companies. While it has at times sought to improve the industry in ways that benefit us all, there can be no mistake that it exists to protect its members, often at the expense of individual investors.

Using the fine print on the back of the forms we all sign to open brokerage accounts, SIA members force customers bringing claims against their brokers into arbitration, preventing them from going to court. Within that securities arbitration system, the SIA insists that one of the three arbitrators deciding the investor's case be a broker, or have direct ties to the securities industry. To be sure, there is some balance built into the securities arbitration rules. Investors have some say in selecting the arbitrators who will hear their case, for example, and the technical rules governing cases filed in court are somewhat relaxed in arbitration. However, any balance exists in spite, and not because, of the SIA. NASD's Dispute Resolution subsidiary has a standing committee that advises the NASD Board on the arbitration process. To its credit, NASD ensures that its committee is balanced between industry and investor representatives. As a past member of that committee, I can assure you that the public investor representatives often express views quite different from the industry members. If the industry alone decided the rules for resolving complaints by customers, a dispute resolution system that is already tipped in favor of the industry would become completely lopsided.

The SIA consistently has taken public positions adverse to investors who have been victimized by wrongdoing on the Street. Sometimes, it files *amicus curiae*, or "friend of the court," briefs seeking to overturn decisions of arbitration panels which have ordered brokerages to compensate defrauded investors. The SIA also routinely files comment letters with the SEC opposing proposed rules that would give investors a level playing field in resolving disputes with their brokers.

The SIA's industry bias in regulation is not limited to investor claims. It is often at odds with the North American Securities Administrators Association, the independent state regulator "stock cops" who seek to protect their citizens from securities scams. Indeed, if the SIA had its way, there would be no state regulation of securities sales.

Like any trade association, the SIA's job is to protect itself, and it does that well. But, do we really want it sitting on the board of the group that regulates its conduct? Congress, SEC Chairman Christopher Cox and incoming NASD Chairperson Mary Schapiro must ensure that

the board of any self-regulatory organization include members who will genuinely further the goals of regulation - to protect investors. Let's not put a fox in the henhouse.

Contact: Robert S. Banks, Jr.
President, Public Investors Arbitration Bar Association
Portland, Oregon
503-467-7681 (direct--day)
503-296-9266 (evening)
bob@bankslawoffice.com
www.bankslawoffice.com