Public Investors Arbitration Bar Association

April 25, 2006

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

Re: Proposed Rule Change to NYSE Rule 619
New Paragraph (h)
File No. SR-NYSE-2005-18
Release No. 34-53599

Dear Secretary Katz:

The Public Investors Arbitration Bar Association ("PIABA") submits these comments on Proposed Rule Change to New York Stock Exchange ("NYSE") Rule 619, new paragraph (h), Securities and Exchange Commission File No. SR-NYSE-2005-18; Release No. 34-53599, clarifying that failure to appear or produce documents in arbitration may be deemed conduct inconsistent with Just and Equitable Principles of Trade pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder.

PIABA's comments will address two areas of the rule filing: (A) support for the new paragraph (h); and (B) suggestions for implementation of the proposed revisions.

A. Support for the New Paragraph (h).

PIABA supports the proposed new paragraph (h) to Rule 619. Our experience leads us to believe that member firms that violate discovery rules and deadlines do not regard their conduct as serious unless sanctions are imposed. Many public investors are required to make numerous requests and costly motions for the same documents in any given arbitration and do not get documents in an acceptable time frame prior to a hearing.

The possibility that sanctions could be imposed by the arbitrators has not served as a deterrent. In our members' experience, arbitrators rarely grant requests for sanctions. The power to sanction a party an is found only in Rule 604 (and Rule 621, which simply refers back to Rule 604). Rule 604(b) states:

(b) The arbitrators may dismiss a claim, defense or proceeding with prejudice as a sanction for willful and intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.

Although NYSE Rule 619 provides that the parties to an arbitration proceeding "shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information in order to expedite the arbitration process" and establishes a timetable for parties to follow, it is rarely enforced by arbitrators. The sanctions provision, Section 604(b), suggests that there must first be an original order, a failure to comply, and an ineffective imposition of a lesser sanction before a meaningful sanction of dismissal of a defense for failure to provide discovery. Such a practice is contrary to the expeditious aspirations of Rule 619 and contrary to the fairness requirements of the Arbitration Rules. As a result, PIABA members often get documents at the proverbial "eleventh hour." "Lesser sanctions" are also not defined in the NYSE Arbitration Code. Sanction guidelines, which do not presently exist, would help empower arbitrators as to the appropriateness and proper measure of sanctions.

The proposed rule change to NYSE Rule 619 is not likely to radically change the process. However, it is a step in the right direction and would communicate to associated members, member firms and arbitrators the importance of complying with discovery obligations. Once firms are subject to regulatory sanctions for non-compliance, including not only fines but a possible bar for some period of time, the discovery process may begin to run more fairly and efficiently.

Additionally, if this rule is accepted, a party who feels aggrieved by an associated member and/or a member firm can simultaneously seek assistance from an arbitration panel and the NYSE regulatory department. Under this scenario, we hope that the non-cooperative members will be more likely to respond timely to discovery requests.

B. <u>Suggestions for Implementation of the Proposed Revisions</u>

We recommend that because this rule relates to arbitration, the NYSE should ensure that all arbitrators are promptly notified of the rule and the reasons behind its enactment. Arbitrators should be reminded that they should be vigilant in ensuring that the discovery process proceeds as the rules contemplate, and that sanctions should be levied against non-complying parties. Finally, arbitrators should be advised that, pursuant to the rule change,

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they may refer members who fail to provide discovery to the Regulatory Department.

Thank you for your consideration.

Very truly yours,

Robert S. Banks, Jr.
PIABA President

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